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25  
26 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
27 **FOR THE COUNTY OF SAN DIEGO, HALL OF JUSTICE**  
28

19 CATHERINE FOSTER, on behalf of herself  
20 and all others similarly situated,

21 Plaintiff,

22 vs.

23 SMARTY, LLC,

24 Defendant.

Case No. 37-2023-00054414-CU-NP-CTL

**CLASS ACTION COMPLAINT**

26 Plaintiff Catherine Foster, 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:

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**INTRODUCTION**

1. Plaintiff brings this action on behalf of herself the general public, and a class of similarly situated consumers against Smarty, LLC (“Smarty”), regarding its automatic renewal scheme.

2. Specifically, Smarty fails to cancel subscription plans of subscribers that cancel their paid monthly subscription. Instead, Smarty continues to charge consumers unwanted monthly fees even after they attempt to cancel their membership.

3. In so doing, Smarty systematically violates state automatic renewal laws and consumer protection laws, by engaging in a pattern and practice of exploiting its members by continuing to charge them monthly fees, without consumers’ consent, after they have canceled their memberships.

4. On behalf of herself and the proposed class, Plaintiff seeks damages, restitution, statutory damages, attorneys’ fees, and public injunctive relief, as set forth more fully below.

**PARTIES**

5. Plaintiff Catherine Foster is a citizen of Adams, Massachusetts.

6. Defendant Smarty, LLC is headquartered in San Diego, California. Smarty offers a web-browser addon designed to help consumers save money on online purchases.

**JURISDICTION AND VENUE**

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

8. Venue is proper in this District pursuant to CCP § 395(a) because Defendants are headquartered in San Diego, California, which is located in San Diego County.

9. Defendants regularly and systematically provides educational services throughout the State of California, including in this county, and provide educational services to its customers, including members of the putative Class. As such, it is subject to the personal jurisdiction of this Court.

**FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

**I. CALIFORNIA AUTOMATIC RENEWAL LAW**

10. The Automatic Renewal Law (“ARL”) is part of California’s False Advertising Law.

1 The purpose of the ARL is to “end the practice of ongoing” subscription charges “without the  
2 consumers’ explicit consent.” Cal. Bus. & Prof. Code §17600. To this end, the law makes it illegal for  
3 companies to charge consumers for automatically renewing subscriptions, unless the company meets  
4 strict disclosure and consent requirements.

5 11. Under the ARL, a company must “present the automatic renewal offer terms or  
6 continuous service offer terms in a clear and conspicuous manner before the subscription or purchasing  
7 agreement is fulfilled and in visual proximity, or in the case of an offer conveyed by voice, in temporal  
8 proximity, to the request for consent to the offer.” Cal. Bus. & Prof. Code §17602(a)(1).

9 12. The “automatic renewal offer terms” that must be presented include:

- 10 1) That the subscription or purchasing agreement will continue until the  
11 consumer cancels.
- 12 2) The description of the cancellation policy that applies to the offer.
- 13 3) The recurring charges that will be charged to the consumer’s credit or debit  
14 card or payment account with a third party as part of the automatic renewal  
15 plan or arrangement, and that the amount of the charge may change, if that  
16 is the case, and the amount to which the charge will change, if known.
- 17 4) The length of the automatic renewal term or that the service is continuous,  
18 unless the length of the term is chosen by the consumer.
- 19 5) The minimum purchase obligation, if any.

20 Cal. Bus. & Prof. Code §17601(b)(1)-(5).

21 13. A “clear and conspicuous” disclosure “means in larger type than the surrounding text,  
22 or in contrasting type, font, or color to the surrounding text of the same size, or set off from the  
23 surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the  
24 language.” Cal. Bus. & Prof. Code §17601(c).

25 14. After presenting all of this information, the company must then obtain the “consumer’s  
26 affirmative consent to the agreement containing the automatic renewal offer terms or continuous  
27 service offer terms.” Cal. Bus. & Prof. Code §17602(a)(2).

28 15. The ARL also includes post-purchase acknowledgment requirements (required in

1 addition to the pre-purchase requirements described above). Cal. Bus. & Prof. Code §17602(a)(3) & (b).

2 **II. OVERVIEW OF SMARTY**

3 16. Smarty offers a web browsers extension aimed at identifying coupons and promotion  
4 codes that consumers may utilize when shopping online. Consumers that use the extension may  
5 receive cash back on purchases.

6 17. SmartyPlus is a monthly paid subscription service offered by Smarty that offers price  
7 comparison, double cash back, food delivery rebates, order protection, streaming service rebates, and  
8 free shipping/return refunds.

9 18. SmartyPlus offers free or cheap \$3 trial subscriptions that last anywhere from 7 to 14  
10 days, depending on the offer presented at the time the consumer signs up for the subscription. Smarty  
11 presents its cancellation terms in small font, such that they are not clear and conspicuous:

12

13 **2. Billing Information**

14  Card Number  MM / YY  CVV

15  f 2 8 e p 9  Enter Captcha

16  I Agree to Offer Details, [Terms of Use](#) & [Privacy Policy](#).

17 **\*\* Offer Details** - Must be over the age of 18 to participate.  
Offer not affiliated with third party merchants. Try your 7-  
18 day trial of SmartyPlus today for only \$3 and explore all the  
perks available to our SmartyPlus members. After this initial  
19 trial Smarty will automatically charge your payment source  
a monthly membership fee of \$19 beginning on 11/20/2023,  
20 until you cancel. You may cancel at any time within the  
"Billing" section of your account or by emailing support. You  
21 must cancel to avoid future charges. Cash-back bonus  
offer available only to first-time members. Must make first  
22 purchase and submit claim within thirty days of enrollment  
to receive Cash-back bonus. SmartyPlus membership and  
benefits of SmartyPlus are subject to complete terms and  
23 conditions.

24 **SUBMIT**

25 **7 day trial for \$3, then \$19/mo.**  
**Cancel anytime.\***

26 Enjoy the money saving perks of a  
SmartyPlus subscription by activating  
your membership today. If you don't love  
it, our super helpful customer service  
27 team will refund your first monthly fee, no  
questions asked. **Even if you cancel, your  
cash back rewards and \$15 will still be  
yours to keep**

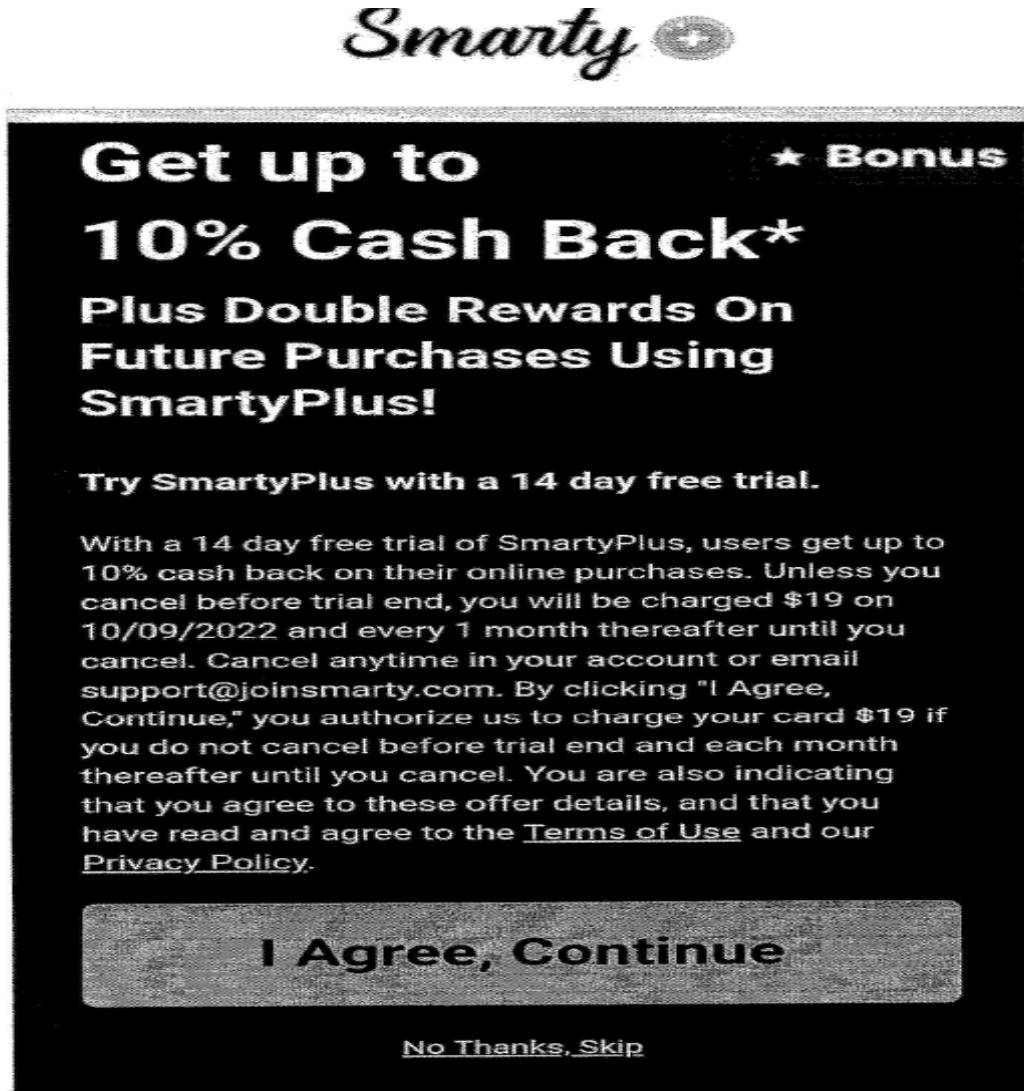
24 19. Smarty represents that the SmartyPlus subscriptions may be cancelled at any time  
25 during the trial period. Smarty further represents that SmartyPlus subscribers may cancel their  
26 subscription any time after the trial period to avoid monthly billing.

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1 **III. SMARTY VIOLATES AUTOMATIC RENEWAL LAWS, CHARGES CONSUMERS**  
2 **FOR TRIALS REPRESENTED AS “FREE”, AND FAILS TO HONOR**  
3 **CANCELLATION REQUESTS.**

4 20. On September 25, 2022, Plaintiff signed up for a free 14-day SmartyPlus subscription.  
5 At the time, the following offer was made to Plaintiff.



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24 21. Also on that day, Smarty charged Plaintiff \$3, despite its representation that a trial  
25 membership was being offered to Plaintiff for free.

26 22. On September 29, 2022, four days into her 14-day trial membership, Plaintiff cancelled  
27 her SmartyPlus subscription, and received confirmation of the same:  
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Hi Catherine Foster,

Thank you for being a SmartyPlus subscriber

Thank you for being a SmartyPlus subscriber.  
Your subscription was cancelled on 09/29/2022 10:03:35am

23. Despite cancelling her subscription, Plaintiff found that Smarty had not honored her cancellation request, and continued to bill Plaintiff again for monthly subscription fees of \$19 on October 2, 2022 and November 2, 2022.

24. In total, Plaintiff paid \$41 for 4 days worth of a subscription service, where per the representations of Smarty, she should have paid nothing.

25. If Plaintiff knew that she would be charged a trial membership fee, and if she knew that her cancellation request would not be honored, Plaintiff would not have purchased a SmartyPlus subscription.

**IV. ONLINE CONSUMER COMPLAINTS CONFIRM SMARTY’S DECEPTIVE CANCELLATION PRACTICES.**

26. Defendant is well aware that its membership cancellation scheme deceives consumers. Hundreds of Smarty paid subscribers have complained of Defendant’s failure to honor consumer cancellations. The following online consumer complaints are indicative of a broader problem:

I signed up after I received a popup promotion for cashback on movie theater tickets purchased. Nowhere did it say I would be charged money for this service. I was then charged \$19 on my card. I had to immediately jump through hoops in order to cancel this "free" subscription. I would like a full refund for false advertising.

Ordered a product online smarty said they would save me 15 more dollars and send it to an account If I joined up with them so I joined up with smarty they charged me \$3 never got my \$15 they don't respond any messages they won't get back with you so I canceled? My account lost \$3 never got the \$15. They promised to give me do not join these people they are scam artists they just take your \$3 they don't give you the money that you're supposed to get by using their account when you purchase something.

i have been charged 19\$ this month and doesn't even know how. does anyone know how to cancel the subscription? which i don't even know how i subscribed. upon

1 reading, people say it will be a monthly charge.

2 27. These reviews are merely a sampling of the negative comments consumers have left  
3 about Defendant's deceptive cancellation policies and practices.

4 **CLASS ALLEGATIONS**

5 28. Plaintiff brings this action pursuant to California Code of Civil Procedure Rule 382 on  
6 behalf of a Class and Subclass of individuals defined as:

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8 **California Class:**

9 All consumers in the state of California who, within the applicable statute of  
10 limitations preceding the filing of this action to the date of class certification purchased  
11 a SmartyPlus subscription.

12 **Alternative Massachusetts Subclass:**

13 All consumers in the state of Massachusetts who, within the applicable statute of  
14 limitations preceding the filing of this action to the date of class certification purchased  
15 a SmartyPlus subscription.

16 29. Excluded from the Classes are all persons who received refunds from Defendant after  
17 being charged any additional amounts after they cancelled their subscription; Defendant, its parents,  
18 subsidiaries, affiliates, officers, and directors; this Court and any of its employees assigned to work  
19 on the case; and all employees of the law firms representing Plaintiff and Class members.

20 30. Plaintiff reserves the right to modify or amend the definition of the proposed Classes  
21 and/or to add subclasses, if necessary, before this Court determines whether class certification is  
22 appropriate.

23 31. Certification of Plaintiff's claims for class wide treatment is appropriate because  
24 Plaintiff can establish each of the elements of her claims on a class wide basis using the same evidence  
25 as would be used to prove those elements in individual actions alleging the same claims.

26 32. **Numerosity:** The members of the Classes are so numerous that a joinder of all  
27 members would be impracticable. While the exact number of Class members is presently unknown  
28 to Plaintiff, and can only be determined through appropriate discovery, Plaintiff believes that the Class  
is likely to include thousands of individuals.

33. **Commonality and Predominance:** This action involves common questions of law and  
fact, which predominate over any questions affecting individual Class members. The questions of law

1 and fact common to both Plaintiff and Class members include, but are not limited to, the following:

- 2 a) Whether Defendant engaged in unconscionable, fraudulent, and/or deceptive business
- 3 practices under the laws asserted;
- 4 b) Whether Defendant’s alleged conduct constitutes violations of the laws asserted;
- 5 c) Whether Plaintiff and members of the Classes were harmed by Defendant’s actions;
- 6 d) Whether Defendant was unjustly enriched;
- 7 e) Whether Plaintiff and the Classes have been damaged, and if so, the proper measure
- 8 of damages;
- 9 f) Whether an injunction is necessary is necessary to prevent Defendant from continuing
- 10 to engage in the wrongful conduct described herein.

11 34. **Typicality:** Plaintiff’s claims are typical of all members of the Classes. The evidence  
12 and legal theories regarding Defendant’s alleged wrongful conduct committed against Plaintiff and  
13 the Class members are substantially the same because all of the relevant agreements between  
14 Defendant and its subscribers were identical as to all relevant terms, and also because the challenged  
15 practice of charging consumers after they cancel their subscriptions are uniform for Plaintiff and Class  
16 members. Accordingly, in pursuing her own self-interest in litigating her claims, Plaintiff will also  
17 serve the interests of the Classes.

18 35. **Adequacy of Representation:** Plaintiff will fairly and adequately protect the interests  
19 of the Classes. Plaintiff retained competent counsel experienced in class action litigation to ensure  
20 such protection. There are no material conflicts between the claims of the representative Plaintiff and  
21 Class members that would make class certification inappropriate. Additionally, Plaintiff’s Counsel  
22 are competent to advance the interest of the Classes having been designated as Lead Counsel in  
23 dozens of similar class action cases. Plaintiff and her Counsel intend to prosecute this action  
24 vigorously.

25 36. **Superiority:** A class action is superior to all other available methods for the fair and  
26 efficient adjudication of this matter because the injuries suffered by the individual Class members are  
27 relatively small. As such, the expense and burden of individual litigation would make it virtually  
28 impossible for Plaintiff and Class members to individually seeks redress for Defendant’s wrongful



1 conduct. Even if Class members could afford individual litigation, it would be unduly burdensome to  
2 the courts in which the individual litigation would proceed. The class action device is preferable to  
3 individual litigation because it provides the benefits of unitary adjudication, economies of scale, and  
4 comprehensive adjudication by a single court. In contrast, the prosecution of separate actions by  
5 individual Class members would create a risk of inconsistent or varying adjudications with respect to  
6 individual Class members that would establish incompatible standards of conduct for the party (or  
7 parties) opposing the Class and would lead to repetitious trials of the numerous common questions of  
8 law and fact. Plaintiff knows of no difficulty that will be encountered in the management of this  
9 litigation that would preclude its maintenance as a class action. As a result, a class action is superior  
10 to other available methods for fair and efficient adjudication of this action. Absent a class action,  
11 Plaintiff and Class members will continue to suffer monetary harm, thereby allowing Defendant’s  
12 violations of law to proceed without remedy and allowing Defendant to retain the proceeds of their  
13 ill-gotten gains.

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15 **CAUSES OF ACTION**

16 **FIRST CLAIM FOR RELIEF**  
17 **Violation of California’s Unfair Competition Law**  
18 **(Cal. Bus. & Prof. Code § 17200, et seq.)**  
19 **(On Behalf of Plaintiff and the Class)**

20 37. Plaintiff hereby incorporates by reference the preceding paragraphs as if fully  
21 restated here.

22 38. Smarty’s conduct described herein violates the Unfair Competition Law (“UCL”),  
23 codified at California Business and Professions Code section 17200, *et seq.*

24 39. The UCL prohibits, and provides civil remedies for, unfair competition. Its purpose is  
25 to protect both consumers and competitors by promoting fair competition in commercial markets for  
26 goods and services. In service of that purpose, the Legislature framed the UCL’s substantive  
27 provisions in broad, sweeping language.

28 40. The UCL imposes strict liability. Plaintiff need not prove that Smarty intentionally or  
negligently engaged in unlawful, unfair, or fraudulent business practices—but only that such practices

1 occurred.

2 41. A business act or practice is “unfair” under the UCL if it offends an established public  
3 policy or is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers,  
4 and that unfairness is determined by weighing the reasons, justifications, and motives of the practice  
5 against the gravity of the harm to the alleged victims.

6 42. A business act or practice is “fraudulent” under the UCL if it is likely to deceive  
7 members of the public.

8 43. A business act or practice is “unlawful” under the UCL if it violates any other law or  
9 regulation.

10 44. Smarty committed unfair and fraudulent business acts and practices in violation of Cal.  
11 Bus. & Prof. Code § 17200, *et seq.*, by affirmatively and knowingly misrepresenting that subscribers  
12 that cancel their subscription will not be subsequently charged, as described herein.

13 45. Smarty also committed unlawful business acts and practices as defined by the UCL by  
14 violating multiple portions of California’s Automatic Renewal Law (“ARL”), specifically Cal. Bus.  
15 & Prof. Code §§ 17601(b) which required Defendant to describe the cancellation policy that applies  
16 to Smarty’s offer, and failing to abide by that cancellation policy. Smarty also violated section  
17 17602(d)(1) of the ARL which provides “a business that allows a consumer to accept an automatic  
18 renewal or continuous service offer online shall allow a consumer to terminate the automatic renewal  
19 or continuous service exclusively online, at will, and without engaging any further steps that obstruct  
20 or delay the consumer's ability to terminate the automatic renewal or continuous service  
21 immediately.” Smarty further failed to provide “clear and conspicuous” disclosures of its cancellation  
22 policy.

23 46. Defendant’s acts and practices offend an established public policy of truthful  
24 advertising in the marketplace, and constitute immoral, unethical, oppressive, and unscrupulous  
25 activities that are substantially injurious to consumers.

26 47. The harm to Plaintiff and the Class outweighs the utility of Defendant’s practices.  
27 There were reasonably available alternatives to further Defendant’s legitimate business interests,  
28 other than the misleading and deceptive conduct described herein.

1           48. Defendant’s conduct also constitutes an “unlawful” act under the UCL because, as  
2 detailed in Plaintiff’ Second Claim for Relief below, it also constitutes a violation of sections  
3 1770(a)(5) and (a)(9) of the California Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code  
4 section 1750, *et seq.*, as set forth more fully below.

5           49. Smarty’s business practices have misled Plaintiff and the proposed Class and, unless  
6 enjoined, will continue to mislead them in the future.

7           50. Plaintiff relied on Defendant’s misrepresentations in choosing to purchase a Smarty  
8 subscription.

9           51. By falsely marketing its cancellation practices, Smarty deceived Plaintiff and Class  
10 members into making purchases they otherwise would not make.

11           52. As a direct and proximate result of Smarty’s unfair, fraudulent, and unlawful practices,  
12 Plaintiff and Class members suffered and will continue to suffer actual damages. Defendant’s  
13 fraudulent conduct is ongoing and presents a continuing threat to Plaintiff and Class members that  
14 they will be deceived. Plaintiff desire to conduct further business with Smarty but cannot rely on  
15 Smarty’s representations unless an injunction is issued.

16           53. As a result of its unfair, fraudulent, and unlawful conduct, Smarty has been unjustly  
17 enriched and should be required to disgorge its unjust profits and make restitution to Plaintiff and  
18 Class members pursuant to Cal. Bus. & Prof. Code § 17203 and 17204.

19           54. Pursuant to Business & Professions Code §§ 17203 and 17500, Plaintiff and the  
20 members of the Class, on behalf of the general public, seek an order of this Court enjoining Defendant  
21 from continuing to engage, use, or employ their unfair, unlawful, and fraudulent practices.

22           55. Plaintiff has no adequate remedy at law in part because Smarty’s conduct is continuing.  
23 Plaintiff therefore seek an injunction on behalf of the general public to prevent Smarty from  
24 continuing to engage in the deceptive and misleading practices described herein.

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**SECOND CLAIM FOR RELIEF**  
**Violation of California’s Consumer Legal Remedies Act (“CLRA”)**  
**(Cal. Civ. Code § 1750, et seq.)**  
**(On behalf of Plaintiff and the Class)**

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3 56. Plaintiff hereby incorporates by reference the preceding paragraphs as if fully restated  
4 here.

5 57. This cause of action is brought pursuant to the Consumer Legal Remedies Act  
6 (“CLRA”), California Civil Code section 1750, *et seq.* Plaintiff and each member of the proposed  
7 Class are “consumers” as defined by California Civil Code section 1761(d).

8 58. Defendant’s sale of video conferencing services to consumers were “transactions”  
9 within the meaning of California Civil Code section 1761(e).

10 59. The Smarty subscriptions purchased by Plaintiff and the Class are “goods” within the  
11 meaning of California Civil Code section 1761(a).

12 60. Defendant violated and continues to violate the CLRA by engaging in the following  
13 practices proscribed by California Civil Code section 1770(a) in transactions with Plaintiff and the  
14 Class which were intended to result in and did result in the sale of Smarty subscriptions: (i)  
15 “[r]epresenting that goods or services have . . . characteristics . . . that they do not have,” Cal. Civ.  
16 Code § 1770(a)(5); “[a]dvertising goods or services with intent not to sell them as advertised,” Cal.  
17 Civ. Code § 1770(a)(9).

18 61. Specifically, as alleged herein, Smarty has misrepresented and continues to  
19 misrepresent that consumers who follow its instructions for cancelling their subscriptions will indeed  
20 have their subscriptions cancelled.

21 62. Smarty has directed and does direct these misrepresentations at consumers before  
22 purchase through marketing communications.

23 63. Smarty has directed and does direct these misrepresentations at consumers after  
24 purchase of Smarty subscriptions when consumers desire to cancel Smarty subscriptions.

25 64. At no time does Smarty disclose its true cancellation practices, it repeatedly conceals  
26 and misrepresents this material information.

27 65. Smarty continues to violate the CLRA and continues to injure the public by misleading  
28 consumers about its cancellation policies. Accordingly, Plaintiff seeks injunctive relief on behalf of

1 the general public to prevent Smarty from continuing to engage in these deceptive and illegal  
2 practices. Otherwise, Plaintiff, the Class members, and members of the general public may be  
3 irreparably harmed or denied an effective and complete remedy if such an order is not granted.

4 66. In accordance with California Civil Code section 1780(a), Plaintiff and the Class  
5 members seek injunctive and equitable relief on behalf of the general public for violations of the  
6 CLRA, including restitution and disgorgement.

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

16 **THIRD CLAIM FOR RELIEF**  
17 **False and Misleading Advertising**  
18 **(Bus. & Prof. Code §§ 17500, et seq.)**  
19 **(On Behalf of Plaintiff and the Class)**

20 68. Plaintiff hereby incorporates by reference the preceding paragraphs if fully restated  
21 here.

22 69. California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code section 17500,  
23 states that “[i]t is unlawful for any . . . corporation . . . with intent . . . to dispose of . . . personal  
24 property . . . to induce the public to enter into any obligation relating thereto, to make or disseminate  
25 or cause to be made or disseminated . . . from this state before the public in any state, in any newspaper  
26 or other publication, or any advertising device, or by public outcry or proclamation, or in any other  
27 manner or means whatever, including over the Internet, any statement . . . which is untrue or  
28 untrue or misleading . . . .”

1 70. Defendant’s material misrepresentations and omissions alleged herein violate  
2 Business and Professions Code section 17500.

3 71. Defendant knew or should have known that its misrepresentations and omissions were  
4 false, deceptive, and misleading.

5 72. Pursuant to Business and Professions Code sections 17203 and 17500, Plaintiff and  
6 the members of the Class, on behalf of the general public, seek an order of this Court enjoining  
7 Defendant from continuing to engage, use, or employ their deceptive practices.

8 73. Further, Plaintiff requests an order awarding Plaintiff and class members restitution of  
9 the money wrongfully acquired by Defendant by means of said misrepresentations.

10 74. Additionally, Plaintiff and the Class members seek an order requiring Defendant to  
11 pay attorneys’ fees pursuant to California Civil Code section 1021.5.

12 **FOURTH CLAIM FOR RELIEF**  
13 **Unjust Enrichment**  
14 **(On Behalf of Plaintiff and the Classes)**

15 75. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully set forth  
16 herein.

17 76. Plaintiff, individually and on behalf of the Classes, asserts a common law claim for  
18 unjust enrichment. This claim is brought solely in the alternative to Plaintiff’s statutory claims. In  
19 such circumstances, unjust enrichment will dictate that Defendant disgorge all improperly assessed  
20 fees. Also, if claims are deemed not to be covered by the contract—for example, if Defendant has  
21 violated state and federal law, but in such a way that it does not violate the contract, then unjust  
22 enrichment will require disgorgement of all improperly assessed subscription fees.

23 77. By means of Defendant’s wrongful conduct alleged herein, Defendant knowingly  
24 assessed subscription fees upon Plaintiff and the members of the Classes that cancelled their  
25 subscriptions that are unfair, unconscionable, and oppressive.

26 78. Defendant has unjustly retained a benefit in the form of improper membership fees to  
27 the detriment of Plaintiff and the members of the Classes.

28 79. Defendant has retained this benefit through its fee maximization scheme, and such  
retention violates fundamental principles of justice, equity, and good conscience.

1 80. Defendant should not be allowed to profit or enrich itself inequitably and unjustly at  
2 the expense of Plaintiff and the members of the Class and should be required to make restitution to  
3 Plaintiff and the members of the Classes.

4 **FIFTH CLAIM FOR RELIEF**  
5 **Violation of Massachusetts Consumer Protection Act, G.L. c. 93A**  
6 **(In The Alternative, On Behalf of Plaintiff and the Massachusetts Subclass)**

7 81. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully set forth  
8 herein.

9 82. This claim is asserted on behalf of Plaintiff and the members of the Classes under  
10 Massachusetts Consumer Protection Act, G.L. c. 93A, et seq.

11 83. The Massachusetts Consumer Protection Act declares unlawful any “unfair or  
12 deceptive acts or practices in the conduct of any trade or commerce.” G.L. c. 93A, § 2.

13 84. Defendant’s acts and practices were in and affected trade or commerce as defined by  
14 G.L. c. 93A, §1.

15 85. Defendant engaged in unfair and deceptive acts and practices relating its subscription  
16 sign up and cancellation practices, in violation of G.L. c. 93A, §§ 2 and 9. Specifically, Defendant  
17 misrepresented its practice of charging subscribers for trial memberships that it represented as free,  
18 and misrepresented that it would honor cancellation requests.

19 86. Defendant’s acts and practices proximately caused injury to Plaintiff and the Classes,  
20 and they are entitled to, inter alia, damages, injunctive, and declaratory relief.

21 87. Defendant’s actions as detailed above were knowing or willful violations of Mass.  
22 Gen. Laws c. 93A, §§ 2 and 9, entitling Plaintiff and the Class members of the Classes to an award  
23 of double or treble damages.

24 88. Plaintiff’s counsel notified Defendant in writing by certified mail of the particular  
25 violations of Gen. Laws c. 93A, §§ 2 and 9 and demanded that it both rectify the problems associated  
26 with the actions detailed above and give notice to all affected consumers of Defendant’s intent to act.  
27 If Defendant fails to respond to Plaintiff’s letter or fails to agree to rectify the problems associated  
28 with the actions detailed above and give notice to all affected consumers within thirty days of the date

1 of written notice, Plaintiff will move to amend her Complaint to pursue claims for actual, punitive,  
2 and statutory damages, as appropriate, against Defendant. However, as to this cause of action, at this  
3 time, Plaintiff seek only injunctive relief.

4 89. Because of the unfair and deceptive acts and practices of Defendant, on behalf of  
5 herself and the Classes, Plaintiff seeks actual damages, minimum statutory damages, double and  
6 treble damages, injunctive relief, and other such equitable relief as the Court finds necessary and  
7 proper, as well as reasonable attorneys' fees and costs under G.L. c. 93A, § 9(3).

8 **PRAYER FOR RELIEF**

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

- 11 (a) Certification for this matter to proceed as a class action on behalf of the Class;
- 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.

22 **DEMAND FOR JURY TRIAL**

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

25 Dated: November 20, 2023

**KALIELGOLD PLLC**

26  
27 By: Sophia Goren Gold  
28 Sophia Goren Gold  
Jeffrey D. Kaliel  
Amanda J. Rosenberg  
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