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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **FOR THE COUNTY OF ORANGE Assigned for All Purposes**  
19 Judge Randall J. Sherman

20 **FRANCES FERNANDEZ and CECILLE** )  
**NGUYEN**, individually and on behalf of all )  
21 others similarly situated, )  
22 *Plaintiffs,* )  
23 v. )  
24 **FAVORITE WORLD, LLC d/b/a** )  
**SHAPERMINT,** )  
25 )  
26 *Defendant.* )  
27 )

Case No. 30-2023-01366132-CU-BC-CXC  
**CLASS ACTION COMPLAINT FOR:**  
1. **VIOLATIONS OF CAL. BUS. & PROF.**  
**CODE §§ 17535 & 17600, et seq.;**  
2. **VIOLATIONS OF CAL. BUS. & PROF.**  
**CODE §§ 17200, et seq.;**  
3. **VIOLATIONS OF CAL. CIV. CODE §**  
**1750, et seq.**  
4. **VIOLATIONS OF WASH. REV. CODE**  
**§ § 19.86.020, et seq.; AND**  
5. **UNJUST ENRICHMENT;**  
6. **CONVERSION**

**JURY TRIAL DEMANDED**

28

1 Plaintiffs Frances Fernandez and Cecille Nguyen, individually and on behalf of all others  
2 similarly situated (hereinafter “Plaintiffs”), bring this Class Action Complaint against Defendant,  
3 Favorite World, LLC d/b/a Shapermint (“Defendant” or “Shapermint”), and allege, upon personal  
4 knowledge as to their own actions, and upon information and belief as to all other matters, as follows:

5 **INTRODUCTION**

6 1. Plaintiffs Frances Fernandez and Cecille Nguyen (“Plaintiffs”), on behalf of  
7 themselves and all others similarly situated, by counsel, bring this action against Defendant Favorite  
8 World, LLC d/b/a Shapermint (“Shapermint” or “Defendant”), for engaging in an illegal “automatic  
9 renewal” scheme with respect to its membership plans and for violating the California Automatic  
10 Renewal Law (California Business & Professions Code §§ 17600, *et seq.*), for which a remedy is  
11 provided by the general remedies provision of the False Advertising Law (California Business &  
12 Professions Code § 17535) violating the Unfair Competition Law (California Business & Professions  
13 Code §§ 17200, *et seq.*), violating the Consumer Legal Remedies Act (“Cal. Civ. Code § 1750)  
14 violating the Washington Consumer Protection Act (Wash. Rev. Code §§19.86.020, *et seq.*), unjust  
15 enrichment, and conversion.

16 2. Defendant is an “online intimates marketplace” which advertises and sells women’s  
17 swimwear, bras, underwear, and shapewear from various brands, including Defendant’s exclusive  
18 Shapermint Essentials and Truekind brand shapewear, through its website, <https://shapermint.com/>  
19 (the “Website”), and in brick and mortar stores like Nordstrom and Belk.<sup>1</sup>

20 3. Defendant systematically violates the California Automatic Renewal Law by enrolling  
21 consumers in automatic-renewal or continuous service membership subscriptions without providing  
22 the “clear and conspicuous” disclosures mandated by California law; posting charges to consumers’  
23 credit cards, debit cards, or third-party payment accounts for such membership subscriptions without  
24 first obtaining the consumers’ affirmative consent to an agreement containing the requisite clear and  
25 conspicuous disclosures; and failing to provide an acknowledgement that includes the required clear

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28 <sup>1</sup> <https://shapermint.com/pages/about-us>

1 and conspicuous disclosures of the automatic renewal offer terms, cancellation policy, and  
2 information regarding how to cancel.

3 4. Specifically, when a consumer completes a purchase through Defendant's Website,  
4 Defendant, surreptitiously and without the consumer's consent, enrolls the consumer in Defendant's  
5 Shapermint Club, which carries a \$4.99 monthly, automatically renewing membership fee. Further,  
6 upon a consumer's discovery of the hidden membership enrollment and associated monthly fee, they  
7 must then navigate Defendant's exceedingly difficult and unnecessarily confusing process for  
8 cancelling the Shapermint Club membership.

9 5. Defendant is engaged in a pattern and practice of exploiting consumers by failing to  
10 obtain consumers' consent before enrolling them in Shapermint Club membership and the  
11 accompanying monthly fee; failing to provide consumers with clear and conspicuous disclosures of  
12 the terms of Shapermint Club membership before enrollment; failing to obtain consumers' consent to  
13 the terms of Shapermint Club membership before charging consumers' credit cards, debit cards, or  
14 third-party payment accounts; and failing to provide consumers with an acknowledgement that  
15 discloses how to cancel and allows consumers to cancel Shapermint Club membership before the  
16 consumer pays for the apparel products purchased from Defendant.

17 6. Plaintiffs assert this action, on behalf of themselves and all others similarly situated,  
18 seeking monetary damages, restitution, and declaratory and public injunctive relief.

19 **THE PARTIES**

20 7. Plaintiff Frances Fernandez is a citizen of California and a resident of Los Angeles  
21 County.

22 8. Plaintiff Cecille Nguyen is a citizen of Washington and a resident of King County.

23 9. Plaintiffs are informed and believe and thereon allege that Defendant Favorite World,  
24 LLC, d/b/a Shapermint, is a Nevada limited liability company that maintains its headquarters in  
25 Irvine, California and does business throughout the United States and California, including, but not  
26 limited to, to online marketing and sale of a variety of women's swimwear, bras, underwear,  
27 shapewear, and other merchandise.

28 **JURISDICTION AND VENUE**



1 Shapermint Club, Defendant posts recurring monthly charges to the consumer’s credit card, debit  
2 card, or third-party payment account. As alleged herein, the manner by which Defendant enrolls  
3 consumers, including Plaintiffs and Class Members, in the Shapermint Club and charges for monthly  
4 membership fees violates California law.

5 15. When consumers like Plaintiffs and Class Members shop for and purchase  
6 merchandise from Defendant’s Website, they expect to pay for and receive the apparel and other  
7 merchandise they selected. However, unbeknownst to these consumers, Defendant simultaneously  
8 and surreptitiously enrolls them in Shapermint Club membership and its associated monthly  
9 membership fees without the consumer’s authorization or consent.

10 **B. CALIFORNIA’S AUTOMATIC RENEWAL LAW**

11 16. In 2009, the California Legislature passed Senate Bill 340, which took effect on  
12 December 1, 2010 as Article 9 of Chapter 1 of the False Advertising Law.<sup>5</sup>

13 17. Through the California Automatic Renewal Law (“ARL”), the California Legislature  
14 intends “to end the practice of ongoing charging of consumer credit or debit cards or third party  
15 payment accounts without the consumers’ explicit consent for ongoing shipments of a product or  
16 ongoing deliveries of service.”<sup>6</sup>

17 18. The ARL seeks to ensure that, before there can be a legally-binding automatic renewal  
18 or continuous service arrangement, there must first be clear and conspicuous disclosure of certain  
19 terms and conditions and affirmative consent by the consumer. To that end, the ARL makes it  
20 unlawful “for any business that makes an automatic renewal offer or a continuous service offer to a  
21 consumer in [California] to do any of the following:

- 22 (1) Fail to present the automatic renewal offer terms or continuous service offer terms in  
23 a clear and conspicuous manner before the subscription or purchasing agreement is  
24 fulfilled and in visual proximity . . . to the request for consent to the offer. If the offer  
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27 <sup>5</sup> Cal. Bus. & Prof. Code §§ 17600, *et seq.* (the California Automatic Renewal Law or “ARL”).

28 <sup>6</sup> Cal. Bus. & Prof. Code § 17600.

1 also includes a free gift or trial, the offer shall include a clear and conspicuous  
2 explanation of the price that will be charged after the trial ends or the manner in which  
3 the subscription or purchasing agreement pricing will change upon conclusion of the  
4 trial.

5 (2) Charge the consumer’s credit or debit card, or the consumer’s account with a third  
6 party, for an automatic renewal or continuous service without first obtaining the  
7 consumer’s affirmative consent to the agreement containing the automatic renewal  
8 offer terms or continuous service offer terms, including the terms of an automatic  
9 renewal offer or continuous service offer that is made at a promotional or discounted  
10 price for a limited period of time.

11 (3) Fail to provide an acknowledgment that includes the automatic renewal or continuous  
12 service offer terms, cancellation policy, and information regarding how to cancel in a  
13 manner that is capable of being retained by the consumer. If the automatic renewal  
14 offer or continuous service offer includes a free gift or trial, the business shall also  
15 disclose in the acknowledgment how to cancel, and allow the consumer to cancel, the  
16 automatic renewal or continuous service before the consumer pays for the goods or  
17 services.”<sup>7</sup>

18 19. The ARL defines “clear and conspicuous” as “in larger type than the surrounding text,  
19 or in contrasting type, font, or color to the surrounding text of the same size, or set off from the  
20 surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention  
21 to the language.”<sup>8</sup>

22 20. “Automatic renewal offer terms,” for the purposes of the ARL, “means the following  
23 clear and conspicuous disclosures:

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27 <sup>7</sup> *Id.* § 17602(a).

28 <sup>8</sup> *Id.* § 17601(c).

- 1 (1) That the subscription or purchasing agreement will continue until the consumer  
2 cancels;
- 3 (2) The description of the cancellation policy that applies to the offer;
- 4 (3) The recurring charges that will be charged to the consumer’s credit or debit card or  
5 payment account with a third party as part of the automatic renewal plan or  
6 arrangement, and that the amount of the charge may change, if that is the case, and the  
7 amount to which the charge will change, if known;
- 8 (4) The length of the automatic renewal term or that the service is continuous, unless the  
9 length of the term is chosen by the consumer.
- 10 (5) The minimum purchase obligation, if any.”<sup>9</sup>

11 21. The acknowledgement specified in Section 17602(a)(3) must include “a toll-free  
12 telephone number, electronic mail address,” or “another cost-effective, timely, and easy-to-use  
13 mechanism for cancellation.”<sup>10</sup>

14 22. Further, the ARL has specific requirements regarding the termination of automatic  
15 renewal or continuous services offers which consumers can accept online. The ARL provides:

16 23. In addition to the requirements of subdivision (b), a business that allows a consumer  
17 to accept an automatic renewal or continuous services offer online shall allow a consumer to terminate  
18 the automatic renewal or continuous service exclusively online, at will, and without engaging any  
19 further steps that obstruct or delay the consumer’s ability to terminate the automatic renewal or  
20 continuous service immediately. The business shall provide a method of termination that is online in  
21 the form of either of the following:

- 22 (1) A prominently located direct link or button which may be located within either a  
23 customer account or profile, or within either device or user settings.
- 24  
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27 <sup>9</sup> *Id.* § 17601(b).

28 <sup>10</sup> *Id.* § 17602(c).

1 (2) By an immediately accessible termination email formatted and provided by the  
2 business that a consumer can send to the business without additional information.

3 (3) The termination requirements of this subdivision apply to the automatic renewal terms  
4 and continuous service terms of the contract and the remaining provisions of the  
5 contract continue to be governed by all applicable laws and regulations.

6 (4) Notwithstanding paragraph (1), a business may require a consumer to enter account  
7 information or otherwise authenticate online before termination of the automatic  
8 renewal or continuous service online if the consumer has an account with the business.  
9 A consumer who is unwilling or unable to enter account information or otherwise  
10 authenticate online before termination of the automatic renewal or continuous service  
11 online shall not be precluded from authenticating or terminating the automatic renewal  
12 or continuous service online using another method pursuant to subdivision (c).<sup>11</sup>

13 24. Violation of the ARL constitutes false advertising and gives rise to restitution and  
14 injunctive relief under § 17535. Violation of the ARL also gives rise to restitution and public  
15 injunctive relief under the UCL.

16 **C. DEFENDANT’S SHAPERMINT CLUB ENROLLMENT PROCESS**

17 25. Defendant markets and sells merchandise through the website  
18 <https://shpermint.com/>. As part of its business activities, Defendant operates a subscription  
19 membership program, known as the Shapermint Club. When a consumer becomes enrolled in the  
20 Shapermint Club, Defendant posts recurring monthly charges to the consumer’s credit card, debit  
21 card, or third-party payment account. As alleged herein, the manner by which Defendant enrolls  
22 consumers (including Plaintiffs) in the Shapermint Club, and charges for monthly membership fees,  
23 violates California and Washington law.

24 26. Defendant primarily sells its merchandise through its website. Consumers are able to  
25 navigate to the website, shop among Defendant’s products and brands, and purchase merchandise

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<sup>11</sup> *Id.* § 17602(d).



1 directly through Defendant’s website. After selecting merchandise for purchase, a consumer proceeds  
2 through a checkout process that includes entering contact information, shipping and billing addresses,  
3 and payment information.

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The screenshot displays the checkout process on the Shapermint website. It is divided into two main sections: 'Shipping Method' and 'Payment Information'.

**Shipping Method:** A text input field prompts the user to "Enter your shipping address to see shipping options".

**Payment Information:** A note states "All transactions are secure and encrypted." Below this, there are two primary payment options:

- Credit Card:** Features logos for VISA, Mastercard, American Express, and Discover. It includes input fields for "Card number", "Name on card", "MM / YY", and "CVV".
- PayPal:** A radio button option with the PayPal logo.

At the bottom of the payment section, there is a checkbox for "Get 25% OFF on Your Next Order" with a detailed description of the offer and terms. A large orange button labeled "COMPLETE ORDER" is positioned below the payment options.

**Customer Reviews:** On the right side, there are two review cards. The first is from Amy K., Miami, FL, a verified buyer with a 5-star rating, who writes: "I don't miss shopping in stores at all. This is as easy as it comes. Check out online and receive your shapewear at your doorstep! Fast delivery and when I made a size mistake, I just exchanged it. They're that good." The second is from Katy B., Salt Lake City, UT, also a verified buyer with a 5-star rating, who writes: "This was my first time buying shapewear, and customer service came to the rescue. 10/10 service!"

At the bottom right, there is a "Need Help? Contact our support from below" link and a "24/7 LIVE CHAT SUPPORT" button.

The footer of the page reads "Shapermint, All rights reserved."

27. After consumers enter this information, they are prompted to select a shipping method, including Standard Delivery for \$6.95, Priority Delivery for \$9.95, or Express Shipping for \$15.99. Alternatively, consumers can select to “Add Shapermint Club for Free & Save \$9.95 on FREE Priority Shipping” among the shipping method options, as depicted below.

The screenshot shows the 'Shipping Method' selection screen. It lists four options with their respective costs and estimated arrival times:

- Add Shapermint Club for Free\*** & Save \$ 9.95 on FREE Priority Shipping on this order! **FREE**
  - ✓ Free US Priority Shipping & Exchanges
  - ✓ Exclusive Deals and early access to new launches
  - ✓ Save up to 70% OFF on retail prices

\*For 30 days. Only \$4.99/month after. Cancel anytime. Full terms [here](#)
- Standard Delivery (4-8 business days)** **\$6.95**  
Estimated arrival: Mon, Nov 20 - Mon, Nov 27
- Priority Delivery (within 4 business days)** **\$9.95**  
Estimated arrival: Thu, Nov 16 - Mon, Nov 20
- Express Shipping (within 3 business days)** **\$15.99**  
Estimated arrival: Wed, Nov 15 - Fri, Nov 17

1           28. Defendant’s checkout page fails to disclose the full terms of its automatic renewal  
2 offer. Nowhere on the checkout page does Defendant disclose that the Shapermint Club “shipping  
3 method” option will automatically renew each month. Nor does the checkout page disclose that a  
4 consumer who selects this shipping method option will be required to cancel the Shapermint Club  
5 membership or else they will be charged a recurring monthly membership fee. Finally, the checkout  
6 page similarly fails to disclose the methods by which consumers could cancel Shapermint Club  
7 memberships.

8           29. Unless a consumer clicks on the underlined “here” hyperlink depicted above, they will  
9 never see the entire automatic renewal offer terms and conditions before completing a purchase of  
10 Defendant’s merchandise.

11           30. Consumers are not required to click the “here” hyperlink in order to complete their  
12 purchase.

13           31. While Defendant states that Shapermint Club membership is “[o]nly \$4.99/month”  
14 after the free 30-day trial, at no point on the checkout page does Defendant disclose that consumers  
15 who select this option will be automatically charged the recurring \$4.99 membership fee following  
16 the completion of the free trial.

17           32. Furthermore, even where consumers elect not to select the Shapermint Club free  
18 shipping method option, upon information and good faith belief, they are still enrolled in Defendant’s  
19 Shapermint Club and the accompanying, auto-renewing membership fee upon purchasing  
20 Defendant’s products.

21           33. For example, Plaintiff Fernandez’s purchase qualified for free standard delivery  
22 shipping. She did not select the free Shapermint Club shipping method option, and yet Defendant still  
23 enrolled Plaintiff Fernandez in the Shapermint Club and charged her a monthly, recurring \$4.99  
24 membership fee. A copy of Plaintiff Fernandez’s order confirmation email showing the free standard  
25 delivery shipping method selected is attached hereto as Exhibit A.

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**Shipping Method**

**Add Shapermint Club for Free\*** & Save \$ 9.95 on **FREE**  
 FREE Priority Shipping on this order!  
 ✓ Free US Priority Shipping & Exchanges  
 ✓ Exclusive Deals and early access to new launches  
 ✓ Save up to 70% OFF on retail prices

\*For 30 days. Only \$4.99/month after. Cancel anytime. Full terms [here](#)

Free Standard Delivery (4-8 business days) **\$0.00**  
 Estimated arrival: Tue, Nov 21 - Tue, Nov 28

Priority Delivery (within 4 business days) **\$9.95**  
 Estimated arrival: Fri, Nov 17 - Tue, Nov 21

Express Shipping (within 3 business days) **\$15.99**  
 Estimated arrival: Thu, Nov 16 - Mon, Nov 20

**D. Defendant Violates California’s Automatic Renewal Law**

34. At all relevant times, Defendant failed to comply with California’s Automatic Renewal Law (“ARL”) in three ways: (i) Defendant failed to present the automatic renewal offer terms in a clear and conspicuous manner and in visual proximity to the request for consent to the offer before the purchasing agreement was fulfilled, in violation of Cal. Bus. & Prof. Code § 17602(a)(1); (ii) Defendant charged Plaintiffs’ and Class members’ credit cards, debit cards, third-party payment accounts, or other financial accounts without first obtaining their affirmative consent to the agreement containing the automatic renewal offer terms, in violation of Cal Bus. & Prof. Code § 17602(a)(2); and (iii) Defendant failed to provide an acknowledgement that included the automatic renewal offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer, in violation of Cal. Bus. & Prof. Code § 17602(a)(3).

**1. Defendant Fails to Clearly and Conspicuously Present the Shapermint Club Membership Terms before the Merchandise Purchase Agreement is Fulfilled and in Visual Proximity to the Request for Consent to the Offer**

35. First, the relevant portion of the checkout page on Defendant’s website does not present the complete “automatic renewal offer terms,” as defined by Cal. Bus. & Prof. Code §

1 17601(b), in violation of Section 17602(a)(1) of the ARL. Specifically, Defendant fails to present a  
2 complete “description of the cancellation policy that applies to the offer.”<sup>12</sup> With respect to  
3 cancellation, the relevant portion of the checkout page states: “Cancel anytime.” However, the  
4 checkout page contains no explanation of *how* to cancel or even that the consumer will be required to  
5 cancel during the free 30 days or else risk being charged the recurring \$4.99 membership fee.

6 36. Even more crucially, the checkout page fails to mention that the Shapermint Club’s  
7 recurring membership fees will be posted to consumers’ credit cards, debit cards, or third-party  
8 payment accounts following the expiration of the 30-day trial and that Shapermint Club membership  
9 “will continue until the consumer cancels.”<sup>13</sup>

10 37. Defendant is aware that it fails to place consumers on notice that Shapermint Club  
11 membership is an automatically renewing subscription, as demonstrated by Defendant’s website’s  
12 chat feature, which, upon inquiry as to how to cancel Shapermint Club membership, provides the  
13 following option for consumers to select as a reason for the cancellation: “I know that membership  
14 was added but I’m not aware that there’s a recurring subscription.”

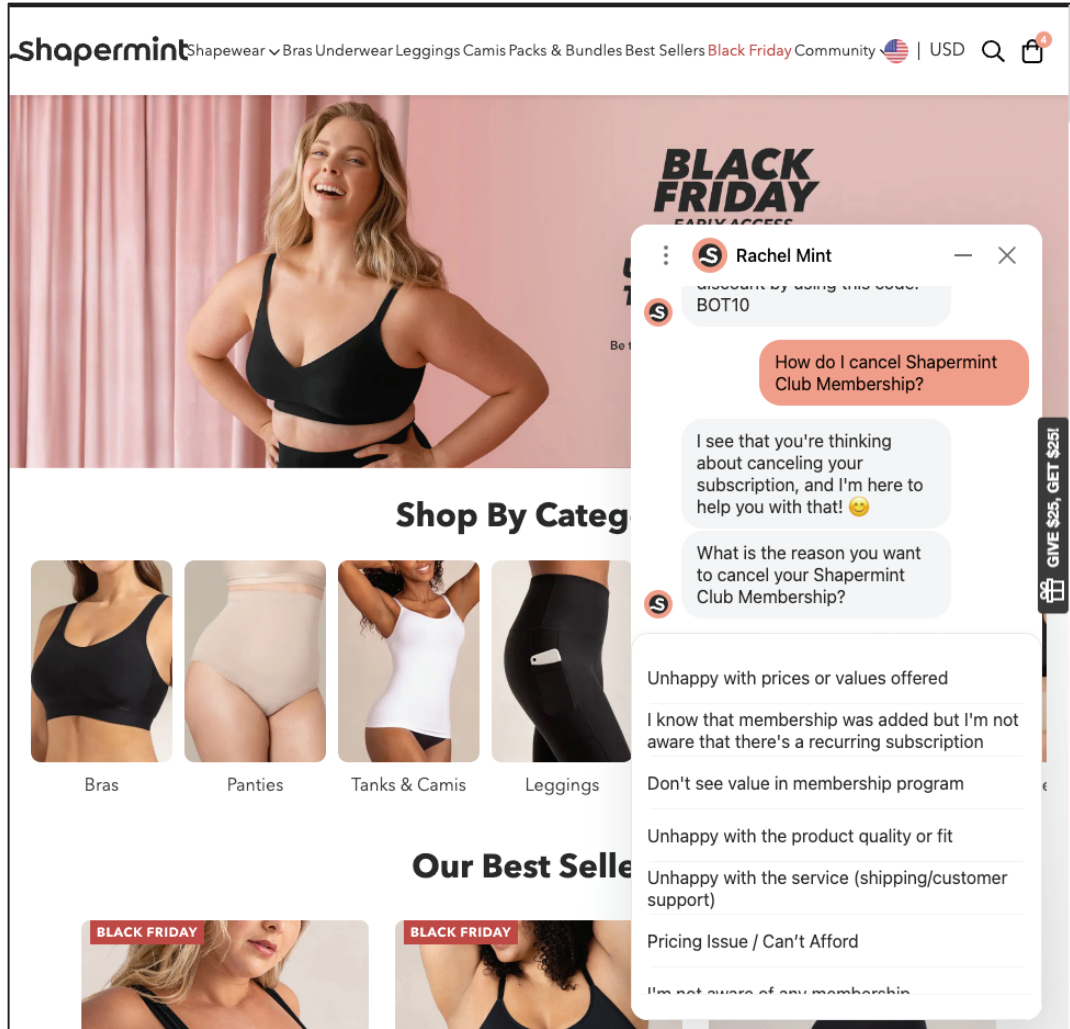
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27 <sup>12</sup> Cal. Bus. & Prof. Code § 17601(b)(2).

28 <sup>13</sup> *Id.* § 17601(b)(1), (3).

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38. Defendant therefore failed to place consumers on notice of these aspects of Defendant’s cancellation and automatic renewal policies in accordance with the ARL because the ARL requires that companies provide such information “in visual proximity to the request for consent to the [automatic renewal] offer.”<sup>14</sup> Defendant failed to do so.

39. Defendant therefore fails to present pertinent information regarding cancellation and automatic renewal of Shapermint Club membership before the purchase agreement is fulfilled and in visual proximity to the request for consent to the offer, as required by the ARL.<sup>15</sup>

<sup>14</sup> *Id.* § 17602(a)(1).

<sup>15</sup> *Id.*

1                   2.       **Defendant Fails to Obtain Consumers’ Affirmative Consent to the**  
2                   **Automatic Renewal Terms Associated with the Shapermint Club**  
3                   **Memberships**

4                   40.       Second, at no point during the checkout process does Defendant require consumers to  
5 read or affirmatively agree to any terms of service associated with Shapermint Club membership, *i.e.*,  
6 by requiring consumers to select or click a “checkbox” next to the automatic renewal offer terms to  
7 complete the checkout process. Accordingly, when Defendant automatically renews customers’  
8 Shapermint Club memberships, Defendant charges consumers’ credit cards, debit cards, or third-party  
9 payment accounts without first obtaining their affirmative consent to the agreement containing the  
10 automatic renewal offer terms in violation of Cal. Bus. & Prof. Code § 17602(a)(2).

11                  41.       Even more egregiously, Defendant, upon information and belief, enrolls consumers  
12 who compete purchases through Defendant’s website in the Shapermint Club without any affirmative  
13 action taken by such consumers to the enrollment. For example, even consumers who do not select  
14 the Shapermint Club Free Priority Delivery shipping method, such as Plaintiff Fernandez, are  
15 nonetheless enrolled in the Shapermint Club and thereafter charged recurring membership fees.

16                   3.       **Defendant Fails to Provide a Post-Checkout Acknowledgement that**  
17                   **Includes Clear and Conspicuous Disclosures of Required Shapermint**  
18                   **Club Membership Offer Terms**

19                  42.       Finally, after Plaintiffs and the members of the Class were enrolled in Defendant’s  
20 Shapermint Club, Defendant sent to Plaintiffs and the Class email confirmations of their merchandise  
21 purchases. The acknowledgement emails contain even less of the required information than is featured  
22 on the relevant portion of the checkout page, discussed above.

23                  43.       Namely, the purchase confirmations do not provide: that the Shapermint Club  
24 membership “will continue until the consumer cancels;” a “description of the cancellation policy that  
25 applies to the offer;” or a statement of “[t]he recurring charges that will be charged to the consumer’s  
26 credit card, debit card, or third-party payment accounts as part of the automatic renewal plan or  
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1 arrangement, and that the amount of the charge may change[, and,] if that is the case, and the amount  
2 to which the charge will change.”<sup>16</sup>

3 44. As such, the acknowledgement fails to “include[] the automatic renewal offer terms .  
4 . . . , cancellation policy, and information regarding how to cancel in a manner that is capable of being  
5 retained by the consumer” in violation of Section 17602(a)(3) of the ARL.

6 45. By and through these actions, Defendant has charged Plaintiffs’ and Class members’  
7 credit cards, debit cards, third-party payment accounts, or other financial accounts in direct violation  
8 of the ARL. As a result, all goods, wares, merchandise, or products sent to Plaintiffs and the Class  
9 under the automatic renewal or continuous service agreements are deemed to be “unconditional gifts”  
10 pursuant to Cal. Bus. & Prof. Code § 17603.

11 **E. Defendant Violates Washington’s Consumer Protection Act**

12 46. The Washington Consumer Protection Act provides: “Unfair methods of competition  
13 and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared  
14 unlawful.”<sup>17</sup>

15 47. Defendant engages in unfair or deceptive acts or practices in the conduct of trade or  
16 commerce by, *inter alia*, (i) failing to provide consumers notice to consumers, prior to the completion  
17 of a purchase, that the Shapermint Club will automatically renew for a monthly, recurring  
18 membership fee; and (ii) upon information and belief, enrolling consumers in Defendant’s  
19 Shapermint Club and the accompanying monthly, recurring membership fee without the consent or  
20 authorization of consumers.

21 48. As a result of Defendant’s unfair or deceptive acts or practices, Washington consumers  
22 are enrolled in the automatically renewing Shapermint Club and charged recurring membership fees  
23 for months without their knowledge or authorization.

24 **F. Online Consumer Complaints About Shapermint Club Enrollment**

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27 <sup>16</sup> *Id.* §§ 17602(b)(1)–(3).

28 <sup>17</sup> WASH. REV. CODE § 19.86.020.



1 49. Defendant is well aware that its Shapermint Club enrollment, membership  
2 cancellation, and autorenewal practices deceive consumers. Many consumers of Shapermint  
3 merchandise have complained of Defendant’s hidden membership enrollment and confusing or  
4 difficult cancellation policy on websites like the Better Business Bureau<sup>18</sup>, Trustpilot<sup>19</sup>, and  
5 Sitejabber<sup>20</sup>.

6 50. The following are a small sampling of the deluge of negative reviews consumers have  
7 left about Defendant’s Shapermint Club enrollment practices and membership cancellation policies:

8 **1. Consumer Complaints Regarding Shapermint Club Enrollment**

	<b>Initial Complaint</b> 08/23/2021	<b>Complaint Type:</b> Problems with Product/Service <b>Status:</b> Unanswered ?
I ordered some items from Shapermint, but never received them. I was charged for the items. When I try to call or email, they never respond. Also, I never signed up for a membership from Shapermint and I've been charged \$5 a month by Shapermint for months on end. They will not remove this charge and they did not cancel the membership when I specifically asked them to remove my name and account from the membership.		

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17 <sup>18</sup> *Shapermint: Complaints*, BETTER BUSINESS BUREAU, <https://www.bbb.org/us/pa/hanover-township/profile/online-shopping/shapermint-0241-236023961/complaints> (last visited Aug. 30, 2023); *Shapermint: Customer Reviews*, BETTER BUSINESS BUREAU, <https://www.bbb.org/us/pa/hanover-township/profile/online-shopping/shapermint-0241-236023961/customer-reviews> (last visited Aug. 30, 2023); *Shapermint: Complaints*, BETTER BUSINESS BUREAU, <https://www.bbb.org/us/ca/los-angeles/profile/ecommerce/shapermint-1216-910276/complaints> (last visited Aug. 30, 2023); *Shapermint: Customer Reviews*, BETTER BUSINESS BUREAU, <https://www.bbb.org/us/ca/los-angeles/profile/ecommerce/shapermint-1216-910276/customer-reviews> (last visited Aug. 30, 2023); *Shapermint: Complaints*, BETTER BUSINESS BUREAU, <https://www.bbb.org/us/nv/henderson/profile/online-retailer/shapermint-1086-90061858/complaints> (last visited Aug. 30, 2023); *Shapermint: Customer Reviews*, BETTER BUSINESS BUREAU, <https://www.bbb.org/us/nv/henderson/profile/online-retailer/shapermint-1086-90061858/customer-reviews> (Aug. 30, 2023); *Shapermint: Complaints*, BETTER BUSINESS BUREAU, <https://www.bbb.org/us/ga/mcdonough/profile/lingerie/shapermint-0443-91824548/complaints> (last visited Aug. 30, 2023); *Shapermint: Customer Reviews*, BETTER BUSINESS BUREAU, <https://www.bbb.org/us/ga/mcdonough/profile/lingerie/shapermint-0443-91824548/customer-reviews> (last visited Aug. 30, 2023).

26 <sup>19</sup> *Shapermint*, TRUSTPILOT, <https://www.trustpilot.com/review/shapermint.com> (last visited Aug. 30, 2023).


27 <sup>20</sup> *Shapermint*, SITEJABBER, <https://www.sitejabber.com/reviews/shapermint.com> (last visited Aug. 28 30, 2023).









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 **Initial Complaint**  
05/01/2023


**Complaint Type:** Billing/Collection Issues  
**Status:** Unresolved 

I made an online purchase in August of 2022. I did not realize until last month that they were charging me a \$\*\*\*\* every month after the initial purchase. The charge is for a membership in their club. I never signed up to be in the club. There is not a phone number to contact them on the website so I tried to use the chat option to get some resolution. The chat was a bot and was not helpful. I tried to log into my account but did not have a record of the password used (probably because I did not sign up to be a member). When I tried to reset my password, the link did not work. In total there have been 8 charges at \*\*\*\* per charge. The total charged to my account has be \$39.92. I would like my money refunded given that I did not sign up for a membership. This is shoddy business practice and the business should not be allowed to continue operating in my opinion. If I had seen the BBB rating, I would not hav purchased from this company. From reading other complaints, the charging a membership is a common complaint with this company.

 **Stephanie L**  
★☆☆☆☆ 08/06/2023

0 star rating. I too have been charged for the club membership which I did NOT order. I reviewed my purchase invoice and it did not include any information about the club membership. On 7/30/23, after receiving a text about the \$4.99 charge I tried to log on to my Shapermint account as my last order with them was in mid-June 2023. When I tried to log onto my account, message said my Password expired. I followed prompt to reset the PW and message said I would receive email. As of today, 8/6/23, I have NOT received email to reset PW. On 7/30/23, I was in chat with Jane who gave me link and steps to cancel the order. I told her I couldn't access my account because of the trouble resetting my PW. She said she was able to cancel my membership and I would receive an email confirmation within 24 to 48 hours. As of today, 8/6/23, I have NOT received cancellation confirmation. PLEASE DO NOT PURCHASE FROM THIS CORRUPT COMPANY. But if you really need to purchase from them, use your PayPal account. I was able to CANCEL the Billing Agreement with Shapermint. I'm grateful that I caught these charges early. Thank you Vicki for providing info to victims on how to recover their money.

 **Donna**  
5 reviews  US

 Aug 22, 2023

**Can't cancel Shapermint membership fee**

I was not aware this was a membership program until I saw the charge on my credit card in July. I quickly cancelled the membership. Now it is August and again a \$4.99 membership fee was billed but under the name Favorite World. Luckily, Amex provides a link to the website as I did not recognize the name Favorite World. The link took me to Shapermint. I have tried their online chat, messenger, the phone number but was unable to contact a real person. I have cancelled the membership again. If I am billed again, I will report it to the Better Business Bureau.

**Date of experience:** August 22, 2023

1           51.     These reviews are a sampling ranging across a two-year timeframe of complaints and  
2 negative reviews consumers have left regarding Defendant’s surprise enrollment of customers in  
3 Shapermint Club membership and the confusing and needlessly arduous process Defendant forces  
4 customers to navigate to cancel unwanted Shapermint Club memberships.

5           **G.     Plaintiffs’ Experiences**

6                 **1.     Plaintiff Frances Fernandez’s Experience**

7           52.     On or about April 30, 2023, Plaintiff Fernandez made an online purchase through  
8 Defendant’s website. Plaintiff Fernandez paid for the purchase with her debit card.

9           53.     When Plaintiff Fernandez made her purchase through Defendant’s website, she was  
10 not aware that upon completion of her purchase, Defendant would contend that she had given consent  
11 for Defendant to post subsequent monthly charges to her debit card.

12          54.     Plaintiff Fernandez was enrolled in a monthly subscription to the Shapermint Club that  
13 was free for the first 30 days, then automatically renewed each month for a \$4.99 membership fee.

14          55.     Before Plaintiff Fernandez purchased Defendant’s products, Defendant did not  
15 disclose to Plaintiff all required automatic renewal and cancellation terms. Specifically, the manner  
16 in which the information was presented was insufficient to put Plaintiff Fernandez on notice because  
17 Defendant’s checkout page did not clearly and conspicuously state that Plaintiff would be enrolled in  
18 the Shapermint Club, that the Shapermint Club membership would automatically renew every month  
19 until Plaintiff cancelled, and the cancellation process that applied to the Shapermint Club  
20 membership.

21          56.     Defendant failed to clearly and conspicuously disclose to Plaintiff Fernandez that  
22 when she completed her purchase on Defendant’s website’s checkout page, she would be enrolled in  
23 the Shapermint Club subscription that automatically renewed each month until Plaintiff cancelled the  
24 subscription.

25          57.     Plaintiff Fernandez never affirmatively consented to be enrolled in Defendant’s  
26 Shapermint Club and never authorized Defendant to charge her a monthly membership fee. Plaintiff  
27 Fernandez did not select free Shapermint Club shipping method or, upon information and belief, take  
28 other affirmative steps to consent to enrollment in the Shapermint Club. *See Ex. A.*

1           58.     After Plaintiff Fernandez completed her initial purchase, Defendant sent Plaintiff  
2 Fernandez and acknowledgement email confirming her purchases. However, that acknowledgement  
3 email failed to provide Plaintiff Fernandez with the complete automatic renewal terms that applied to  
4 Defendant’s Shapermint Club offer, a description of Defendant’s full cancellation policy, or  
5 information regarding how to cancel the Shapermint Club membership in a manner capable of being  
6 retained by Plaintiff Fernandez. Plaintiff Fernandez did not receive any other acknowledgements that  
7 contained the required information.

8           59.     From May of 2023 to October of 2023, Defendant made a series of monthly charges  
9 to Plaintiff Fernandez’s debit card in the amount of \$4.99 each, purportedly for the Shapermint Club  
10 membership. Plaintiff Fernandez did not authorize or consent to those charges. Plaintiff Fernandez  
11 did not discover those charges until October of 2023.

12           60.     Had Plaintiff Fernandez known that Defendant was going to enroll her in an automatic  
13 renewal or continuous membership program that would result in subsequent charges, Plaintiff  
14 Fernandez either would not have purchased merchandise from Defendant in the first place, or would  
15 have taken other steps to avoid becoming enrolled in and/or charged for Defendant’s Shapermint Club  
16 membership, such that Plaintiff Fernandez would not have paid any money to Defendant for the  
17 Shapermint Club.

18           61.     Plaintiff Fernandez received no value in return for the Shapermint club membership  
19 charges that Defendant posted to her debit card.

20           62.     Plaintiff Fernandez suffered real monetary loss as a result of Defendant’s failure to  
21 properly disclose its autorenewal and cancellation policy and Defendant’s deceptive policy and  
22 practices with regards to Shapermint Club membership enrollment and cancellation.

23                   **2. Plaintiff Cecille Nguyen’s Experience**

24           63.     On or about August of 2021, Plaintiff Nguyen made an online purchase through  
25 Defendant’s website. Plaintiff Nguyen paid for the purchase with her PayPal account.

26           64.     When Plaintiff Nguyen made her purchase through Defendant’s website, she was not  
27 aware that upon completion of her purchase, Defendant would contend that she had given consent for  
28 Defendant to post subsequent monthly charges to her PayPal account.

1           65. Plaintiff Nguyen was enrolled in a monthly subscription to the Shapermint Club that  
2 was free for the first 30 days, then automatically renewed each month for an approximate \$4.99  
3 membership fee.

4           66. Before Plaintiff Nguyen purchased Defendant's products, Defendant did not disclose  
5 to Plaintiff all required automatic renewal and cancellation terms. Specifically, the manner in which  
6 the information was presented was insufficient to put Plaintiff Nguyen on notice because Defendant's  
7 checkout page did not clearly and conspicuously state that Plaintiff would be enrolled in the  
8 Shapermint Club, that the Shapermint Club membership would automatically renew every month  
9 until Plaintiff cancelled, and the cancellation process that applied to the Shapermint Club  
10 membership.

11           67. Defendant failed to clearly and conspicuously disclose to Plaintiff Nguyen that when  
12 she completed her purchase on Defendant's website's checkout page, she would be enrolled in the  
13 Shapermint Club subscription that automatically renewed each month until Plaintiff cancelled the  
14 subscription.

15           68. Plaintiff Nguyen never affirmatively consented to be enrolled in Defendant's  
16 Shapermint Club and never authorized Defendant to charge her a monthly membership fee. Upon  
17 information and belief, the Shapermint Club free 30-day membership was automatically added to  
18 Plaintiff's shopping cart when checking out without any affirmative action by Plaintiff Nguyen to  
19 elect to join the Shapermint Club.

20           69. After Plaintiff Nguyen completed her initial purchase, Defendant sent Plaintiff  
21 Nguyen and acknowledgement email confirming her purchases. However, that acknowledgement  
22 email failed to provide Plaintiff Nguyen with the complete automatic renewal terms that applied to  
23 Defendant's Shapermint Club offer, a description of Defendant's full cancellation policy, or  
24 information regarding how to cancel the Shapermint Club membership in a manner capable of being  
25 retained by Plaintiff Nguyen. Plaintiff Nguyen did not receive any other acknowledgements that  
26 contained the required information.

27           70. From around August of 2021 to December of 2021, Defendant made a series of  
28 monthly charges to Plaintiff Nguyen's PayPal account in the amount of \$4.99 each, purportedly for



1 the Shapermint Club membership. Plaintiff Nguyen did not authorize or consent to those charges.  
2 Plaintiff Nguyen did not discover those charges until December of 2021.

3 71. Had Plaintiff Nguyen known that Defendant was going to enroll her in an automatic  
4 renewal or continuous membership program that would result in subsequent charges, Plaintiff Nguyen  
5 either would not have purchased merchandise from Defendant in the first place, or would have taken  
6 other steps to avoid becoming enrolled in and/or charged for Defendant's Shapermint Club  
7 membership, such that Plaintiff Nguyen would not have paid any money to Defendant for the  
8 Shapermint Club.

9 72. Plaintiff Nguyen received no value in return for the Shapermint club membership  
10 charges that Defendant posted to her PayPal account.

11 73. Plaintiff Nguyen suffered real monetary loss as a result of Defendant's failure to  
12 properly disclose its autorenewal and cancellation policy and Defendant's deceptive policy and  
13 practices with regards to Shapermint Club membership enrollment and cancellation.

14 **CLASS ACTION ALLEGATIONS**

15 74. Plaintiffs bring this action on behalf of themselves and as a class action under Code of  
16 Civil Procedure § 382 on behalf of the following Classes:

17 The Nationwide Class: All persons who reside in the United States who, within the  
18 applicable statute of limitations period, were both (1) enrolled in Defendant's  
Shapermint Club and (2) charged a least one membership fee for such Club.

19 The California Subclass: All California citizens who, within the applicable statute of  
20 limitations period, were both (1) enrolled in Defendant's Shapermint Club and (2)  
charged a least one membership fee for such Club.

21 The Washington Subclass: All Washington citizens who, within the applicable statute  
22 of limitations period, were both (1) enrolled in Defendant's Shapermint Club and (2)  
charged a least one membership fee for such Club.

23 75. Plaintiffs reserve the right to modify or amend the definitions of the Classes as this  
24 litigation proceeds.

25 76. Excluded from the Classes are Defendant's officers, directors, affiliates, legal  
26 representatives, employees, successors, subsidiaries, and assigns. Also excluded from the Classes are  
27 any judge, justice, or judicial officer presiding over this matter and the members of their immediate  
28 families and judicial staff.

1           77.     The time period for the Classes is the number of years immediately preceding the date  
2 on which this Complaint was filed as allowed by the applicable statute of limitations, going forward  
3 into the future until such time as Defendant remedies the conduct complained of herein.

4           78.     Ascertainability: The members of the Classes may be ascertained by reviewing records  
5 in the possession of Defendant and/or third parties, including without limitation Defendant's  
6 customer, order, and billing records.

7           79.     Common Questions of Fact or Law: There are questions of fact or law that are common  
8 to the members of the Classes, which predominate over individual issues. Common questions  
9 regarding the Classes include, without limitation:

- 10           (1) Whether Defendant presents all statutorily-mandated automatic renewal or continuous  
11           service offer terms, within the meaning of § 17601(b);
- 12           (2) Whether Defendant presents automatic renewal or continuous service offer terms in a  
13           manner that is "clear and conspicuous," within the meaning of § 17601(c);
- 14           (3) Whether Defendant obtains consumers' affirmative consent to an agreement  
15           containing clear and conspicuous disclosure of automatic renewal or continuous  
16           service offer terms before charging a credit card, debit card, or third-party payment  
17           account;
- 18           (4) Whether Defendant provides consumers with an acknowledgement that includes clear  
19           and conspicuous disclosure of all statutorily-mandated automatic renewal or  
20           continuous service offer terms, the cancellation policy, and information regarding how  
21           to cancel;
- 22           (5) Whether Defendant was unjustly enriched;
- 23           (6) Whether Defendant's conduct alleged herein constitutes unfair and deceptive trade  
24           practices;
- 25           (7) Defendant's record-keeping practices; and
- 26           (8) The appropriate remedies for Defendant's conduct.

27           80.     Numerosity: The members of the proposed Classes are so numerous that individual  
28 joinder of all members is impracticable. The exact number and identities of the members of the

1 proposed Classes are unknown at this time and can be ascertained only through appropriate discovery.  
2 Plaintiffs estimate the number of members in the Classes to be in the thousands.

3 81. Typicality and Adequacy: Plaintiffs' claims are typical of the claims of the members  
4 of the Classes. Plaintiffs allege that Defendant enrolled Plaintiffs and Class members in an automatic  
5 renewal membership program without disclosing all terms required by law, and without presenting  
6 such terms in the requisite "clear and conspicuous" manner; charged Class members' credit cards,  
7 debit cards, or third-party payment accounts without first obtaining Class members' affirmative  
8 consent to an agreement containing clear and conspicuous disclosure of automatic renewal offer  
9 terms; and failed to provide the requisite acknowledgement. Plaintiffs have no interests that are  
10 adverse to those of the other Class members. Plaintiffs will fairly and adequately protect the interests  
11 of the Class members.

12 82. Superiority: A class action is superior to other methods for resolving this controversy.  
13 Because the amount of restitution to which the Class members may be entitled is low in comparison  
14 to the expense and burden of individual litigation, it would be impracticable for Class members to  
15 redress the wrongs done to them without a class action forum. Furthermore, on information and belief,  
16 many Class members do not know that their legal rights have been violated. Class certification would  
17 also conserve judicial resources and avoid the possibility of inconsistent judgements.

18 **CAUSES OF ACTION**

19 **FIRST CLAIM FOR RELIEF**

20 **Violations of California's False Advertising Law ("FAL")**  
21 **Based on Violation of the California Automatic Renewal Law**  
22 **Cal. Bus. & Prof. Code §§ 17535 & 17600, *et seq.***  
23 ***On Behalf of Plaintiff Fernandez and the California Subclass***

24 83. Plaintiff restates and incorporates the previous allegations as though set forth herein.

25 84. During the applicable statute of limitations period, Defendant enrolled consumers,  
26 including Plaintiff and Class members, in automatic renewal and/or continuous service membership  
27 programs and have (a) failed to present the automatic renewal or continuous service offer terms in a  
28 clear and conspicuous manner before the membership agreement is fulfilled and in visual proximity  
to the request for consent to the offer, in violation of § 17602(a)(1); (b) charged the consumer's credit

1 cards, debit cards, or third-party payment accounts for an automatic renewal or continuous service  
2 without first obtaining the consumer’s affirmative consent to an agreement containing clear and  
3 conspicuous disclosure of all automatic renewal or continuous service offer terms, in violation of §  
4 17602(a)(2); and (c) failed to provide an acknowledgement that includes clear and conspicuous  
5 disclosure of automatic renewal or continuous service offer terms, the cancellation policy, and  
6 information regarding how to cancel, in violation of § 17602(a)(3) and § 17602(b).

7 85. Plaintiff and the California Class have suffered injury in fact and lost money as a result  
8 of Defendant’s violations alleged herein because they either would not have purchased merchandise  
9 from Defendant in the first place, or would have taken other steps to avoid becoming enrolled in  
10 and/or charged for Defendant’s Shapermint Club membership, such that Plaintiff and the Class would  
11 not have paid any money to Defendant for the Shapermint Club.

12 86. Pursuant to § 17535, Plaintiff and Class members are entitled to restitution of all  
13 amounts that Defendant charged for the Shapermint Club during the four years preceding the filing  
14 of the initial Complaint in this action and continuing until Defendant’s statutory violations cease.

15 87. Pursuant to § 17535, for the benefit of the general public of the State of California,  
16 Plaintiff seeks a public injunction enjoining Defendant from making Shapermint Club offers to  
17 California consumers that do not comply with California law, and from posting charges for  
18 Shapermint Club membership fees without first complying with California law. Plaintiff reserves the  
19 right to seek other prohibitory or mandatory aspects of injunctive relief.

20 88. Plaintiff Fernandez, individually and on behalf of all similarly situated California  
21 consumers, seeks individual, representative, and public injunctive relief and any other necessary  
22 orders or judgements that will prevent Defendant from continuing with its unlawful acts described  
23 herein; restitution that will restore the full amount of their money or property; disgorgement of  
24 Defendant’s relevant profits and proceeds; and an award of costs and reasonable attorneys’ fees.

25 **SECOND CLAIM FOR RELIEF**  
26 **Violation of California’s Unfair Competition Law (“UCL”)**  
27 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***  
***On Behalf of Plaintiff Fernandez and the California Subclass***

28 89. Plaintiff restates and incorporates the previous allegations as though set forth herein.

1           90.     The UCL defines unfair competition as including any unlawful, unfair, or fraudulent  
2 business act or practice; any unfair, deceptive, untrue, or misleading advertising; and any act  
3 prohibited by Chapter 1 of Part 3 of Division 7 of the Business and Professions Code.

4           91.     During the applicable statute of limitations, Defendant committed acts of unfair  
5 competition by, inter alia and without limitation: (a) failing to present automatic renewal and/or  
6 continuous service offer terms in a clear and conspicuous manner before a subscription is fulfilled, in  
7 violation of § 17602(a)(1); (b) charging the consumers' credit cards, debit cards, or third-party  
8 payment accounts for an automatic renewal or continuous service without first obtaining the  
9 consumers' affirmative consent to an agreement containing clear and conspicuous disclosure of  
10 automatic renewal or continuous service offer terms, in violation of § 17602(a)(2); and (c) failing to  
11 provide an acknowledgement that included clear and conspicuous disclosure of automatic renewal or  
12 continuous service offer terms, cancellation policy, and information regarding how to cancel, in  
13 violation of § 17602(a)(3). Plaintiff reserves the right to allege other business practices that constitute  
14 unfair competition.

15           92.     Each of these acts and practices constitutes an independent violation of the California  
16 Automatic Renewal Law, and thus an independent violation of the UCL.

17           93.     Defendant's acts and omissions as alleged herein violate obligations imposed by  
18 statute, are substantially injurious to consumers, offend public policy, and are immoral, unethical,  
19 oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable  
20 to such conduct.

21           94.     There were reasonably available alternatives to further Defendant's legitimate  
22 business interests, other than the conduct described herein.

23           95.     Plaintiff and the California Class have suffered injury in fact and lost money as a result  
24 of Defendant's violations alleged herein because they either would not have purchased merchandise  
25 from Defendant in the first place, or would have taken other steps to avoid becoming enrolled in  
26 and/or charged for Defendant's Shapermint Club membership, such that Plaintiff and the Class would  
27 not have paid any money to Defendant for the Shapermint Club.

28

1 96. Pursuant to § 17203, Plaintiff and the Class members are entitled to restitution of all  
2 amounts that Defendant charged for the Shapermint Club during the four years preceding the filing  
3 of the initial Complaint in this action and continuing until Defendant’s statutory violations cease.

4 97. Pursuant to § 17203, for the benefit of the general public of the State of California,  
5 Plaintiff seeks a public injunction enjoining Defendant from making Shapermint Club offers to  
6 California consumers that do not comply with California law, and from posting charges for  
7 Shapermint Club membership fees without first complying with California law. Plaintiff reserves the  
8 right to seek other prohibitory and mandatory aspects of injunctive relief.

9 98. Plaintiff Fernandez brings this action as private attorneys general and to vindicate and  
10 enforce an important right affecting the public interest. Plaintiff and the California Class are therefore  
11 entitled to an award of attorneys’ fees under Code of Civil Procedure § 1021.5 for bringing this action.

12 **THIRD CLAIM FOR RELIEF**  
13 **Violation of California’s Consumer Legal Remedies Act (“CLRA”)**  
14 **(Cal. Civ. Code § 1750, *et seq.*)**  
15 ***On Behalf of Plaintiff Fernandez and the California Subclass***

16 99. Plaintiffs hereby incorporate by reference the preceding paragraphs as if fully  
17 restated here.

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

21 101. Defendants’ sale of merchandise to consumers were “transactions” within the meaning  
22 of California Civil Code section 1761(e).

23 102. Plaintiffs and the Class purchased “goods” within the meaning of California Civil  
24 Code section 1761(a).

25 103. Defendant violated and continues to violate the CLRA by engaging in the following  
26 practices proscribed by California Civil Code section 1770(a) in transactions with Plaintiffs and the  
27 Class which were intended to result in and did result in the sale of membership subscriptions : (i)  
28 “[r]epresenting that goods or services have . . . characteristics . . . that they do not have,” Cal. Civ.  
Code § 1770(a)(5); “[a]dvertising goods or services with intent not to sell them as advertised,” Cal.

1 Civ. Code § 1770(a)(9).

2 104. Specifically, as alleged herein, Defendants have misrepresented and continue to  
3 misrepresent the terms of their membership subscriptions.

4 105. Defendants have directed and does direct these misrepresentations at consumers before  
5 purchase through marketing communications.

6 106. At no time do Defendants disclose its true cancellation practices, it repeatedly conceals  
7 and misrepresents this material information.

8 107. Defendants continues to violate the CLRA and continues to injure the public by  
9 misleading consumers about its cancellation policies. Accordingly, Plaintiff seeks injunctive relief on  
10 behalf of the general public to prevent Defendants from continuing to engage in these deceptive and  
11 illegal practices. Otherwise, Plaintiffs, the Class members, and members of the general public may  
12 be irreparably harmed or denied an effective and complete remedy if such an order is not granted.

13 108. In accordance with California Civil Code section 1780(a), Plaintiffs and the Class  
14 members seek injunctive and equitable relief on behalf of the general public for violations of the  
15 CLRA, including restitution and disgorgement.

16 109. Pursuant to section 1782(a) of the CLRA, Plaintiffs' counsel notified Defendants in  
17 writing by certified mail of the particular violations of section 1770 of the CLRA and demanded that  
18 it both rectify the problems associated with the actions detailed above and give notice to all affected  
19 consumers of Defendants' intent to act. If Defendants fail to respond to Plaintiff's letter or fails to  
20 agree to rectify the problems associated with the actions detailed above and give notice to all affected  
21 consumers within thirty days of the date of written notice, as proscribed by section 1782, Plaintiff  
22 will move to amend his Complaint to pursue claims for actual, punitive, and statutory damages, as  
23 appropriate, against Defendants. However, as to this cause of action, at this time, Plaintiff seeks only  
24 injunctive relief.

25 **FOURTH CLAIM FOR RELIEF**  
26 **Violation of the Washington Consumer Protection Act**  
27 **Wash. Rev. Code §§ 19.86.020, et seq.**  
***On Behalf of Plaintiff Nguyen and the Washington Subclass***

28 110. Plaintiff restates and incorporates the previous allegations as though set forth herein.

1 111. Defendant is a “person,” as defined by Wash. Rev. Code § 19.86.010(1).

2 112. Defendant advertised, offered, or sold products or services in Washington to  
3 Washington consumers and engaged in trade or commerce directly or indirectly affecting the people  
4 of Washington, as defined by Wash. Rev. Code § 19.86.010(2).

5 113. Defendant engaged in unfair or deceptive acts or practices in the conduct of trade or  
6 commerce, in violation Wash. Rev. Code § 19.86.020, by, *inter alia*, (i) failing to provide consumers  
7 notice to consumers, prior to the completion of a purchase, that the Shapermint Club will  
8 automatically renew for a monthly, recurring membership fee; and (ii) upon information and belief,  
9 enrolling consumers in Defendant’s Shapermint Club and the accompanying monthly, recurring  
10 membership fee without the consent or authorization of consumers. Such acts or practices cause  
11 injuries to consumers and are unfair and deceptive because consumers incur charges that are not  
12 commensurate with the consumers’ reasonable expectations and end up paying for services they  
13 never authorized.

14 114. Consumers cannot avoid any of these injuries caused by Defendant’s deceptive  
15 advertising, representations, and practices regarding the Shapermint Club membership. Accordingly,  
16 the injuries Defendant caused outweigh any possible benefit, if any exists, from Defendant’s  
17 marketing and enrollment process for the Shapermint Club.

18 115. Defendant’s enrollment process for the Shapermint Club is false, misleading, and  
19 unreasonable, and constitutes unfair and deceptive conduct. Defendant knew or should have known  
20 of its unfair and deceptive conduct.

21 116. Defendant’s representations and omissions were material because they were likely to  
22 deceive reasonable consumers.

23 117. The above unfair and deceptive practices and acts by Defendant were immoral,  
24 unethical, oppressive, and unscrupulous. These acts caused substantial injury to Plaintiff and  
25 Washington Subclass Members that they could not reasonably avoid; this substantial injury  
26 outweighed any benefits to consumers or to competition, if any exist.

27 118. Plaintiff and the Washington Subclass have suffered injury in fact and have lost money  
28 as a result of Defendant’s unfair conduct. Plaintiff and the Class paid unwarranted and unauthorized  
membership fees, or otherwise bargained for a product they did not receive. Plaintiff and the



1 Washington Subclass would not have purchased merchandise from Defendant in the first place, or  
2 would have taken other steps to avoid becoming enrolled in and/or charged for Defendant's  
3 Shapermint Club membership, such that Plaintiff and the Class would not have paid any money to  
4 Defendant for the Shapermint Club, if they had been notified of the full terms and conditions of  
5 Shapermint Club membership and Defendant's unauthorized enrollment practices.

6 119. As a direct and proximate result of Defendant's unfair, unlawful, and deceptive trade  
7 practices, Plaintiff and Washington Subclass Members have suffered and will continue to suffer injury  
8 and damages.

9 120. Plaintiff and the Washington Subclass members seek all monetary and non-monetary  
10 relief allowed by law, including actual damages, treble damages, injunctive relief, civil penalties, and  
11 attorneys' fees and costs.

12 **FIFTH CLAIM FOR RELIEF**

13 **Unjust Enrichment**

14 ***On Behalf of Plaintiffs and the Nationwide Class***

15 121. Plaintiffs, individually and on behalf of the Classes, assert a common law claim for  
16 unjust enrichment. This claim is brought solely in the alternative to Plaintiffs' statutory claims and  
17 applies only if the parties' contract is deemed unconscionable, null and void, or otherwise  
18 unenforceable for any reason. In such circumstances, unjust enrichment will dictate that Defendant  
19 disgorge all improperly assessed fees. Also, if claims are deemed not to be covered by the contract—  
20 for example, if Defendant has violated state and federal law, but in such a way that it does not violate  
21 the contract, then unjust enrichment will require disgorgement of all improperly assessed membership  
22 fees.

23 122. By means of Defendant's wrongful conduct alleged herein, Defendant knowingly  
24 engaged in practices which harmed Plaintiffs and members of the Classes and that were unfair,  
25 unconscionable, and oppressive.

26 123. Defendant knowingly received and retained wrongful Shapermint Club membership  
27 fees from Plaintiffs and members of the Classes by surreptitiously enrolling consumers in the  
28 Shapermint Club without their assent, without clearly and conspicuously disclosing that Shapermint  
Club membership automatically renews for a monthly fee, and without properly disclosing how to

1 cancel Shapermint Club membership.

2 124. As a result, Defendant was unjustly enriched at the expense of Plaintiffs and the  
3 members of the Classes.

4 125. Defendant should not be allowed to profit or enrich itself inequitably and unjustly at  
5 the expense of Plaintiff and the members of the Classes and should be required to make restitution to  
6 Plaintiffs and the members of the Classes.

7 126. Accordingly, Plaintiffs and the Class members seek full disgorgement and restitution  
8 of the amounts Defendant has retained as a result of the unlawful automatic renewal subscription  
9 scheme alleged herein.

10 **SIXTH CLAIM FOR RELIEF**

11 **Conversion**

12 ***On Behalf of Plaintiffs and the Nationwide Class***

13 127. Plaintiffs restate and incorporate the previous allegations as though set forth herein.

14 128. Plaintiffs bring this claim individually and on behalf of the members of the Nationwide  
15 Class against Defendant.

16 129. As a result of charges made by Defendant to Plaintiffs' and Class members' credit  
17 cards, debit cards, third-party payment accounts, or other financial accounts without authorization  
18 and in violation of state and federal law, Defendant has taken money that belongs to Plaintiffs and the  
19 Class members.

20 130. The amount of money wrongfully taken by Defendant is capable of identification.

21 131. Defendant engaged in this conduct knowingly, willfully, and with oppression, fraud,  
22 and/or malice.

23 132. As a result of Defendant's actions, Plaintiffs and the Class members have suffered  
24 damages.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiffs on behalf of themselves and on behalf of the Class members  
27 respectfully request that the Court:

28 A. Certify this case as a class action, designating Plaintiffs as class representatives and  
designating the undersigned as Class Counsel;

- 1 B. Award Plaintiffs and the Class actual, statutory, and punitive damages in an amount
- 2 to be proven at trial;
- 3 C. Declare Defendant's conduct violates the statutes and common laws referenced herein;
- 4 D. Grant an order finding in favor of Plaintiffs and the Class members on all counts
- 5 asserted herein;
- 6 E. Award Plaintiffs and the Class members restitution in an amount to be proven at trial;
- 7 F. Award Plaintiffs and the Class members pre- and post-judgment interest in the amount
- 8 permitted by law;
- 9 G. Award Plaintiffs and the Class attorneys' fees and costs as permitted by law;
- 10 H. Enjoin Defendant from engaging in the practices outlined herein; and
- 11 I. Grant such other and further relief as the Court deems just and proper.

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff and all others similarly situated hereby demand trial by jury on all issues in this  
14 complaint that are so triable as a matter of right.

15 Dated: December 1, 2023

Respectfully submitted,

16 **KALIELGOLD PLLC**

17 *Sophia Goren Gold*  
18 By: \_\_\_\_\_  
19 Sophia Goren Gold  
20 Jeffrey D. Kaliel  
21 Amanda J. Rosenberg

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