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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF LOS ANGELES**
19

20 AMANDA BOOE, on behalf of herself
21 and all others similarly situated,

Case No. **23STCV20795**

22 Plaintiff,

CLASS ACTION COMPLAINT

23 vs.

24 GAMMABILLING INC.,

25 Defendant.

26 Plaintiff Amanda Booe, on behalf of herself and all others similarly situated, complains and
27 alleges upon information and belief based, among other things, upon the investigation made by
28 Plaintiff and through her attorneys as follows:

INTRODUCTION

1. This is a proposed class action seeking monetary damages, restitution, and injunctive
and declaratory relief from Defendant GammaBilling Inc. (“GammaBilling”), arising from
GammaBilling’s deceptive and fraudulent billing practices on its Adult Time website.

1 headquartered in Santa Clarita, California. GammaBilling owns and operates the website
2 Adulttime.com.

3 **JURISDICTION AND VENUE**

4 9. This Court has jurisdiction over this matter because the amount in controversy exceeds
5 \$25,000.

6 10. Venue is proper in this District pursuant to CCP § 395(a) because Defendant
7 GammaBilling Inc., is headquartered in Santa Clarita, California, which is located in Los Angeles
8 County.

9 11. Defendant regularly and systematically provide adult entertainment services
10 throughout the State of California, including in this county, and provide adult entertainment services
11 to their customers, including members of the putative Classes. As such, it is subject to the personal
12 jurisdiction of this Court.

13 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

14 **A. Pornography is a Multibillion Dollar Business**

15 12. According to a recent study, 30% of all data transferred across the Internet is
16 pornography and pornography sites get more visitors each month than Netflix, Amazon and Twitter
17 combined.¹

18 13. Globally, pornography is a \$97 billion industry, with an estimated \$10-\$12 billion
19 coming from the United States.²

20 14. 10.5 percent of U.S. men have paid for Internet pornography subscriptions.³

24 ¹ “Porn Sites Get More Visitors Each Month Than Netflix, Amazon And Twitter Combined,”
25 Huffington Post, available at https://www.huffpost.com/entry/internet-porn-stats_n_3187682 (last
accessed May 15, 2021)

26 ² “Things Are Looking Up in America’s Porn Industry,” NBC News, available at
27 <https://www.nbcnews.com/business/business-news/things-are-looking-americas-porn-industry-n289431> (last accessed May 15, 2021).

28 ³ “How Many Men Actually Pay for This?,” Bustle, available at
[https://www.bustle.com/articles/189498-how-many-men-actually-pay-for-porn-one-in-10-guys-
have-paid-porn-subscriptions](https://www.bustle.com/articles/189498-how-many-men-actually-pay-for-porn-one-in-10-guys-have-paid-porn-subscriptions) (last accessed May 15, 2021).

1 15. But as ubiquitous as it is, the pornography industry remains highly unregulated, and
2 remains fertile ground for fraudulent business practices such as those that are the subject of this
3 complaint.

4 16. This lawsuit seeks to hold Defendant accountable for a practice that, in any other
5 industry, would have ended years ago.

6 **B. Adult Time Is a Popular Membership-Based Website Which Is Owned and**
7 **Operated by GammaBilling**

8 17. Adult Time markets itself as “the ultimate subscription platform for adults.”⁴

9 18. Unlike many other websites offering similar content, Adult Time is not free. Instead,
10 access to Adult Time content requires a “membership.”

11 19. Adult Time offers several membership programs, including monthly subscriptions, an
12 annual subscription, and a trial membership. The cost and length of the trial membership vary
13 depending on the day the user enrolls.

14 20. Adulttime.com is fully owned and operated by GammaBilling.

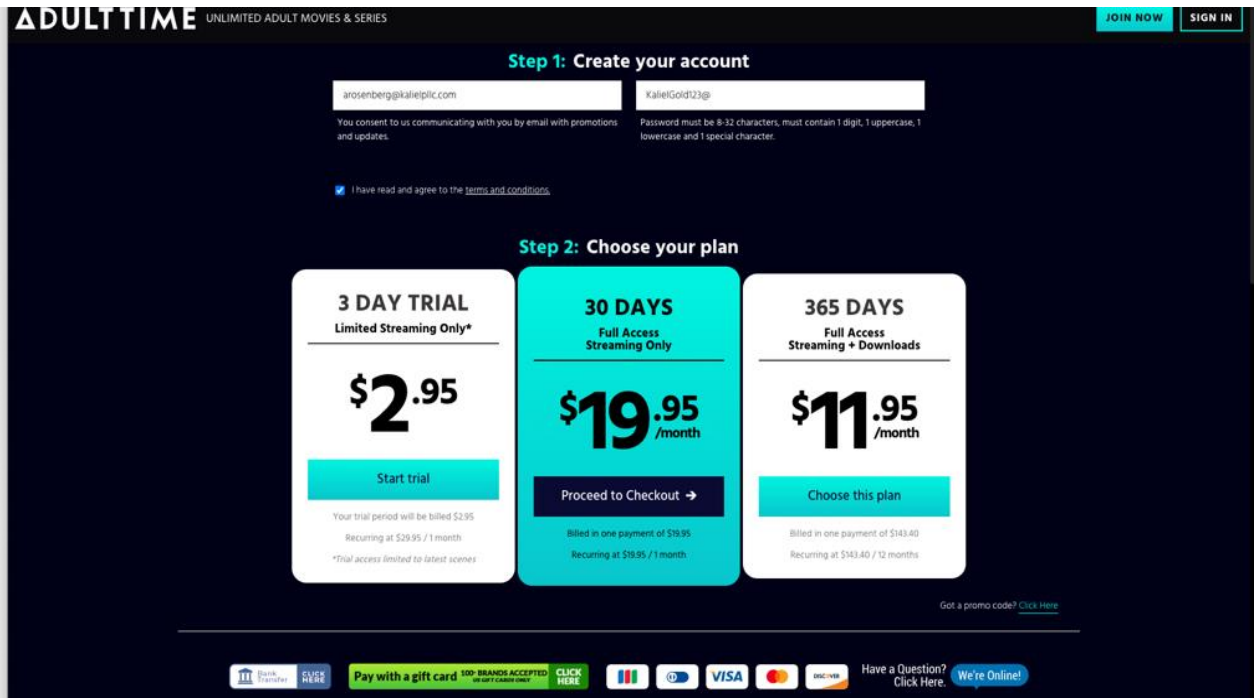
15 **C. Plaintiff Was Deceived into Paying Monthly Subscription Fees and Enrolling In**
16 **An Ancillary Adult Entertainment Membership**

17 21. Plaintiff signed up for an Adult Time 1-day trial membership in March of 2023.

18 22. On information and belief, at the time Plaintiff signed up for her Adult Time trial, the
19 membership screen offered a 1-day trial membership for \$2.00. On information and belief, the style
20 and format of the membership screen looked like the below, although the cost and length of trial
21 membership were different:

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28 ⁴ <https://www.adulttime.com/> (last accessed 8/7/2023)

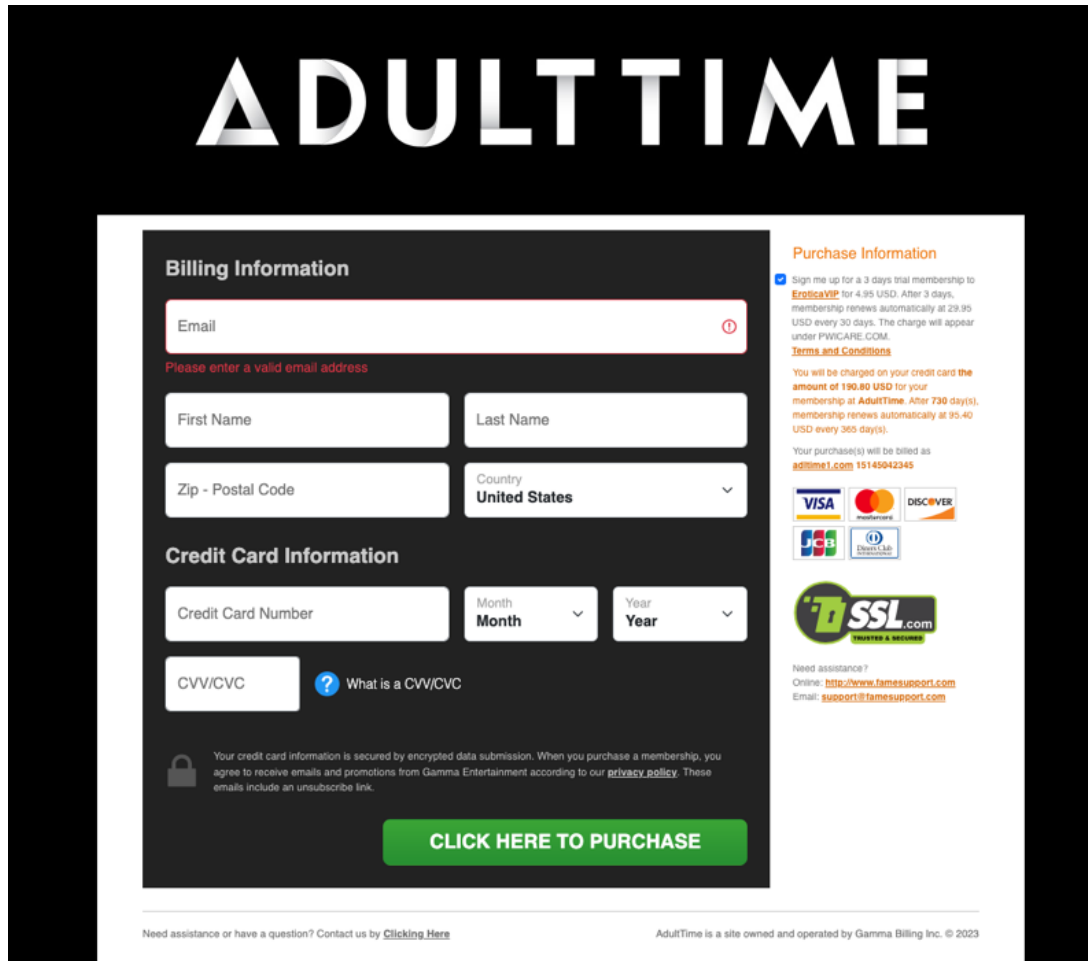
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23. In a font size and color that was light gray and small, and therefore neither clear nor conspicuous, the screen offering the trial membership stated “Recurring at \$19.95/ 1 month.” In other words, the fine print disclosure is designed to be easily overlooked, in violation of state law.

24. Next, via a tiny, automatically *pre-checked* box, users who click on the trial membership are automatically enrolled in a *second adult entertainment membership*. On information and belief, Defendant used a tiny prechecked box similar to the one in the below screenshot to enroll Plaintiff into the second membership:

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The second adult membership costs \$4.95 per month, bringing the total cost for Plaintiff’s membership to almost \$25/month, when she only intended to pay \$2.00 for a brief trial of Adult Time.

25. Plaintiff, like other reasonable consumers, selected the trial membership and clicked the large “Start Trial” button without realizing that by doing so, she would be automatically enrolled in two separate memberships and she would be forced to pay automatically recurring subscription fees for both memberships.

26. By using a large “Start Trial” button—which after all, refers to a single “trial”, not multiple trials—along with other design tricks, Defendant ensured users did not and could not determine the truth: that GammaBilling was signing up users for two separate trials that required two separate cancellations to avoid expensive monthly subscription fees.

1 27. This is far from the norm in electronic commerce in general. While “free trials” that
2 convert to recurring memberships are common in e-commerce, state law requires platforms to
3 prominently state directly adjacent to the “start trial” button that failure to cancel will result in
4 automatic renewal and provide the terms of that renewal in a clear and conspicuous manner.

5 28. Here, GammaBilling did not alert users that two separate memberships were created
6 simultaneously, requiring two separate cancellations, in an intentional design choice to deceive its
7 users.

8 29. Defendant’s bait-and-switch lured Plaintiff and other consumers into purchasing the
9 “trial” membership based on the false promise that Plaintiff would not incur costs beyond that of the
10 trial membership Then, armed with consumers’ credit card information, Defendant quietly and
11 automatically enrolled Plaintiff and other consumers into monthly subscriptions and ancillary
12 memberships they did not want, need, or use.

13 **E. Numerous Consumer Complaints Confirm Plaintiff’s Experience Is Not Unique**

14 30. Numerous consumer complaints confirm Plaintiff’s experience is far from unusual.

15 31. The following online consumer complaints are indicative of a broader problem:

16 I made a trial purchase of \$1.00 through pwicare.com. I canceled my subscription, and
17 have called the company (they use gamma as their billing company). They have been
18 trying to charge me \$4.95. They are refusing to remove my card from the system. They
19 said it was a third party involved that I didn't know about when I signed up. They won't
20 tell me the name of the third party who is trying to charge me. They are telling me they
21 will never stop trying to charge me. They hang up on me every time I call. I haven't
22 used any abusive or profane language. They're simply trying to steal my money. I want
23 my card deleted from the system. That it.⁵

24 This is an extremely scammy site that has horrible and opaque customer service. They
25 lied to me about canceling my trial and issued a charge to my credit card that they
26 refused to refund.⁶

27 yeah what happens is it gives you the trial charge but it also charges you for a separate
28 account just call and get the other account canceled but dont expect a refund.⁷

26 ⁵<https://www.bbb.org/us/ca/rohnert-park/profile/ecommerce/gamma-billing-inc-1116-928414/complaints> (last accessed August 7, 2023)

27 ⁶https://www.reddit.com/r/theHandy/comments/x5q5vg/dont_sign_up_for_adult_time_trial/ (last
28 accessed August 7, 2023)

⁷ *Id.*

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Also had this problem, signed up for adult time trial and cancelled 10 minutes later. A few days ago received a bill from adult time for the full price which is hilarious to me because I never had the full access to adult time whatsoever.⁸

I also want to add, the Erotic Vip addition you HAVE to untick before you register your account. I made that mistake and that was the thing that they charged me for and didn't refund me for. I think that's an extra service that is out of their control and they are hocking it from another company. They were freely open to refunding me for a mistake on the Base Adult Time membership issue, but were outright refusal on the Erotic Vip 4.99. It's extremely scammy to have it in the corner already checked by default in tiny letters with even tinier fine print...⁹

The one you ticked is the extra one that they can cancel. I will say this though, they 9x outta 10 won't refund you for the "mistake". I wrote it like that because we all know they set the system up like that to fuck people. That's why they don't refund the 4.95.¹⁰

F. GammaBilling's Conduct Breaches its Contract with Consumers

32. GammaBilling's conduct as described herein breaches its contract with consumers.

33. First, Plaintiff and class members did not agree to be charged for anything more than the single trial membership they signed up for. Plaintiff and class members did not agree to pay for additional monthly subscriptions and ancillary memberships.

34. By charging Plaintiff and class members for monthly subscription fees and additional memberships that they did not affirmatively select, GammaBilling breaches its contract.

CLASS ALLEGATIONS

35. Plaintiff brings this action on behalf of herself, and all others similarly situated pursuant to California Code of Civil Procedure Rule 382. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of Rule 382. The proposed classes are defined as:

All consumers in the United States who, during the applicable statute of limitations, were charged for an add-on subscription purchased simultaneously with their Adult Time subscription. ("Add-On Membership Class")

All consumers in the United States who, during the applicable statute of limitations, purchased a trial membership and were subsequently charged monthly Adult Time membership fees. ("Recurring Membership Class")

⁸ *Id.*
⁹ *Id.*
¹⁰ *Id.*

1 36. In addition to the proposed nationwide classes, Plaintiff also brings this action on
2 behalf of Illinois subclasses.

3 37. Excluded from the Classes are Defendants, any entities in which they have a
4 controlling interest, any of their parents, subsidiaries, affiliates, officers, directors, employees and
5 members of such persons' immediate families, and the presiding judge(s) in this case, and their staff.
6 Plaintiff reserves the right to expand, limit, modify, or amend this class definition, including the
7 addition of one or more subclasses, in connection with her motion for class certification, or at any
8 other time, based upon, *inter alia*, changing circumstances and/or new facts obtained during
9 discovery.

10 38. Plaintiff reserves the right to modify or amend the definition of the proposed Classes
11 and/or add a subclass(es), if necessary, before this Court determines whether certification is
12 appropriate.

13 39. The questions here are ones of common or general interest such that there is a well-
14 defined community of interest among the members of the Classes. These questions predominate over
15 questions that may affect only individual class members because Defendants has acted on grounds
16 generally applicable to the Classes. Such common legal or factual questions include, but are not
17 limited to:

- 18 a. Whether Defendant's alleged misconduct misled or had the tendency to mislead
19 consumers;
- 20 b. Whether Defendant engaged in unfair, unlawful, and/or fraudulent business practices
21 under the laws asserted;
- 22 c. Whether Defendant's alleged conduct constitutes violations of the laws asserted;
- 23 d. Whether Defendant breached its contract with consumers;
- 24 e. Whether Plaintiff and members of the Classes were harmed by Defendant's
25 misrepresentations;
- 26 f. Whether Defendant was unjustly enriched;
- 27 g. Whether Plaintiff and the Classes have been damaged, and if so, the proper measure
28 of damages; and

1 h. Whether an injunction is necessary to prevent Defendant from continuing to engage in
2 the wrongful conduct described herein.

3 40. The parties are numerous such that joinder is impracticable. Upon information and
4 belief, and subject to class discovery, the Classes consist of thousands of members or more, the
5 identity of whom are within the exclusive knowledge of and can be ascertained only by resort to
6 Defendants' records. Defendants has the administrative capability through its computer systems and
7 other records to identify all members of the Classes, and such specific information is not otherwise
8 available to Plaintiff.

9 41. It is impracticable to bring members of the Classes' individual claims before the Court.
10 Class treatment permits a large number of similarly situated persons or entities to prosecute their
11 common claims in a single forum simultaneously, efficiently and without the unnecessary duplication
12 of evidence, effort, expense, or the possibility of inconsistent or contradictory judgments that
13 numerous individual actions would engender. The benefits of the class mechanism, including
14 providing injured persons or entities with a method for obtaining redress on claims that might not be
15 practicable to pursue individually, substantially outweigh any difficulties that may arise in the
16 management of this class action.

17 42. Plaintiff's claims are typical of the claims of the other members of the Classes in that
18 they arise out of the same wrongful business practices by Defendants, as described herein.

19 43. Plaintiff is more than adequate representative of the Classes in that Plaintiff is a
20 Defendants customer and has suffered damages as a result of Defendants' contract violations. In
21 addition:

- 22 a) Plaintiff is committed to the vigorous prosecution of this action on behalf of herself
23 and all others similarly situated and has retained competent counsel experienced in the
24 prosecution of class actions and, in particular, class actions on behalf of
25 accountholders against financial institutions;
- 26 b) There is no conflict of interest between Plaintiff and the unnamed members of the
27 Classes;
- 28 c) Plaintiff anticipates no difficulty in the management of this litigation as a class action;

1 and

2 d) Plaintiff's legal counsel has the financial and legal resources to meet the substantial
3 costs and legal issues associated with this type of litigation.

4 44. Plaintiff knows of no difficulty to be encountered in the maintenance of this action
5 that would preclude its maintenance as a class action.

6 45. Defendants has acted or refused to act on grounds generally applicable to the class,
7 thereby making appropriate corresponding declaratory relief with respect to the Classes as a whole.

8 46. All conditions precedent to bringing this action have been satisfied and/or waived.

9

CAUSES OF ACTION

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FIRST CLAIM FOR RELIEF

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**Breach of Contract, Including Breach of the Covenant of Good Faith and Fair Dealing
(On Behalf of Plaintiff and the Add-On Membership Class and Illinois Subclass)**

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47. Plaintiff realleges the preceding paragraphs as though fully set forth herein.

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48. Plaintiff and Defendant contracted for certain services.

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15 49. No contract provision authorizes Defendant to charge consumers for more than the
one trial membership they affirmatively select.

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50. Therefore, Defendant breached the terms of its contract.

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18 51. In addition, there exists an implied covenant of good faith and fair dealing in all
contracts that neither party shall do anything which will have the effect of destroying or injuring the

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right of the other party to receive the fruits of the contract. Good faith and fair dealing, in connection

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with executing contracts and discharging performance and other duties according to their terms,
means preserving the spirit – not merely the letter – of the bargain. Put differently, the parties to a

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contract are mutually obligated to comply with the substance of their contract in addition to its form.
Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad

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faith in the performance of contracts.

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24 52. Subterfuge and evasion violate the obligation of good faith in performance even when
an actor believes their conduct to be justified. Bad faith may be overt or may consist of inaction, and

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26 fair dealing may require more than honesty. Examples of bad faith are evasion of the spirit of the
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1 bargain, willful rendering of imperfect performance, abuse of a power to specify terms, and
2 interference with or failure to cooperate in the other party's performance.

3 53. The implied covenant of good faith and fair dealing applies to the performance and
4 enforcement of contracts, limits the parties' conduct when their contract defers decision on a
5 particular term, omits terms, or provides ambiguous terms.

6 54. Defendant has breached the covenant of good faith and fair dealing and abused its
7 discretion in its contract as described herein.

8 55. Plaintiff and members of the Classes have performed all, or substantially all, of the
9 obligations imposed on them under the contract.

10 56. Plaintiff and members of the Classes have sustained damages as a result of
11 Defendant's breaches of the contract.

12 **SECOND CLAIM FOR RELIEF**
13 **Violation of California's Unfair Competition Law ("UCL")**
14 **Cal. Bus. & Prof. Code § 17200, *et seq.***
(On Behalf of Plaintiff and the Nationwide Classes)

15 57. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

16 58. California Business & Professions Code § 17200 prohibits acts of "unfair
17 competition," including any "unlawful, unfair or fraudulent business act or practice." Defendants'
18 conduct as described herein violates each of the statute's "unfair," "unlawful," and "fraudulent"
19 prongs.

20 59. The UCL imposes strict liability. Plaintiff need not prove that Defendants intentionally
21 or negligently engaged in unlawful, unfair, or fraudulent business practices—but only that such
22 practices occurred.

23 60. A business act or practice is "unfair" under the UCL if it offends an established public
24 policy or is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers,
25 and that unfairness is determined by weighing the reasons, justifications, and motives of the practice
26 against the gravity of the harm to the alleged victims.

27 61. A business act or practice is "fraudulent" under the UCL if it is likely to deceive
28 members of the public.

1 62. A business act or practice is “unlawful” under the UCL if it violates any other law or
2 regulation.

3 63. Defendants committed unfair and fraudulent business acts and practices in violation
4 of Cal. Bus. & Prof. Code § 17200, *et seq.*, by affirmatively and knowingly misrepresenting that users
5 were signing up for a limited trial, when, in reality, they were signing up for two recurring monthly
6 memberships. Defendants’ conduct amounted to a bait & switch.

7 64. Defendant’s acts and practices offend an established public policy of fee transparency
8 in the marketplace, and constitute immoral, unethical, oppressive, and unscrupulous activities that are
9 substantially injurious to consumers.

10 65. The harm to Plaintiff and the Classes outweighs the utility of Defendant’s practices.
11 There were reasonably available alternatives to further Defendant’s legitimate business interests,
12 other than the misleading and deceptive conduct described herein.

13 66. Defendant’s conduct also constitutes an “unlawful” act under the UCL because, as
14 detailed in Plaintiff’s Third Claim for Relief below, it also constitutes a violation of sections
15 1770(a)(5) and (a)(9) of the California Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code §
16 1750, *et seq.*, *infra*. Defendant’s conduct also violates Cal. Bus. & Prof. Code § 17602 *et seq.* because
17 Defendant failed to provide with the statutory requirements regarding auto-renewals, as outlined
18 under that statute.

19 67. Defendants’ business practices have misled Plaintiff and the proposed Classes and will
20 continue to mislead them in the future.

21 68. Plaintiff relied on Defendant’s misrepresentations and omissions as discussed above.

22 69. Had Plaintiff known the truth, she would not have signed up for an Adult Time
23 membership.

24 70. As a direct and proximate result of Defendants’ unfair, fraudulent, and unlawful
25 practices, Plaintiff and Class members suffered and will continue to suffer actual damages.

26 71. As a result of its unfair, fraudulent, and unlawful conduct, Defendants have been
27 unjustly enriched and should be required to disgorge its unjust profits and make restitution to Plaintiff
28 and Class members pursuant to Cal. Bus. & Prof. Code § 17203 and 17204.

1 practices. Otherwise, Plaintiff, the Class members, and members of the general public may be
2 irreparably harmed and/or denied effective and complete remedy if such an order is not granted.

3 79. In accordance with Cal. Civ. Code § 1780(a), Plaintiff and the Class members seek
4 injunctive and equitable relief on behalf of the general public for violations of the CLRA, including
5 restitution and disgorgement.

6 80. Pursuant to § 1782(a) of the CLRA, Plaintiff's counsel notified Defendant in writing
7 by certified mail of the particular violations of §1770 of the CLRA and demanded that it rectify the
8 problems associated with the actions detailed above and give notice to all affected consumers of
9 Defendant's intent to act. If Defendant fails to respond to Plaintiff's letter or agree to rectify the
10 problems associated with the actions detailed above and give notice to all affected consumers within
11 30 days of the date of written notice, as proscribed by §1782, Plaintiff will move to amend his
12 Complaint to pursue claims for actual, punitive and statutory damages, as appropriate against
13 Defendant. As to this cause of action, at this time, Plaintiff seeks only injunctive relief.

14 81. California law applies to class members throughout the United States because, upon
15 information and belief, Defendants' deceptive conduct emanated from California.

16 **FOURTH CLAIM FOR RELIEF**
17 **Violations of the Illinois Automatic Contract Renewal Act**
18 **(815 ILCS 601/1 *et. seq.*)**
19 **(On Behalf of Plaintiff and the Illinois Subclasses)**

20 82. Plaintiff repeats, realleges, and incorporates by reference each of the foregoing
21 paragraphs as if fully set forth herein.

22 83. 815 ILCS 601/10 (a) provides that "[a]ny person, firm, partnership, association, or
23 corporation that sells or offers to sell any products or services to a consumer pursuant to a contract,
24 where such contract automatically renews unless the consumer cancels the contract, shall disclose the
25 automatic renewal clause clearly and conspicuously in the contract, including the cancellation
26 procedure."

27 84. Defendant is a person, firm, partnership, association, or corporation that sells or offers
28 to sell products or services to consumers, such as Plaintiff and the Class, pursuant to a contract.

1 85. Defendant's membership contracts and additional membership contracts automatically
2 renew unless the consumers, such as Plaintiff and Classes, cancel the contracts.

3 86. Defendant failed to disclose the automatic renewal clause clearly and conspicuously
4 in the contracts, including the cancellation procedure.

5 87. The contracts automatically renew continuously unless consumers, such as Plaintiff
6 and the Class, cancel the contracts.

7 88. Upon information and belief, Defendant has not established and implemented written
8 procedures to comply with the Illinois Automatic Contract Renewal Act and enforce compliance with
9 its procedures.

10 89. Upon information and belief, Defendant's failure to comply with the Illinois Automatic
11 Contract Renewal Act was not the result of error.

12 90. Defendant did not provide a full refund or credit for all amounts billed to or paid by
13 consumers, such as Plaintiff and the Classes, from the date of the renewal until the date of the
14 termination of the account, or the date of the subsequent notice of renewal.

15 91. Plaintiff and the members of the Classes have suffered reasonably foreseeable costs
16 caused by the continuance of their contracts without their valid consent. These costs include, but are
17 not limited to, the direct costs of charges for unwanted products and pecuniary injury in the form of
18 time and expense to mitigate the effects of unauthorized payments.

19 **FIFTH CLAIM FOR RELIEF**

20 **Violations of the Illinois Consumer Fraud and Deceptive Business Practices Act**

(815 ILCS 505/1 *et. seq.*)

21 **(On Behalf of Plaintiff and the Illinois Subclasses)**

22 92. Plaintiff repeats, realleges, and incorporates by reference each of the foregoing
23 paragraphs as if fully set forth herein.

24 93. The Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"),
25 prohibits deceptive acts and practices in the sale of goods to consumers.

26 94. Plaintiff and other members of the Class engaged in consumer transactions with
27 Defendant in purchasing trial memberships.

28

1 104. Plaintiff and the Classes conferred a benefit on Defendant.

2 105. Defendants unfairly, deceptively, unjustly, and/or unlawfully accepted said benefits,
3 which under the circumstances, would be unjust to allow Defendant to retain.

4 106. Defendants' unjust enrichment is traceable to, and resulted directly and proximately
5 from, the conduct alleged herein.

6 107. Plaintiff and the Classes, therefore, seek disgorgement of all wrongfully obtained fees
7 received by Defendants as a result of its inequitable conduct as more fully stated herein.

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiff, individually and on behalf of the Classes demand a jury trial on
10 all claims so triable and judgment as follows:

- 11 (a) Certification for this matter to proceed as a class action on behalf of the Classes;
- 12 (b) Declaring Defendants' billing practices and policies to be in breach of its contract with
13 customers;
- 14 (c) For declaratory and injunctive relief as set forth above;
- 15 (d) For an order requiring Defendant to disgorge and make restitution of all monies it
16 acquired by means of the unlawful practices set forth above;
- 17 (e) For compensatory damages according to proof;
- 18 (f) For punitive damages according to proof;
- 19 (g) For reasonable attorneys' fees and costs of suit;
- 20 (h) For pre-judgment interest; and
- 21 (i) Awarding such other and further relief as this Court deems just, proper and equitable.

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DEMAND FOR JURY TRIAL

Plaintiff and all others similarly situated hereby demand trial by jury on all issues in this Class Action Complaint that are so triable.

Dated: August 29, 2023

Respectfully submitted,

KALIELGOLD PLLC



By: _____

SOPHIA GOREN GOLD
JEFFREY D. KALIEL
AMANDA J. ROSENBERG

Counsel for Plaintiff and Proposed Classes