1 Vladi Khiterer (Bar No. 177007)
2 Khiterer, Inc.
   2901 W. Coast Hwy., Suite 200
3 Newport Beach, CA 92663
   (949) 631-6161
4 vladi@khiterer.com
5
   Attorneys for plaintiff
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8
9   UNITED STATES DISTRICT COURT

10   CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

11 JACK GERSHFELD, individually, and on behalf of a class of 12 similarly situated,	Case No. SACV 21-00058-CJC (ADSx)
13 Plaintiff,	**CLASS ACTION**
14 vs.	**First Amended Complaint**
15	(1) Violation of California Consumer Privacy Act of 2018, California *Civil Code* § 1798.100 *et seq.* (the "CCPA")
16 TEAMVIEWER US, INC., and DOES 1 through 100, inclusive,	
17	
18 Defendants.	(2) Violation of California Unfair Competition Law, California *Business and Professions Code* § 17200 *et seq.* (the "UCL")
19	
20	Judge: Hon. Cormac J. Carney Courtroom: 9B
21	

22   Plaintiff, Jack Gershfeld, ("plaintiff") alleges:

23   **First Cause of Action for Violation of the CCPA**

24   **INTRODUCTION**

25   1.   Plaintiff brings this action for himself and on behalf of all similarly

26 situated (collectively the "Class Members"), namely, all California customers of

27 Teamviewer US, Inc. ("TeamViewer") whose nonencrypted and nonredacted

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personal information was subject to an unauthorized access and infiltration, theft or disclosure as a result of TeamViewer's failure to implement and maintain reasonable and appropriate security procedures and practices, and who were charged for TeamViewer's software subscription where the customers did not want, need or use said software.

2.   Whenever this complaint refers to TeamViewer's violations of the CCPA and UCL suffered by Plaintiff, it shall be also referring, with equal force, to the violations of the CCPA and UCL suffered by the Class Members.

THE PARTIES

3.   Plaintiff resides in Fullerton, California. Plaintiff was TeamViewer's customer.

4.   TeamViewer is a Delaware corporation headquartered in Clearwater, Florida.

5.   TeamViewer provides remote access software that allows control, management, monitoring and repair of computers and other devices remotely (the "Software"). The Software is purchased via a download from TeamViewer's website www.teamviewer.com. The Software does not include the Tensor, Internet of Things (IoT), Augmented Reality (AR), Mobile Software Development Kit (SDK), Xaleon.

6.   Plaintiff does not know the true names of defendants DOES 1 through 100, inclusive. Therefore, plaintiff sues said defendants by such fictitious names. Each of the defendants designated in this complaint as a DOE committed the same violations as those alleged against TeamViewer.

7.   Whenever this complaint refers to TeamViewer, it shall be also referring, with equal force, to defendants DOES 1 through 100, inclusive. Plaintiff will ask leave of Court to amend this complaint to show the names of defendants DOES 1 through 100, inclusive, when they have been ascertained.

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8.   At all times mentioned in this complaint, defendants were the agents, servants, employees, successors-in-interest and assigns of each other and were acting within the course and scope of their authority as such agents, servants, employees, successors and/or assigns.

JURISDICTION AND VENUE

9.   This is a class action. Members of the proposed class are citizens of California. The aggregate claims of individual class members do not exceed $5,000,000.00 exclusive of interest and costs.

10.   Venue is proper in this Court because a substantial part of the events giving rise to the claims in this action occurred in Orange County, California.

TEAMVIEWER VIOLATED THE CCPA

11.   The CCPA proscribes an unauthorized access and exfiltration, theft, or disclosure of a customer's nonencrypted and nonredacted personal information as a result of the business's violation of the duty to implement and maintain appropriate reasonable security procedures and practices.

12.   The nonencrypted and nonredacted personal information subject to the CCPA includes an individual's first and last names in combination with an account, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account (hereinafter the "Personal Information").

13.   On 09/19/2019, plaintiff purchased a year's worth of the Software subscription and paid $499.80 by his credit card. To this end, plaintiff filled out the Personal Information, namely, the credit card number, first and last name, credit card expiration date, CVC code, on the checkout page of the www.teamviewer.com website reproduced below:

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Plaintiff then clicked the "submit" button and purchased the Software subscription.

14.   At no time did plaintiff authorize his credit card to be used or charged for any other purchase.

15.   Other than said purchase of the Software subscription on 09/19/2019, at no time did plaintiff authorize his Personal Information to be accessed, exfiltrated, or disclosed.

16.   TeamViewer retained and stored the Personal Information in a nonencrypted and nonredacted fashion.

17.   Plaintiff used the Software for about 6 months and then discontinued using it. Plaintiff no longer needed the Software and he had no intention of purchasing it again.

18.   On 09/21/2020, TeamViewer, without authorization, accessed and exfiltrated plaintiff's Personal Information and disclosed it to TeamViewer's credit

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card processors, including Adyen, Inc., thus causing plaintiff's credit card to be charged $588.00. The $588.00 charge was purportedly for a year's worth of the Software subscription, albeit unwanted.

19.   TeamViewer had a duty to implement and maintain appropriate reasonable security procedures and practices vis-à-vis the Personal Information, such that the Personal Information is not accessed, exfiltrated and disclosed to third parties or used to charge customers' financial accounts unless expressly and unequivocally authorized by customers.

TeamViewer failed in discharging this duty, which caused plaintiff's credit card to be charged $588.00.

20.   Plaintiff demanded a refund of the $588.00 immediately after the charge, but TeamViewer refused to issue a refund. Plaintiff then disputed the charge with the credit card company but TeamViewer fought the dispute and prevailed.

21.   Plaintiff served TeamViewer with a pre-lawsuit notice under California *Civil Code* § 1798.150(b). Said notice was received by TeamViewer on 10/31/2020.

As of the date of filing this lawsuit, TeamViewer failed to cure the violations.

22.   TeamViewer's violations of the CCPA and failure to cure the violations entitles plaintiff and the Class Members to the damages set forth in California *Civil Code* § 1798.150(a)(1)(A), which relief is hereby requested.

23.   Unless enjoined by the Court, TeamViewer will continue to violate the CCPA. Accordingly, an order enjoining TeamViewer from charging the Class Members' accounts, credit or debit cards without the Class Members' affirmative, explicit and unequivocal authorization is requested pursuant to California *Civil Code* § 1798.150(a)(1)(B).

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Second Cause of Action for Violation of the UCL

24.   Plaintiff incorporates by reference ¶¶ 1 – 23.

TEAMVIEWER VIOLATED THE UCL

25.   The UCL prohibits acts of "unfair competition", including any "unlawful, unfair or fraudulent business act or practice". TeamViewer violated the unlawful and unfair prongs of the UCL.

26.   TeamViewer's violation of the unlawful prong of the UCL includes violation of California common law set forth in a number of California cases, including *Peterson v. Cellco Partnership* (2008) 164 Cal.App.4th 1583, that sets forth the elements of an unjust enrichment claim as "receipt of a benefit and the unjust retention at the expense of another" particularly when "plaintiff does not get the exchange that he expected". TeamViewer received plaintiff's $588.00 purportedly for a year's worth of the Software subscription where plaintiff did not want, need or use the Software. TeamViewer was unjustly enriched in the amount of $588.00, which is a violation of California common law.

27.   TeamViewer's violation of the unlawful prong of the UCL includes violation of California common law set forth in a number of California cases, including *Moran v. Prime Health Care Management* (2016) 3 Cal.App.5th 1131, that proscribe charging unconscionable prices. The price of $588.00 for a year's worth of the Software subscription where plaintiff did not want, need or use the Software is unconscionable, which is a violation of California common law.

28.   TeamViewer's violation of the unlawful prong of the UCL includes violation of California *Business and Professions Code* § 17602(a)(1) by failing to present the automatic renewal offer terms in a clear and conspicuous manner before the subscription is fulfilled and in visual proximity to the request for consent to the offer.

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29.   TeamViewer's violation of the unlawful prong of the UCL includes violation of California *Business and Professions Code* § 17602(a)(2) by charging plaintiff's credit for an automatic renewal without first obtaining plaintiff's affirmative and unequivocal consent. Plaintiff did not want, need or use the Software and he never gave TeamViewer an affirmative and unequivocal consent to charge his credit card. As a result of the violation, plaintiff's credit card was charged $588.00.

30.   TeamViewer's violation of the unlawful prong of the UCL includes violation of California *Business and Professions Code* § 17602(a)(3) by failing to provide an acknowledgment that includes the automatic renewal offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer. Because plaintiff did not want, need or use the Software, but for the violation, he would have availed himself of an easy-to-use and conspicuous mechanism for cancellation and avoided the $588.00 charge.

31.   TeamViewer's violation of the unlawful prong of the UCL includes violation of California *Business and Professions Code* § 17602(b) by failing to provide a toll-free telephone number, electronic mail address, or another cost-effective, timely, and easy-to-use mechanism for cancellation that shall be described in said acknowledgment. Specifically, the website www.teamviewer.com does not conspicuously explain how a customer could cancel the subscription. Because plaintiff did not want, need or use the Software, but for the violation, he would have availed himself of an easy-to-use and conspicuous mechanism for cancellation and avoided the $588.00 charge.

32.   TeamViewer's violation of the unlawful prong of the UCL includes violation of California *Business and Professions Code* § 17602(b) by failing to

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allow to terminate the automatic renewal exclusively online. Specifically, the website www.teamviewer.com does not conspicuously provide the ability to terminate the automatic renewal exclusively online and does not conspicuously explain how a customer could cancel the subscription. Because plaintiff did not want, need or use the Software, but for the violation, he would have availed himself of an easy-to-use and conspicuous mechanism for cancellation and avoided the $588.00 charge.

33.   TeamViewer's violation of the unlawful prong of the UCL includes violation of California *Business and Professions Code* § 17602(d) by making a material change from $499.80 to $588.00 for a year's worth of the Software subscription and failing to provide plaintiff with a clear and conspicuous notice of said material change and failing to provide conspicuous information regarding how to cancel. Because plaintiff did not want, need or use the Software, but for the violation, he would have availed himself of an easy-to-use and conspicuous mechanism for cancellation and avoided the $588.00 charge.

34.   TeamViewer's charging plaintiff $588.00 for a year's worth of the Software subscription where plaintiff did not want, need or use the Software, violates the unfair prong of the UCL because it is immoral, unethical, oppressive, unscrupulous and substantially injurious to consumers, such that the utility of such conduct is zero while the gravity of the harm to the consumers is substantial.

35.   TeamViewer's charging plaintiff $588.00 for a year's worth of the Software subscription where plaintiff did not want, need or use the Software, violates the unfair prong of the UCL because the consumer injury is substantial, the injury is not outweighed by any countervailing benefits to consumers (in fact, there is zero benefit to consumers), and the injury is of the type that consumers could not reasonably have avoided.

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36.   TeamViewer's charging plaintiff $588.00 for a year's worth of the Software subscription where plaintiff did not want, need or use the Software, violates the unfair prong of the UCL because it is contrary to California Legislature's intent to end the practice of ongoing charging of consumer credit or debit cards or third party payments for such subscriptions without the consumers' explicit consent, as set forth in California *Business and Professions Code* § 17600. Plaintiff did not want, need or use the Software and he never gave TeamViewer an affirmative, explicit and unequivocal consent to charge his credit card. As a result of the violation, plaintiff's credit card was charged $588.00.

37.   TeamViewer's violations of the UCL entitles plaintiff and the Class Members to restitution pursuant to California *Business and Professions Code* § 17203, which relief is hereby requested.

38.   Unless enjoined by the Court, TeamViewer will continue to violate the UCL. Accordingly, an order enjoining TeamViewer from charging the Class Members for software subscriptions where the Class Members did not want, need or use said software is requested pursuant to California *Business and Professions Code* § 17203.

CLASS ACTION ALLEGATIONS

39.   Plaintiff brings this lawsuit as a class action. Plaintiff seeks to represent the Class based on the violation of the CCPA and UCL as alleged in this Complaint.

40.   Class. The Class is defined below:

(a)   The CCPA subclass:

All customers of TeamViewer who were California residents on and after January 1, 2020, whose accounts, credit or debit cards were charged for renewals of TeamViewer's software subscription without the customers' affirmative, explicit and unequivocal authorization and who communicated that they did not

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want, need or use said software by requesting a refund and/or disputing the charges.

    (b)   The UCL subclass:

All customers of TeamViewer who were California residents on and after December 1, 2016, who were charged for renewals of TeamViewer's software subscription and who communicated that they did not want, need or use said software by requesting a refund and/or disputing the charges.

The customers of TeamViewer who themselves manually renewed TeamViewer's software subscription, including by utilizing TeamViewer's "Payment Portal", "Change of payment method" page or calling TeamViewer and voluntarily providing their credit or debit card information to TeamViewer to pay for the renewal, are excluded from the CCPA and UCL subclasses.

41.   Ascertainability. The Class Members can be readily identified because TeamViewer has the Class Members' e mail addresses. The definitions of the subclasses above will permit the Class-Members to self-identify.

42.   Numerosity. The exact number of the Class Members will be ascertained through discovery, but it is numerous enough that a joinder is impracticable. The disposition of the claims of these Class Members is a single class action will provide substantial benefits to all parties and the Court.

43.   Typicality. The claim of the representative Plaintiff is not just typical, it is identical to the claims of the Class Members. Plaintiff and the Class Members were injured by TeamViewer's violation of the CCPA and UCL in an identical fashion.

44.   Commonality. There are numerous questions of law and fact common to Plaintiff and Class Members that predominate over any question affecting only individual Class Members, including whether or not TeamViewer violated the CCPA and UCL by charging the Class Members' accounts, credit or debit cards

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without the Class Members' affirmative, explicit and unequivocal authorization and by charging the Class Members for TeamViewer's software subscriptions where the Class Members did not want, need or use said software. The issues of remedies under California *Civil Code* §§ 1798.150(a)(1)(A) and 1798.150(a)(1)(B) and California *Business and Professions Code* § 17203 can be adjudicated on a class-wide basis because the amounts of damages and/or restitution are easy to determine by the amounts set forth in California *Civil Code* §§ 1798.150(a)(1)(A) and/or the amounts charged for the unwanted software subscription.

45.   Adequacy. Plaintiff will fairly and adequately protect the interests of the Class Members. Plaintiff is represented by a competent counsel. Plaintiff is committed to prosecuting this action vigorously on behalf of the Class Members and has financial resources to do so. Neither Plaintiff nor his counsel has any interest adverse to those of the Class Members.

46.   Superiority. Class Action in this case is superior because the amounts of individual claims are too small to justify the expense of litigation, the individual Class Members would have to bring virtually identical actions as other Class Members and having such duplicative actions is contrary to judicial economy and efficiency, without this class action, TeamViewer will be unjustly enriched by its violations of the CCPA and UCL.

RELIEF REQUESTED

Plaintiff Jack Gershfeld, on behalf of himself and all others similarly situated, requests that the Court enter judgment against defendant Teamviewer US, Inc. as follows:

- An order certifying the proposed Class, designating Plaintiff as named representative of the Class, and designating the undersigned as Class Counsel;

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1   -   An order that defendant Teamviewer US, Inc. pay damages to

2   Plaintiff and the Class Members pursuant to California *Civil Code* §

3   1798.150(a)(1)(A);

4   -   An order enjoining Teamviewer US, Inc. from charging the Class

5   Members' accounts, credit or debit cards without the Class Members'

6   affirmative, explicit and unequivocal authorization pursuant to

7   California *Civil Code* § 1798.150(a)(1)(B).

8   -   An order that defendant Teamviewer US, Inc. make restitution to

9   Plaintiff and the Class Members pursuant to California *Business and*

10   *Professions Code* § 17203;

11   -   An order enjoining Teamviewer US, Inc. from charging the Class

12   Members for software subscriptions where the Class Members did not

13   want, need or use said software pursuant to California *Business and*

14   *Professions Code* § 17203;

15   -   An award of attorneys' fees and costs pursuant to California *Code of*

16   *Civil Procedure* § 1021.5, the common fund theory, or any other

17   applicable law;

18   -   An award of pre-judgment and post-judgment interest, as provided by

19   law;

20   -   Leave to amend the complaint to conform to the evidence; and

21   -   Such other or further relief as may be appropriate under the

22   circumstances.

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24 DATED: March 6, 2021   Khiterer, Inc.

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26   /s/ *Vladi Khiterer*

27   _____

28   Vladi Khiterer
                               Attorneys for plaintiff Jack Gershfeld

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