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7 *Attorney for Plaintiff and the Proposed Class*

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 JORDAN BRISTOW, on behalf of
12 himself and all others similarly situated,

13 Plaintiff,

14 v.

15 GAMMA BILLING INC. d/b/a EVIL
16 ANGEL,

17 Defendant.
18

Case No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

19
20 Jordan Bristow (“Plaintiff”), on behalf of himself and all others similarly situated,
21 brings this complaint against Defendant Gamma Billing, Inc. d/b/a Evil Angel (“Evil
22 Angel” or “Defendant”). Plaintiff makes the following allegations based upon, *inter alia*,
23 the investigation made by his counsel, and based upon information and belief, except as to
24 those allegations specifically pertaining to Plaintiff, which are based on his personal
25 knowledge.
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27
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INTRODUCTION

1
2 1. This is a proposed class action seeking monetary damages, restitution, and
3 injunctive and declaratory relief from Defendant arising from its deceptive and fraudulent
4 billing practices.

5 2. Defendant operates an adult entertainment (www.evilangel.com).

6 3. Defendant lures consumers into providing their credit card information based
7 on the promise of a one-time payment for short trial memberships. Then, without
8 consumers' consent, Defendant enrolls consumers into recurring membership plans.

9 4. Defendant's membership signup portal does not mention anything about
10 automatic renewal or recurring charges. Rather, Defendant is regularly tricking consumers
11 into signing up for recurring plans under the (false) impression that they are only signing
12 up for a trial or stated term (e.g., 30 days).

13 5. In fact, Defendant exploits their membership offers to sneak additional and
14 expensive subscription charges onto users' credit cards, hoping consumers overlook the
15 charges on their credit card bill.

16 6. Worst yet, Defendant fails to allow subscribers to cancel their membership
17 plans. Instead, Defendant continues to charge consumers unwanted recurring fees even after
18 they attempt to cancel their membership.

19 7. Plaintiff signed up for a three-day trial membership and, out of an abundance
20 of caution, and without being required to do so, proactively cancelled his membership
21 within the three-day period. Despite cancelling, Plaintiff later learned that he was assessed
22 several sporadic and additional fees for the underlying membership. Plaintiff tried to dispute
23 the charges to no avail and ultimately had to inform his bank to decline further charges from
24 Defendant. Defendant continues to (unlawfully) charge Plaintiff to this day.

25 8. Defendant's conduct amounts to a bait and switch, violates state consumer
26 protection law, and breaches its contract with consumers.

27 9. Plaintiff and Class members have been injured by Defendant's deceptive and
28 fraudulent practices. Plaintiff brings this action on behalf of himself, the putative Classes,

1 and the general public. Plaintiff seeks actual damages, punitive damages, restitution, and
2 injunctive and declaratory relief on behalf of the general public to prevent Defendant from
3 continuing to engage in its illegal practices described herein.

4 PARTIES

5 10. Plaintiff Jordan Bristow is a citizen and resident of Texas.

6 11. Defendant Gamma Billing Inc. is a California corporation with its
7 headquarters in Santa Clarita, California. Defendant is engaged in the business of providing
8 adult entertainment to consumers, including Plaintiff and members of the putative Class.

9 JURISDICTION AND VENUE

10 12. This Court has subject matter jurisdiction pursuant to the Class Action Fairness
11 Act, 28 U.S.C. § 1332(d) because (1) the amount in controversy, exclusive of costs and
12 interest, exceeds the sum of \$5,000,000.00, (2) the proposed Class is comprised of at least
13 100 members, and (3) complete diversity exists between at least one plaintiff and one
14 defendant.

15 13. This Court has personal jurisdiction over Defendant because Defendant is
16 incorporated and headquartered in California.

17 14. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because
18 Defendant resides in and is subject to personal jurisdiction in this District and a substantial
19 portion of the events and/or omissions giving rise to this action occurred in this District.

20 FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

21 **I. Pornography is a Multibillion Dollar Business**

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

25
26
27 ¹ Alexis Kleinman, *Porn Sites Get More Visitors Each Month Than Netflix, Amazon And Twitter*
28 *Combined*, Huffington Post (Dec. 6, 2017), https://www.huffpost.com/entry/internet-porn-stats_n_3187682.

1 16. The global pornography industry is worth around \$97 billion, with an
2 estimated \$12-14 billion coming from the United States.² Internet pornography makes up
3 about 20% of total e-commerce sales in the United States. *See id.*

4 17. An estimated 40 million Americans regularly visit porn sites. *See id.* In 2016,
5 it was estimated that 10.5 percent of U.S. men have paid for Internet pornography
6 subscriptions, a figure that is likely higher today.³

7 18. Yet, as ubiquitous as it is, the pornography industry remains highly
8 unregulated and remains fertile ground for fraudulent business practices such as those
9 described herein.

10 19. This lawsuit seeks to hold Defendant accountable for a practice that, in any
11 other industry, would have ended years ago.

12 **II. Evil Angel is a Popular Membership-Based Website**

13 20. Evil Angel markets itself as a top site for adult content.

14 21. Unlike many other websites offering similar content, Evil Angel is not free, at
15 least not to access and use the site. Instead, access to Evil Angel content requires a
16 “subscription.”

17 22. Evil Angel offers several subscription programs, which vary by price and
18 length of time.

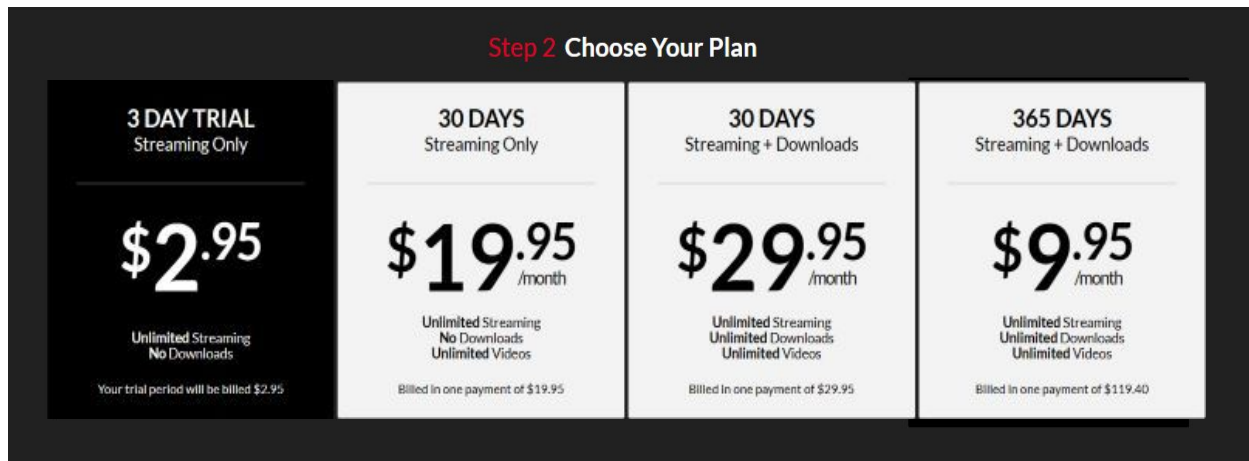
19 **III. Plaintiff was Deceived into Paying Monthly Subscription Fees, Even After** 20 **Attempting to Cancel**

21 23. In March 2023, Plaintiff signed up for the Evil Angel three-day trial
22 membership for \$2.95.

26 ² Jannik Linder, *Pornography Industry Statistics* (Jan. 9, 2024), <https://gitnux.org/pornography-industry-statistics/#:~:text=It%20is%20estimated%20to%20be,visit%20porn%20sites%20each%20month>.

27 ³ Lea Rose Emery, *How Many Men Actually Pay for This?* (Oct. 13, 2016) Bustle,
28 <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).

24. At the time Plaintiff signed up for a membership, the membership screen looked similar to this:



25. Further, at the time Plaintiff signed up, an advertisement at the bottom of the page read: “NO pre-checked cross-sales, NO unexpected charges!”

26. These plans promise a commitment to access Evil Angel’s content for the specified period: 365 days, 30 days, or a 3-day trial. The membership signup page is completely devoid of any notice that the membership plans would automatically renew. Stated differently, Defendant failed to present the automatic renewal offer terms in a clear and conspicuous way.

27. Moreover, the promise of a shorter trial period (compared to longer trials) strongly implies that this will be a “one-time” charge with be no further charges or, at the minimum, a user may cancel their trial before the period is up.

28. Based on these representations, Plaintiff, like other reasonable consumers, selected a membership plan and clicked the large yellow “Proceed to Checkout” button on the page without realizing that, by doing so, it would be impossible to cancel his subscription and he would be subject to automatic renewal.

29. Further, by using a large “Proceed to Checkout” button, along with other design tricks, Defendant ensured consumers did not and could not determine the truth: at the expiration of the subscription period, users were automatically renewed and charged for

1 additional memberships and their subscriptions could not be cancelled. Worse yet, users,
2 like Plaintiff, who click “3 Day Trial” were automatically enrolled in the premium and more
3 expensive 30-Day membership that included streaming and downloads.

4 30. This is far from the norm in electronic commerce in general. While “free trials”
5 or shorter trials that convert to recurring memberships may be common in e-commerce,
6 nearly all platforms in electronic commerce prominently state directly adjacent to the “start
7 trial” button that failure to cancel will result in automatic renewal and provide the terms of
8 that renewal. Indeed, such prominent placement is mandated by law in many states,
9 including California. Moreover, all platforms in electronic commerce provide users an
10 opportunity to cancel their memberships in a timely fashion.

11 31. Contrary to the norm and common procedures, Defendant did not alert users
12 (let alone prominently) that it would be (1) subject to additional recurring and expensive
13 fees, and (2) impossible to cancel a membership.

14 32. Defendant’s bait-and-switch practice lured Plaintiff and other consumers into
15 purchasing memberships without informing consumers that their memberships would
16 automatically renew and based on the (false) implied promise that cancellation is possible.
17 In return, once armed with consumers’ credit card information, Defendant secretly charged
18 Plaintiff’s card for various additional fees without providing any notice and without
19 obtaining their affirmative consent.

20 **IV. Evil Angel Does Not Cancel Memberships Even When Consumers Request**
21 **That They Do So**

22 33. Defendant routinely fails to cancel consumer subscriptions. In that regard,
23 Plaintiff’s experience is informative.

24 34. Plaintiff signed up for Defendant’s three-day trial with the understanding that
25 he was providing his credit card information for a one-time charge. After signing up for a
26 subscription, out of an abundance of caution, and without being required to do so, Plaintiff
27 proactively attempted to cancel his subscription online before the end of the trial.
28

1 35. Despite entering the proper username and password, Plaintiff was not able to
2 log in to his account through no fault of his own. Plaintiff tried to reset his password to log
3 in and cancel his trial, but the reset password link Defendant provided did not work.

4 36. Unable to login to his account, Plaintiff then emailed Defendant's customer
5 service to cancel his subscription. Defendant did not respond to this email.

6 37. Plaintiff timely cancelled his membership before the three-day subscription
7 expired. Plaintiff reasonably understood that he would incur no further charges.

8 38. Despite cancelling his subscription, Defendant continued to bill Plaintiff, both
9 for the underlying membership, and for various other charges that became reoccurring.

10 39. Plaintiff only noticed these charges upon looking at his credit card bill at the
11 end of the month. Plaintiff would never have known that he was being charged
12 surreptitiously had he not checked his bill.

13 40. Plaintiff contacted Defendant but was unable to get a response. Thus, Plaintiff
14 instructed his bank to decline the charges. Defendant continues to (unlawfully) charge
15 Plaintiff to this day.

16 41. Plaintiff faces an imminent threat of future harm. Plaintiff would buy a (limited
17 term, non-renewing) subscription to Defendant's website if he could feel sure that
18 Defendant would not illegally auto-renew him. But without an injunction, he cannot trust
19 that Defendant will halt the deceptive conduct alleged herein.

20 **V. Other Consumer Complaints Confirm Plaintiff's Experience Is Not Unique**

21 42. A review of consumer complaints online confirm Plaintiff's experience is far
22 from unusual and is indicative of a broader problem. One user wrote the following:

- 23
- 24 • I decided to buy an evil angel porn trial this evening and I
25 decided to cancel right after. But I don't know how and
26 whenever I go to the cancel link it takes me to some
27 random fame care website and it asks for my debit card
28 info. What should I do, I put my debit card on hold so [n]o

1 more transactions can come through. I'm in a bit of a
2 pickle[.]⁴

3 **VI. Defendant's Conduct Breaches its Contract with Consumers**

4 43. Defendant's conduct as described herein breaches its contract with consumers.

5 44. Plaintiff and the putative class members did not agree to be charged for
6 anything more than the single membership they signed up for.

7 45. By charging Plaintiff and class members for additional fees (likely in the form
8 of additional memberships) that they did not affirmatively select or accept, Defendant
9 breached (and continues to breach) its contracts.

10 46. Moreover, Defendant's failure to cancel memberships breaches its contract
11 with consumers, especially given Defendant's representations that a membership could be
12 cancelled before the trial period is up.

13 **CLASS ALLEGATIONS**

14 47. Plaintiff brings this action on behalf of himself, and all others similarly situated
15 persons, pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3). The proposed classes are
16 defined as:

17 All consumers who, within the applicable statute of limitations preceding the
18 filing of this action to the date of class certification, signed up for an Evil Angel
19 membership and subsequently paid more than the Evil Angel subscription fee
20 to Defendant (the "Bait & Switch Class").

21 All consumers who, within the applicable statute of limitations preceding the
22 filing of this action to the date of class certification cancelled their Evil Angel
23 subscription but were subsequently charged by Defendant (the "Cancellation
24 Class").

25 48. The Bait & Switch Class and the Cancellation Class shall be collectively
26 referred to as the "Classes."

27 49. In addition to the proposed nationwide Classes, Plaintiff also brings this action
28 on behalf of Texas subclasses.

⁴ https://www.reddit.com/r/CustomerService/comments/jrcvxb/evil_angel_subscription/ (last accessed March 27, 2024)

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

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

11 52. The questions here are ones of common or general interest such that there is a
12 well-defined community of interest among the members of the Classes. These questions
13 predominate over questions that may affect only individual class members because
14 Defendant has acted on grounds generally applicable to the Classes. Moreover, adjudication
15 of these common issues in a single action has important and desirable advantages of judicial
16 economy. Such common legal or factual questions include, but are not limited to:

- 17 a. Whether Defendant's alleged misconduct misled or had the tendency to
18 mislead consumers;
- 19 b. Whether Defendant engaged in unfair, unlawful, and/or fraudulent business
20 practices under the laws asserted;
- 21 c. Whether Defendant's alleged conduct constitutes violations of the laws
22 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
28 measure of damages; and

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

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

9 54. It is impracticable to bring members of the Classes' individual claims before
10 the Court. Class treatment permits a large number of similarly situated persons or entities
11 to prosecute their common claims in a single forum simultaneously, efficiently and without
12 the unnecessary duplication of evidence, effort, expense, or the possibility of inconsistent
13 or contradictory judgments that numerous individual actions would engender. The benefits
14 of the class mechanism, including providing injured persons with a method for obtaining
15 redress on claims that might not be practicable to pursue individually, substantially
16 outweigh any difficulties that may arise in the management of this class action. The
17 likelihood that individual class members will prosecute separate actions is remote due to
18 the extensive time and considerable expense necessary to conduct such litigation, especially
19 when compared to the comparatively modest amount of monetary relief available for each
20 individual class member.

21 55. Plaintiff's claims are typical of the claims of the other members of the Classes
22 in that they arise out of the same wrongful business practices by Defendant, as described
23 herein, and they assert the same legal theory. Moreover, Plaintiff is not subject to any unique
24 defenses.

25 56. Plaintiff is more than adequate representative of the Classes in that Plaintiff is
26 a Defendant customer and has suffered damages as a result of Defendant's misconduct. In
27 addition:

28 a) Plaintiff is committed to the vigorous prosecution of this action on behalf of

1 himself and all others similarly situated and has retained competent counsel
2 experienced in the prosecution of class actions and, in particular, class actions
3 on behalf of accountholders against financial institutions;

4 b) There is no conflict of interest between Plaintiff and the unnamed members of
5 the Classes;

6 c) Plaintiff anticipates no difficulty in the management of this litigation as a class
7 action; and

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

10 57. Plaintiff knows of no difficulty to be encountered in the maintenance of this
11 action that would preclude its maintenance as a class action.

12 58. Defendant has acted or refused to act on grounds generally applicable to the
13 class, thereby making appropriate final injunctive, equitable and declaratory relief with
14 respect to the Classes as a whole.

15 59. All conditions precedent to bringing this action have been satisfied and/or
16 waived.

17 **FIRST CAUSE OF ACTION**

18 **Breach of Contract, Including Breach of the Covenant of Good Faith and Fair**
19 **Dealing**
20 **(On Behalf of Plaintiff and the Classes)**

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

23 61. Plaintiff and Defendant contracted for certain services.

24 62. No contract provision authorizes Defendant to charge consumers for (1) more
25 than the one membership they affirmatively select; or (2) additional or unexpected charges
26 if they cancel timely, which Plaintiff did.

27 63. Therefore, Defendant breached the terms of its contract.

1 64. In addition, there exists an implied covenant of good faith and fair dealing in
2 all contracts that neither party shall do anything which will have the effect of destroying or
3 injuring the right of the other party to receive the fruits of the contract. Good faith and fair
4 dealing, in connection with executing contracts and discharging performance and other
5 duties according to their terms, means preserving the spirit – not merely the letter – of the
6 bargain. Stated differently, the parties to a contract are mutually obligated to comply with
7 the substance of their contract in addition to its form. Evading the spirit of the bargain and
8 abusing the power to specify terms constitute examples of bad faith in the performance of
9 contracts.

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

13 66. Defendant breached the covenant of good faith and fair dealing and abused its
14 discretion in its contract as described herein by refusing to permit Plaintiff to cancel its
15 membership and/or charging various miscellaneous fees after Plaintiff timely canceled his
16 membership.

17 67. Plaintiff and members of the Classes have performed all, or substantially all,
18 of the obligations imposed on them under the contract.

19 68. Plaintiff and members of the Classes have sustained damages as a result of
20 Defendant's breaches of the contract.

21 **SECOND CAUSE OF ACTION**

22 **Violation of California's Unfair Competition Law ("UCL")**
23 **Cal. Bus. & Prof. Code § 17200, *et seq.***
24 **(On Behalf of Plaintiff and the Classes)**

25 69. Plaintiff repeats, realleges, and incorporates by reference each of the foregoing
26 paragraphs as if fully set forth herein.

27 70. California law applies to the class because California has a significant interest
28 in regulating the conduct of businesses operating within its borders. Moreover, the principal

1 place of business of Defendant is in California, which constitutes the “nerve center” of its
2 business activities—the place where its high-level officers direct, control, and coordinate
3 the corporation’s activities, including decisions related to automatic renewal and
4 cancellation policies.

5 71. Defendant’s corporate decisions with regard to its marketing representations
6 were likely made from California and its tortious and deceptive conduct emanated from this
7 state.

8 72. The UCL defines “unfair competition” to include any “unlawful, unfair or
9 fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200.

10 73. A business practice is “unfair” under the UCL if it offends an established
11 public policy or is immoral, unethical, oppressive, unscrupulous or substantially injurious
12 to consumers, and that unfairness is determined by weighing the reasons, justifications and
13 motives of the practices against the gravity of the harm to the alleged victims.

14 74. A business act or practice is “fraudulent” under the UCL if it is likely to
15 deceive members of the public.

16 75. A business act or practice is “unlawful” under the UCL if it violates any other
17 law or regulation.

18 76. The UCL imposes strict liability. Plaintiff need not prove that Defendant
19 intentionally or negligently engaged in unfair business practices—but only that such
20 practices occurred.

21 77. Defendant’s conduct described herein is “unfair” because it violates public
22 policy and is immoral, unethical, oppressive, unscrupulous, and/or substantially injurious
23 to consumers, and any utility of such practices is outweighed by the harm caused to
24 consumers, including to Plaintiff, the Classes, and the public. Specifically, Defendant, *inter*
25 *alia*:

- 26 a. Concealed the fact that the trial period would renew automatically and
27 impose reoccurring charges;

- 1 b. Failed to disclose the automatic renewal clause and cancellation
2 procedure clearly and conspicuously on its web page at the time
3 customers signed up for a subscription;
4 c. Failed to apprise consumers of the various terms they were accepting;
5 d. Charged consumers for one subscription, only to tack on consumers
6 additional, unexpected, and miscellaneous fees without providing notice
7 to consumers of same;
8 e. Charged consumers for one subscription, only to tack on additional,
9 unexpected, and miscellaneous fees after consumers attempted to and/or
10 did timely cancel their memberships; and
11 f. Lured consumers into signing up for a subscription only to make it
12 impossible to cancel same, thereby “permitting” Defendant to charge
13 consumers additional fees.

14 78. Defendant’s conduct amounted to a bait and switch.

15 79. Plaintiff and the Classes could not have reasonably avoided this injury.
16 Defendant’s representations were deceiving to reasonable consumers like Plaintiff. There
17 were reasonably available alternative to further Defendant’s legitimate business interests,
18 such as clearly and conspicuously disclosing its automatic renewal terms and cancellation
19 policy.

20 80. Defendant’s conduct is “fraudulent” because, *inter alia*, its representations and
21 deficient disclosures were misleading and likely to deceive Plaintiff and other reasonable
22 consumers. Defendant’s conduct is also fraudulent because it affirmatively and knowingly
23 misrepresented to its consumers that they could sign up for a membership that could be
24 cancelled without incurring further charges and/or consumers would not be charged for
25 unexpected fees.

26 81. Defendant’s conduct was “unlawful” because it violated the CLRA as
27 discussed in Count III.

28

1 82. Despite being made aware of consumer complaints, Defendant did not take
2 any effective measures to ensure that consumers are clearly made aware of the automatic
3 renewal nature of Evil Angel’s subscriptions, nor did it change its billing practices to obtain
4 affirmative consent from consumers before it placed monthly charges on their credit or debit
5 cards.

6 83. Defendant’s conduct and actions are deceptive, untrue, and misleading to
7 reasonable consumers, and will continue to mislead consumers in the future.

8 84. Plaintiff relied on Defendant’s representations to sign up for a three-day
9 subscription. Defendant’s misleading misrepresentations were a substantial factor in
10 Plaintiff’s purchase decision. If he had known about the automatic renewal scheme, he
11 would not have purchased his initial trial membership.

12 85. As a direct and proximate result of Defendant’s misconduct, Plaintiff and Class
13 members have suffered and will continue to suffer actual damages.

14 86. Defendant’s wrongful conduct is ongoing and presents a continuing threat to
15 Class members.

16 87. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff seeks restitution,
17 disgorgement, and an injunction enjoining Defendant from continuing to engage in the
18 unfair business practices described above.

19 **THIRD CAUSE OF ACTION**

20 **Violation of California’s Consumer Legal Remedies Act (“CLRA”)**
21 **Cal. Civ. Code § 17500, *et seq.***
22 **(On Behalf of Plaintiff and the Classes)**

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

25 89. Defendant’s adult entertainment service and subscriptions utilized by Plaintiff
26 and the Classes are a “service” within the meaning of Cal. Civ. Code. § 1761(b), and its
27 “subscriptions” are “goods” within the meaning of Cal. Civ. Code. § 1761(a).
28

1 90. Plaintiff and each member of the proposed Classes are consumers as defined
2 by Cal. Civ. Code. § 1761(d).

3 91. Defendant’s sale of subscriptions to consumers were “transactions” within the
4 meaning of Cal. Civ. Code. § 1761(e).

5 92. Defendant violated, and continues to violate, the CLRA by, *inter alia*:

- 6 a. Concealing the fact that the trial period would renew automatically and
7 impose reoccurring charges;
- 8 b. Failing to disclose the automatic renewal clause and cancellation
9 procedure clearly and conspicuously on its web page at the time
10 customers signed up for a subscription;
- 11 c. Failing to apprise consumers of the various terms they were accepting;
- 12 d. Luring consumers into signing up for a subscription only to make it
13 impossible to cancel same, thereby “permitting” Defendant to charge
14 consumers additional fees;
- 15 e. Charging consumers for one initial subscription, only to tack on
16 additional, unexpected, and miscellaneous fees without providing notice
17 to consumers of same; and
- 18 f. Charging consumers for one initial subscription, only to charge
19 consumers additional, unexpected, and miscellaneous fees after they
20 attempted to and/or did cancel their membership.

21 93. Defendant’s conduct violated the following provisions of Cal. Civ. Code §
22 1770:

- 23 a. “Representing that goods or services have . . . characteristics . . . that
24 they do not have”;
- 25 b. “Using deceptive representations . . . in connections with . . . services”;
26 and
- 27 c. “Advertising goods or services with intent not to sell them as
28 advertised.”

1 94. Defendant affirmatively and knowingly misrepresented to its consumers that
2 they could sign up for a membership that could be cancelled without incurring further
3 charges and/or consumers would not be charged for unexpected fees other than the
4 membership.

5 95. Defendant's conduct and actions are deceptive, untrue, and misleading to
6 reasonable consumers, and will continue to mislead consumers in the future.

7 96. Plaintiff relied on Defendant's representations to sign up for a three-day
8 subscription.

9 97. Despite being made aware of consumer complaints, Defendant did not take
10 any effective measures to ensure that consumers are clearly made aware of the automatic
11 renewal nature of Evil Angel's subscriptions, nor did it change its billing practices to obtain
12 affirmative consent from consumers before it placed monthly charges on their credit or debit
13 cards.

14 98. As a direct and proximate result of Defendant's misconduct, Plaintiff and Class
15 members have suffered and will continue to suffer actual damages.

16 99. Defendant's wrongful conduct is ongoing and presents a continuing threat to
17 Class members.

18 100. Pursuant to Cal. Civ. Code § 1780(a), Plaintiff seeks injunctive and declaratory
19 relief on behalf of the general public for violations of the CLRA.

20 101. On March 28, 2024, pursuant to Cal. Civ. Code § 1782(a), Plaintiff notified
21 Defendant in writing by certified mail of the particular violations of § 1770 of the CLRA
22 and demanded that, *inter alia*, it correct same. Plaintiff will amend this Complaint to seek
23 damages if Defendant does not comply with Cal. Civ. Code § 1782(b).

24 **FOURTH CAUSE OF ACTION**

25 **Unjust Enrichment**
26 **(On Behalf of Plaintiff and the Classes)**

27 102. Plaintiff repeats, realleges, and incorporates by reference each of the
28 foregoing paragraphs as if fully set forth herein.

1 103. This claim is plead in the alternative to Count I to the extent there was no
2 contract between the parties.

3 104. Plaintiff and the Class members conferred a monetary benefit on Defendant by
4 paying monies to Defendant for a subscription, in addition to various other charges procured
5 by Defendant that were miscellaneous, unexpected and/or not approved by Plaintiff and the
6 Class members.

7 105. Defendant had knowingly and voluntarily accepted and retained these benefits.

8 106. The circumstances are such that it would be unequitable for Defendant to retain
9 the benefits it received from Plaintiff and the Class members because, as fully described
10 herein, Plaintiff never agreed to pay these additional monies and tried to recover them to no
11 avail.

12 107. Through its conduct alleged herein, Defendant was unjustly enriched to the
13 detriment of Plaintiff and the Class members.

14 108. As a result of Defendant's wrongful conduct, Plaintiff and Class members are
15 entitled to restitution and disgorgement of all profits, benefits and other compensation
16 obtained by Defendant.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiff, on behalf of himself and all others similarly situated, pray
19 for a judgment:
20

- 21 (a) Certifying the Class as requested herein;
- 22 (b) Appointing Plaintiff as Class Representative;
- 23 (c) Appointing Plaintiff's attorneys as Class Counsel;
- 24 (d) Declaring Defendant's billing practices and policies to be in breach of its
25 contract with customers;
- 26 (e) Enjoining Defendant from the unlawful conduct alleged herein;
- 27
28

- 1 (f) Requiring Defendant to disgorge and make restitution of all monies it acquired
2 by means of the unlawful practices set forth above;
- 3 (g) Awarding Plaintiff and the Class damages under common law and/or by
4 statute, including compensatory and punitive, according to proof at trial, along
5 with interest on such sums at the maximum legal rate;
- 6 (h) For reasonable attorneys' fees and costs of suit, along with pre-judgment and
7 post-judgment interest; and
- 8 (i) Awarding such other and further relief as this Court deems just, proper and
9 equitable.

10 **DEMAND FOR JURY TRIAL**

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

13
14
15 Dated: March 27, 2024

Respectfully submitted,

16 */s/ Scott Edelsberg*

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