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9 *Putative Class*

10
11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 EMILY PACHOUD, individually, and
14 on behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 SURFSHARK INC. and SURFSHARK
18 B.V.,

19 Defendants.

CASE NO.: 5:24-cv-02299

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

20 Plaintiff Emily Pachoud (“Plaintiff”), on behalf of herself and all others
21 similarly situated, brings this class action complaint against Defendants Surfshark Inc.
22 and Surfshark B.V., (collectively, “Defendant”¹) based on violations of California’s
23 Automatic Renewal Law (“ARL”). Plaintiff makes the following allegations based on
24 her personal knowledge, and upon the information, investigation and belief of her
25 counsel.

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27 _____
28 ¹ Defendants are part of the same corporate family of companies and are thus referred to as
a singular defendant.

1 **INTRODUCTION**

2 1. This class action seeks to challenge Defendant’s deceptive enrollment of
3 unwary consumers into Defendant’s auto-renewal payment plan, in violation of Cal.
4 Bus. & Prof. Code § 17600, *et seq.*, for Defendant’s various products it offers, such
5 as its Virtual Private Network (“VPN”) subscription (collectively, the “Products”).

6 2. Defendant is a cybersecurity company that provides privacy and security
7 solutions to consumers via subscriptions to its software services and products on its
8 website, www.surfshark.com. Defendant provides numerous products on its website,
9 including VPN access, antivirus software, security alerts, private searches and
10 automated personal data removal systems. It is unclear how many people use
11 Defendant’s Products, but it is estimated to be more than a half a million California
12 subscribers, with exorbitant annual revenues, largely fueled by the auto-renewals as
13 explained herein.

14 3. Defendant uses this renewal scheme to lure customers in and trap them
15 in an automatically renewing payment plan without disclosing to prospective
16 consumers, as required by California law, essential facts concerning the nature of the
17 payment.

18 4. Plaintiff and other consumers have been deceived by Defendant’s
19 actions, and consequently have been deceived into signing up for an automatically
20 recurring payment plan.

21 5. Had Plaintiff and Class members been aware that Defendant charged
22 them on an automatically renewing basis, Plaintiff and Class members would not have
23 purchased the Product subscriptions. Accordingly, Plaintiff and Class members have
24 been injured by Defendant’s deceptive business practices.

25 **JURISDICTION AND VENUE**

26 6. This Court has subject matter jurisdiction pursuant to the Class Action
27 Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), because this is a class action filed under
28 Rule 23 of the Federal Rules of Civil Procedure, there are thousands of proposed Class

1 members, the aggregate amount in controversy exceeds \$5,000,000 exclusive of
2 interest and costs, and Defendant is a citizen of a state different from at least some
3 members of the proposed Class, including Plaintiff.

4 7. This Court has personal jurisdiction over Defendant because Defendant
5 has sufficient minimum contacts in California, or otherwise intentionally availed itself
6 of the markets within California, through its marketing and sale of its Products in
7 California and to California consumers.

8 8. Venue is proper in this judicial District pursuant to 28 U.S.C. §
9 1391(b)(2) because a substantial part of the events or omissions giving rise to
10 Plaintiff's claims occurred in this District. Specifically, Plaintiff purchased the VPN
11 subscription in this District.

12 **THE PARTIES**

13 9. Plaintiff Emily Pachoud is a citizen of the United States and the State of
14 California. In or around March 2021, Plaintiff, a resident of San Jose, California,
15 subscribed to Defendant's VPN product. Defendant is a major provider for such
16 security and VPN products. Unbeknownst to Plaintiff, and without giving a clear and
17 conspicuous notice of the renewal terms, length, and cancellation policy, Defendant
18 enrolled Plaintiff in a continuous service or automatic renewal service and charged
19 Plaintiff, without her consent. Specifically, in March 2023 Plaintiff's subscription was
20 renewed without her consent from her bank account in the amount of \$71.64 by
21 Defendant, notated as "SURFSHARK.* SURFSHARK. LEWES DE." Had Plaintiff
22 known she was being enrolled in an automatic renewal service, she would not have
23 subscribed to Defendant's VPN product. Therefore, Plaintiff suffered injury in fact
24 and lost money as a result of Defendant's misleading, false, unfair, and deceptive
25 practices, as described herein.

26 10. Defendant Surfshark Inc. is a Delaware corporation with its principal
27 place of business in Delaware.

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1 11. Defendant Surfshark B.V. is a Dutch company with its principal place of
2 business in Amsterdam, Netherlands.

3 12. The allegations contained herein are asserted against the above
4 defendants jointly, severally, or in the alternative. These defendants are part of the
5 same corporate family of companies, and are each directly, contributorily and/or
6 vicariously liable, and/or liable by way of inducement, for the misconduct as
7 described herein. For purposes of simplicity, they will be referred to collectively as
8 “Defendant.”

9 **FACTUAL ALLEGATIONS**

10 **A. Defendant Has Violated California’s ARL by Failing to Present Its**
11 **Subscription Terms in a Clear and Conspicuous Manner**

12 13. California’s ARL makes it illegal for companies to charge consumers for
13 automatically renewing subscriptions or services unless the company meets strict
14 disclosure requirements. This includes both pre-purchase and post-purchase
15 disclosures. The ARL makes it unlawful for any business making an automatic
16 renewal offer to consumers in California to “[f]ail to present the automatic renewal
17 offer terms or continuous service offer terms in a clear and conspicuous manner before
18 the subscription or purchasing agreement is fulfilled and in visual proximity...to the
19 request for consent to the offer.”

20 14. The ARL defines “automatic renewal offer terms” to mean:

- 21 a. That the subscription or purchasing agreement will continue until the
22 consumer cancels (Cal. Bus. & Prof. Code §17601(b)(1));
- 23 b. The description of the cancellation policy that applies to the offer
24 (Cal. Bus. & Prof. Code §17601(b)(2));
- 25 c. The recurring charges that will be charged to the consumer’s credit
26 or debit card or payment account with a third party as part of the
27 automatic renewal plan or arrangement, and that the amount of the
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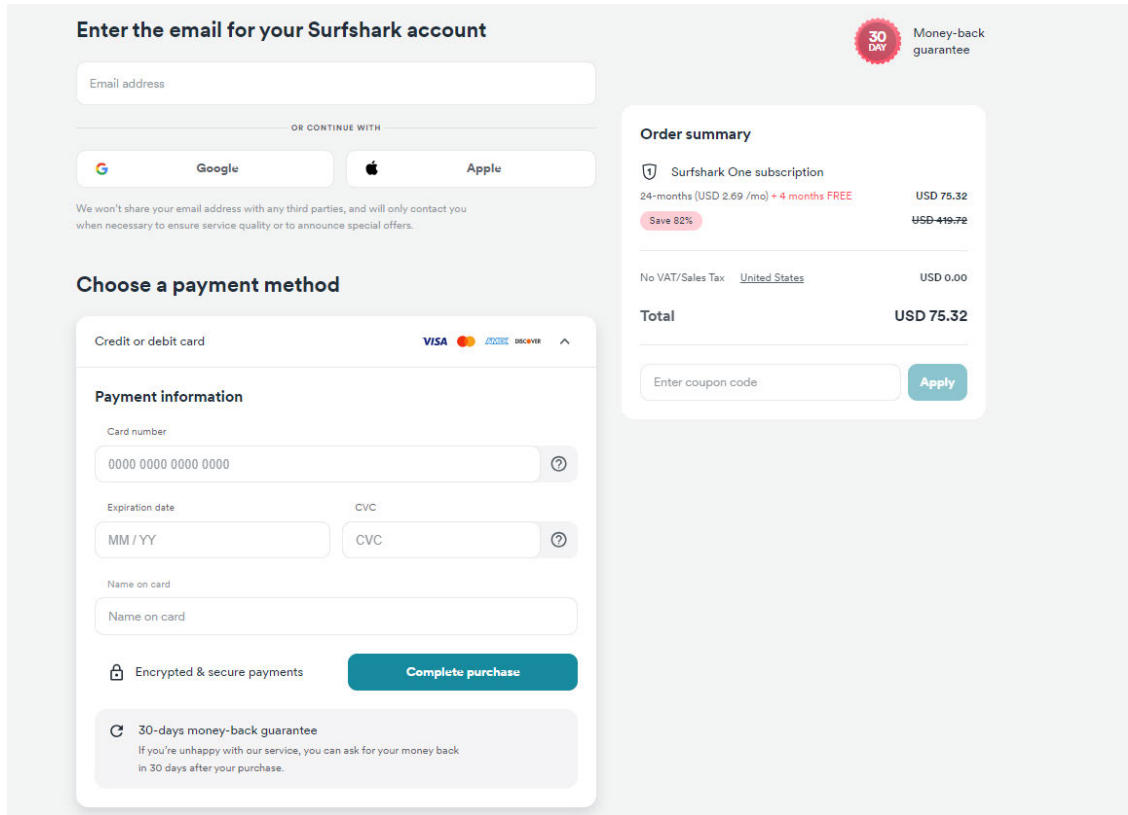
- 1 charge may change, if that is the case, and the amount to which the
- 2 charge will change, if known (Cal. Bus. & Prof. Code §17601(b)(3));
- 3 d. The length of the automatic renewal term or that the service is
- 4 continuous, unless the length of the term is chosen by the consumer
- 5 (Cal. Bus. & Prof. Code §17601(b)(4)); and
- 6 e. The minimum purchase obligation, if any. (Cal. Bus. & Prof. Code
- 7 §17601(b)(5))

8 15. Additionally, the ARL defines “clear and conspicuous” to mean “in
9 larger type than the surrounding text, or in contrasting type, font, or color to the
10 surrounding text of the same size, or set off from the surrounding text of the same size
11 by symbols or other marks, in a manner that clearly calls attention to the language. In
12 the case of an audio disclosure, ‘clear and conspicuous’ and ‘clearly and
13 conspicuously’ means in a volume and cadence sufficient to be readily audible and
14 understandable.” Cal. Bus. & Prof. Code §17601(c).

15 16. However, Defendant does not present the requisite, material auto-
16 renewal terms to its subscribers prior to their enrollment in a manner compliant with
17 the ARL. *See image below.*

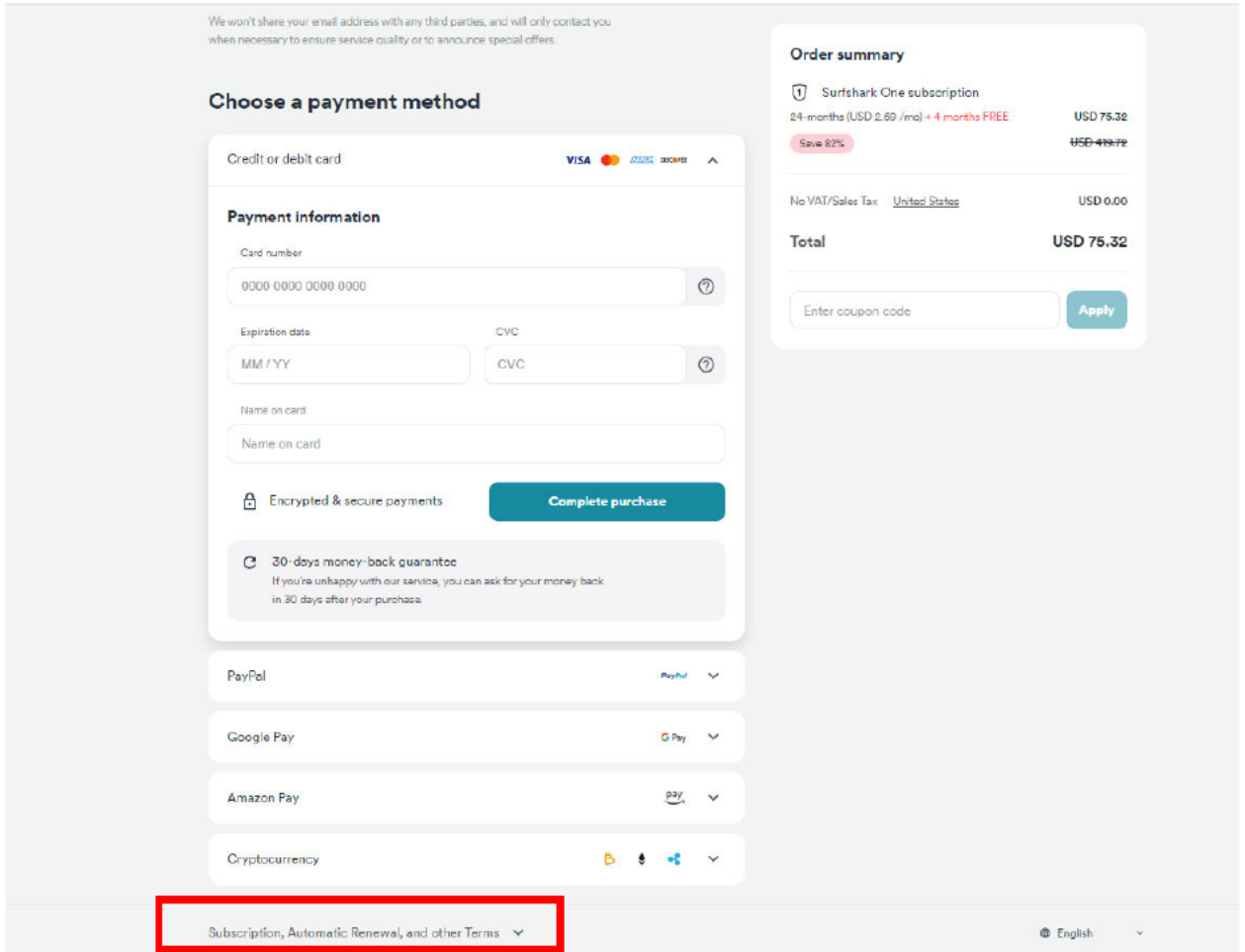
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17. The above image is representative of what consumers readily see when they reach the checkout page. In order to even see that there is a tab labeled “Subscription, Automatic Renewal, and other Terms” consumers must scroll all the way down the page to a small tab, written in light gray colored font. *See below image.*

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18. As shown above, Defendant does not present all of the requisite, material auto-renewal terms to its subscribers prior to enrollment in a clear and conspicuous manner, as required. The terms are not “in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the language.” Cal. Bus. & Prof. Code §17601(c).

19. Instead, consumers are not required to scroll all the way down the webpage. A consumer can easily use the website and complete their purchase without viewing these terms, meaning Defendant does not satisfy the requirement for close proximity under the ARL.

1 20. Therefore, Defendant has violated California's ARL by failing to
2 provide the automatic renewal offer terms in a clear and conspicuous manner.

3 **B. Defendant Has Violated California's ARL by Failing to Obtain**
4 **Affirmative Consent from Users Prior to Enrollment**

5 21. California's ARL requires that Defendant must obtain affirmative
6 consent to the agreement containing the automatic renewal offer terms prior to
7 charging the consumer's banking institution, credit card or debit card. Cal. Bus. &
8 Prof. Code § 17602(a)(2).

9 22. Defendant fails to obtain affirmative consent from consumers prior to
10 charging them as Defendant does not clearly outline the renewal offer terms, as
11 described above. Additionally, Defendant does not clarify to consumers that they are
12 enrolling in an automatically recurring subscription. Instead, Defendant only vaguely
13 states that the offer costs \$75.32 for 24 months.

14 23. Therefore, as consumers are not made aware of the automatically
15 recurring nature of the subscription, nor presented with the relevant automatic renewal
16 offer terms, Defendant has violated California's ARL by failing to obtain affirmative
17 consent prior to enrollment. As a result, Plaintiff and other users have suffered injury
18 in fact, as they would not have enrolled had they known they were signing up for an
19 automatically renewing subscription.

20 **C. Defendant Has Violated California's ARL by Failing to Provide an**
21 **Appropriate Transaction Acknowledgement**

22 24. California's ARL requires that Defendant must provide customers with
23 an acknowledgement, including the automatic renewal or continuous offer terms,
24 cancellation policy, and clear, consumer-friendly cancellation information. Cal. Bus.
25 & Prof. Code § 17602(a)(3).

26 25. Defendant, however, does not send a post-transaction acknowledgement.
27 Instead, after signing up, Defendant only sends a receipt detailing the product
28 purchased and only vaguely indicates that once the plan renews there will be another

1 charge, implying further action is required to renew. Nowhere in this email does
2 Defendant provide the actual automatic renewal offer terms (and in fact indicates an
3 incorrect amount, and not what Plaintiff was ultimately charged), the cancellation
4 policy, or a clear, consumer-friendly cancellation method.

5 26. Therefore, Defendant does not provide the requisite information as
6 required by Cal. Bus. & Prof. Code § 17602(a)(3). The ARL specifically requires an
7 acknowledgement include “the automatic renewal offer terms...cancellation policy,
8 and information regarding how to cancel.” Cal. Bus. & Prof. Code § 17602(a)(3).
9 Defendant fails to adhere to the ARL requirements. There is no information regarding
10 the terms of the automatic renewal, no indication that the subscription will continue
11 until cancelled, no information regarding the cancellation policy, and no link or other
12 guidance on how a consumer may cancel their subscription. Therefore, Defendant has
13 violated California’s ARL for failing to provide an adequate acknowledgement.

14 **D. Defendant Has Violated California’s ARL by Failing to Meet the**
15 **Requirements for the Cancellation Policy**

16 27. California’s ARL requires a business that makes an automatic renewal
17 offer or continuous service offer “shall provide a toll-free telephone number,
18 electronic mail address, a postal address, if the seller bills directly to the consumers,
19 or it shall provide another cost-effective, timely, and easy-to-use mechanism for
20 cancellation that shall be described in the acknowledgement.” Cal. Bus. & Prof.
21 Code § 17602(c).

22 28. Additionally, Cal. Bus. & Prof. Code §17602(d)(1)(A)-(B) states a
23 business which allows a consumer to accept an automatic renewal or continuous
24 service offer online shall allow a consumer to terminate the automatic renewal or
25 continuous service exclusively online, at will, and without engaging in further steps
26 that obstruct or delay the ability to terminate the automatic renewal or continuous
27 service immediately. The business shall provide a method of termination online in
28 the form of either:

- 1 a. A prominently located direct link or button which may be located
- 2 within either a customer account or profile, or within either device
- 3 or user settings; or
- 4 b. By an immediately accessible termination email formatted and
- 5 provided by the business that a consumer can send to the business
- 6 without additional information.

7 29. Defendant does not provide a termination email, a prominently located

8 link or button, nor an easy-to-use mechanism. Instead, Defendant requires

9 consumers go through a multi-step process to cancel their account.

10 30. First, consumers must log in, and navigate through multiple pages on

11 the Surfshark site to locate a page where they can elect to cancel their subscription.

12 Then, users are presented with a page that requires them to provide a reason for their

13 cancellation. Then, they must proceed through two additional pages confirming

14 their cancellation. On both of these pages, pictured below, the primary action button

15 is the “Stay Subscribed” button, which is the top button emphasized with the most

16 contrasting colors, whereas the “Cancel plan renewal” button is placed below and

17 does not contrast with the background of the page. Moreover, there either seems to

18 be no cancellation option on the mobile browser or Defendant’s mobile app (or is

19 very difficult to locate).

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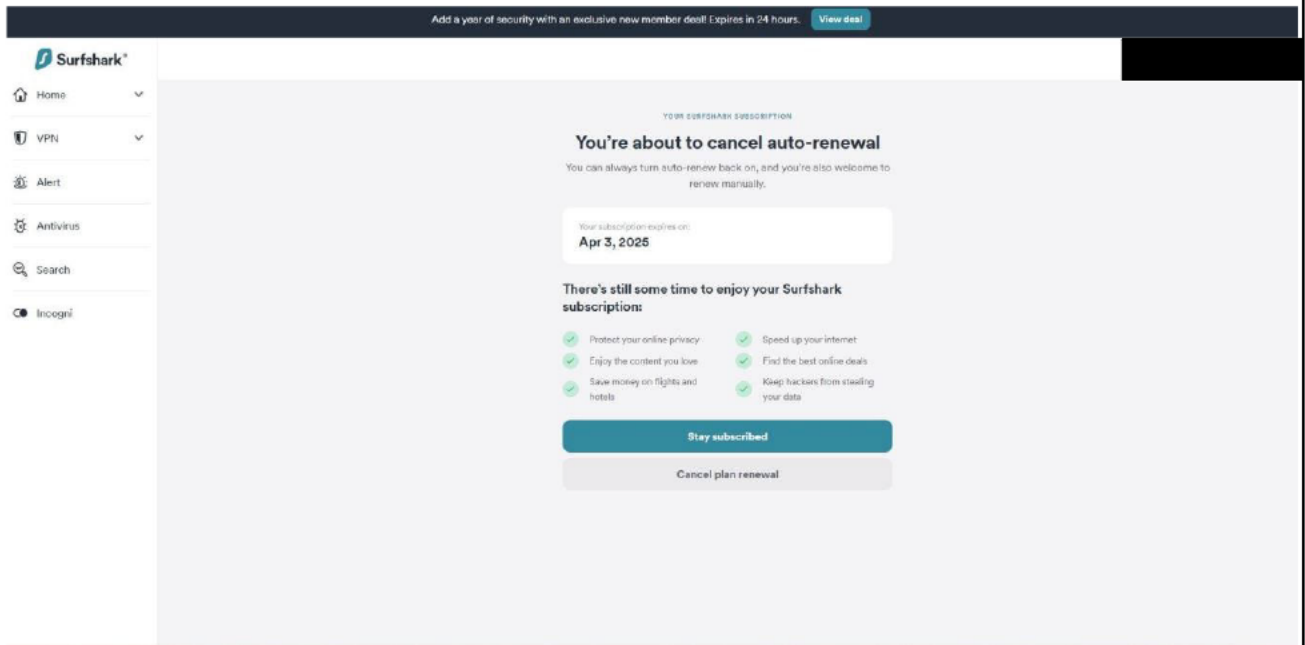
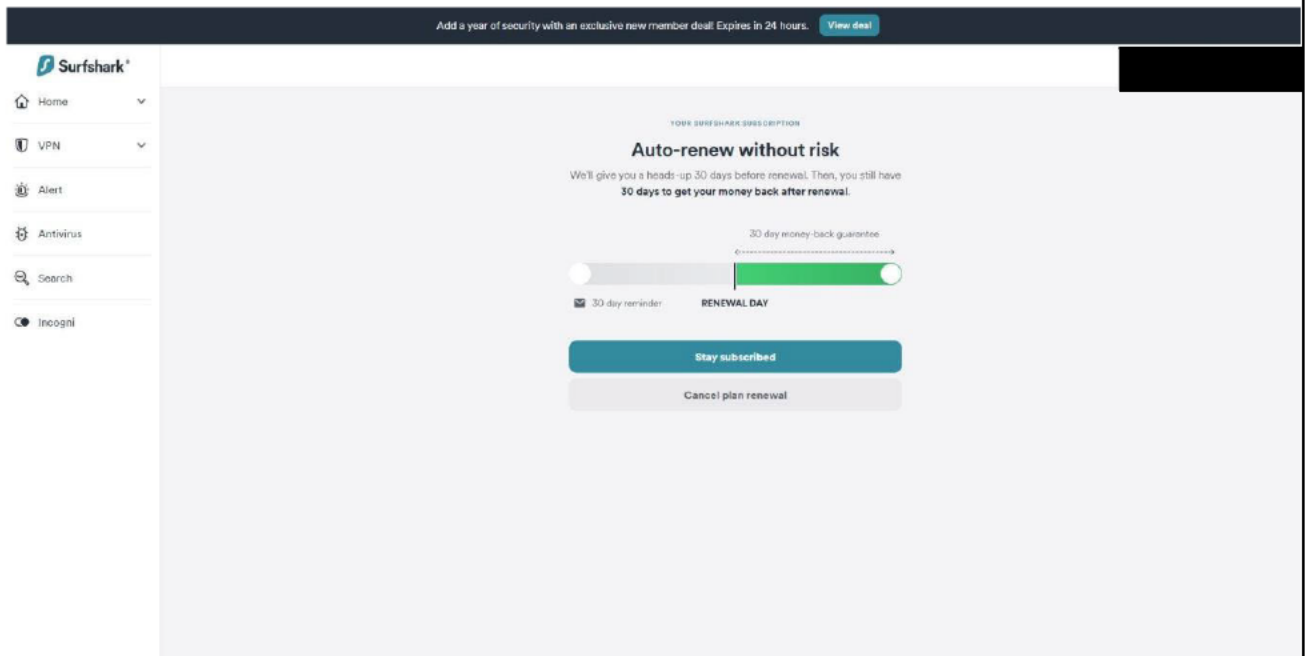
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31. Defendant's cancellation policy is not the "easy-to-use" mechanism contemplated by the ARL. Rather, it is a multi-step process. Furthermore,

1 Defendant does not present the cancellation button in an easily recognized form.
2 Instead, Defendant requires diligent searching by a user before they are even able to
3 identify where they must go to cancel their automatically renewing subscription.
4 Additionally, the cancellation method is not described in the acknowledgement, as
5 required by Cal. Bus. & Prof. Code § 17602(c).

6 32. Therefore, Defendant has violated California’s ARL for failing to
7 provide an adequate acknowledgement describing the cancellation method, and
8 providing an easy-to-use cancellation method as required by Cal. Bus & Prof. Code
9 § 17602 *et seq.* Thus, Plaintiff and other consumers purchasing the Products have
10 suffered injury in fact and lost money as a result of Defendant’s false and deceptive
11 practices, as described herein.

12 **CLASS ACTION ALLEGATIONS**

13 33. As alleged throughout this Complaint, the Class claims all derive directly
14 from a single course of conduct by Defendant. Defendant has engaged in uniform and
15 standardized conduct toward the Class – its marketing and billing tactics – and this
16 case is about the responsibility of Defendant, at law and in equity, for its knowledge
17 and conduct in deceiving its customers. This conduct did not meaningfully
18 differentiate among individual Class members in its degree of care or candor, its
19 action or inactions, or in the content of its statements or omissions. The objective facts
20 on these subjects are the same for all Class members.

21 34. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23 and all
22 other applicable laws and rules, individually, and on behalf of all members of the
23 following Class:

24 **California Class**

25 All Defendant’s customers in the State of California who were automatically
26 enrolled in the Products and were charged at least one renewal fee by
27 Defendant, within the governing statute of limitations period.
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1 35. Excluded from the Class are the following individuals and/or entities:
2 Defendant and its parents, subsidiaries, affiliates, officers and directors, current or
3 former employees, and any entity in which Defendant has a controlling interest; all
4 individuals who make a timely election to be excluded from this proceeding using the
5 correct protocol for opting out; and all judges assigned to hear any aspect of this
6 litigation, as well as their immediate family members.

7 36. Plaintiff reserves the right to modify or amend the definition of the
8 proposed Class and/or add subclasses before the Court determines whether
9 certification is appropriate.

10 37. Numerosity: The proposed Class is so numerous that joinder of all
11 members would be impractical. The number of individuals who purchased the
12 Products' subscriptions during the relevant time period is at least in the thousands.
13 Accordingly, Class members are so numerous that their individual joinder herein is
14 impractical. While the precise number of Class members and their identities are
15 unknown to Plaintiff at this time, these Class members are identifiable and
16 ascertainable.

17 38. Common Questions Predominate: There are questions of law and fact
18 common to the proposed Class that will drive the resolution of this action and will
19 predominate over questions affecting only individual Class members. These questions
20 include, but are not limited to, the following:

- 21 a. Whether Defendant misrepresented material facts and/or failed to
22 disclose material facts in connection with their auto-renewal charging
23 plan;
- 24 b. Whether Defendant's conduct constitutes unfair, unlawful, and/or
25 fraudulent practices prohibited by the laws of California;
- 26 c. Whether Defendant's unlawful conduct, as alleged herein, was
27 intentional and knowing;
- 28 d. Whether Defendant was unjustly enriched as a result of its conduct;

- 1 e. Whether Plaintiff and the Class are entitled to damages and/or
- 2 restitution, and in what amount;
- 3 f. Whether Defendant is likely to continue using false, misleading or
- 4 unlawful conduct such that an injunction is necessary; and
- 5 g. Whether Plaintiff and the Class are entitled to an award of reasonable
- 6 attorneys' fees, interest, and costs of suit.

7 39. Defendant has engaged in a common course of conduct giving rise to
8 violations of the legal rights sought to be enforced uniformly by Plaintiff and Class
9 members. Similar or identical statutory and common law violations, business
10 practices, and injuries are involved. The injuries sustained by members of the
11 proposed Class flows, in each instance, from a common nucleus of operative fact;
12 namely, Defendant's failure to adequately disclose the automatic-renewal nature of
13 their customers' enrollment, and failure to abide by the requirements set forth in
14 California's ARL. Each instance of harm suffered by Plaintiff and Class members has
15 directly resulted from a single course of illegal conduct. Therefore, individual
16 questions, if any, pale in comparison to the numerous common questions presented in
17 this action.

18 40. Superiority: Because of the relatively small amount of damages at issue
19 for each individual Class member, no Class member could afford to seek legal redress
20 on an individual basis. Furthermore, individualized litigation increases the delay and
21 expense to all parties and multiplies the burden on the judicial system presented by
22 the complex legal and factual issues of this case. Individualized litigation also presents
23 a potential for inconsistent or contradictory judgments. A class action is superior to
24 any alternative means of prosecution.

25 41. Typicality: The representative Plaintiff's claims are typical of those of
26 the proposed Class, as all members of the proposed Class are similarly affected by
27 Defendant's uniform unlawful conduct as alleged herein, including but not limited to
28 being subject to the same or similar marketing, enrollment and billing practices

1 engineered by Defendant. Further, Plaintiff and members of the Class sustained
2 substantially the same injuries and damages arising out of Defendant's conduct.

3 42. Adequacy: Plaintiff will fairly and adequately protect the interests of the
4 proposed Class as her interests do not conflict with the interests of the members of
5 the proposed Class she seeks to represent, and she has retained counsel competent and
6 experienced in class action litigation. Thus, the interests of the members of the Class
7 will be fairly and adequately protected by Plaintiff and her counsel.

8 43. Defendant has also acted, or failed to act, on grounds generally
9 applicable to Plaintiff and the proposed Class, supporting the imposition of uniform
10 relief to ensure compatible standards of conduct toward the members of the Class.

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12 **FIRST CLAIM FOR RELIEF**
13 **Violation of California's Consumers Legal Remedies Act**
14 **California Civil Code § 1750, *et seq.***
15 **(for the California Class)**

16 44. Plaintiff repeats the allegations contained in paragraphs 1-43 above as if
17 fully set forth herein.

18 45. Plaintiff brings this claim individually and on behalf of the members of
19 the proposed California Class, against Defendant pursuant to California's Consumers
20 Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750, *et seq.* The CLRA prohibits
21 "unfair or deceptive acts or practices...undertaken by any person in a transaction
22 intended to result or that results in the sale or lease of goods or services to any
23 consumer." Cal. Civ. Code § 1770(a).

24 46. Plaintiff and the Class members are "consumers" within the meaning of
25 Cal. Civ. Code § 1761(d) in that Plaintiff and the Class members sought or acquired
26 by purchase Defendant's Products for personal, family, or household purposes.

27 47. Defendant's offers constitute "goods or services" within the meaning of
28 Cal. Civ. Code § 1761(a) and (b).

1 48. The purchases by Plaintiff and Class Members are “transactions” within
2 the meaning of Cal. Civ. Code § 1761(e).

3 49. Defendant has violated Cal. Civ. Code § 1770, subdivisions (a)(5), (a)(9),
4 (a)(14), and (a)(16) by, *inter alia*, representing that Defendant’s goods and services
5 have certain characteristics that they do not have; advertising goods and services with
6 the intent not to sell them as advertised; representing that a transaction confers or
7 involves rights, remedies, or obligations that it does not have or involve, or that are
8 prohibited by law; and representing that the subject of a transaction has been supplied
9 in accordance with a previous representation when it has not.

10 50. As a direct and proximate result of Defendant’s violations of the CLRA,
11 Plaintiff and the California Class were wrongfully charged fees by Defendant.

12 51. Defendant’s conduct alleged herein was undertaken by Defendant
13 knowingly, willfully, and with oppression, fraud, and/or malice, within the meaning of
14 Cal. Civ. Code § 3294(c).

15 52. Plaintiff has standing to pursue these claims because she has suffered
16 injury in fact and a loss of money as a result of the wrongful conduct alleged herein.
17 Plaintiff would not have enrolled in Defendant’s subscription had she known the truth.
18 Plaintiff saw and relied upon Defendant’s misleading representations and omissions,
19 as detailed above. Class-wide reliance can be inferred because Defendant’s
20 misrepresentations and omissions were material, i.e., a reasonable consumer would
21 consider them important in deciding whether to subscribe to Defendant’s Products.

22 53. On about November 8, 2023, Plaintiff provided written notice pursuant
23 to § 1782 of the CLRA, on behalf of herself and the Class. Defendant failed to rectify
24 or agree to rectify the unlawful acts detailed above within 30 days, thus Plaintiff and
25 the Class are entitled to actual, punitive, and statutory damages, as appropriate, as
26 well as any other remedies the Court may deem appropriate under Cal. Civ. Code
27 §1750 *et seq.*

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SECOND CLAIM FOR RELIEF
Violation of California’s False Advertising Law
California Business & Professions Code § 17500, *et seq*
(for the California Class)

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4 54. Plaintiff repeats the allegations contained in paragraphs 1-43 above as if
5 fully set forth herein.

6 55. Plaintiff brings this claim individually and on behalf of the members of
7 the proposed California Class, against Defendant pursuant to California’s False
8 Advertising Law (“FAL”) Cal. Bus. & Prof. Code § 17500, *et seq.*

9 56. As part of California’s FAL, the ARL, Cal. Bus. & Prof. Code § 17600,
10 *et seq.*, became effective on December 1, 2010.

11 57. Cal. Bus. & Prof. Code § 17600, *et seq.*, declares unlawful “the practice
12 of ongoing charging of consumer credit or debit cards or third party payment accounts
13 without the consumers’ explicit consent for ongoing shipments of a product or
14 ongoing deliveries of service.” Defendant’s conduct as alleged in this Complaint
15 violates Cal. Bus. & Prof. Code § 17602 because each of the following practices
16 Defendant has engaged in is an independent violation of the Automatic Purchase
17 Renewal Statute:

- 18 a. Defendant failed to present the terms of its automatic renewal or
19 continuous service offer in a clear and conspicuous manner before
20 fulfilling the subscription and in visual proximity to the request for
21 consent to the offer, as required by Cal. Bus. & Prof. Code §
22 17602(a)(1);
- 23 b. Defendant charges Plaintiff’s and the Class’s credit card or debit card,
24 or the consumer’s account with a third party, for an automatic renewal
25 or continuous service without first obtaining the consumer’s
26 affirmative consent to the agreement containing the automatic
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- 1 renewal offer terms or continuous offer terms, as required by Cal.
- 2 Bus. & Prof. Code § 17602(a)(2);
- 3 c. Defendant failed to provide a post-transaction acknowledgement
- 4 including the automatic renewal or continuous offer terms,
- 5 cancellation policy, and clear, consumer-friendly cancellation
- 6 information. Cal. Bus. & Prof. Code § 17602(a)(3);
- 7 d. Defendant failed to provide a toll-free telephone number, electronic
- 8 mail address, a postal address or other cost-effective, timely, and easy-
- 9 to-use mechanism for cancellation as described in Cal. Bus. & Prof.
- 10 Code § 17602(a)(3), as required by Cal. Bus. & Prof. Code §
- 11 17602(b).
- 12 e. Defendant failed to provide a method for cancellation without
- 13 engaging in further steps that obstruct or delay the ability to terminate
- 14 the automatic renewal or continuous service immediately as required
- 15 by Cal. Bus. & Prof. Code §17602(d)(1)(A)-(B).

16 58. As a result of Defendant’s misconduct pursuant to Cal. Bus. & Prof.
17 Code § 17603, Plaintiff and the Class are entitled to restitution of all amounts that
18 Defendant charged or caused to be charged to Plaintiff’s and Class members’ credit
19 cards, debit cards, or third-party payment accounts during the applicable statute of
20 limitations and continuing until Defendant’s statutory violations cease.

21 59. As a result of Defendant’s misconduct pursuant to Cal. Bus. & Prof.
22 Code § 17535, Plaintiff and the Class are entitled to an injunction:

- 23 a. Enjoining Defendant from making automatic renewal offers that do
- 24 not comply with California law;
- 25 b. Enjoining Defendant from making charges to credit cards, debit
- 26 cards, or third-party payment accounts without prior affirmative
- 27 consent to an agreement containing “clear and conspicuous”
- 28 disclosures of automatic renewal or continuous service offer terms;

1 c. Enjoining Defendant from making automatic renewal offers that fail
2 to provide an acknowledgment that includes a “clear and
3 conspicuous” disclosure of automatic renewal or continuous service
4 offer terms, cancellation policy, and information regarding how to
5 cancel in a manner that is capable of being retained by the consumer;
6 and,

7 d. Enjoining Defendant from making automatic renewal offers that fail
8 to provide an online, easy-to-use mechanism for cancellation.

9 60. Defendant’s actions in violation of §§ 17500 & 17600 *et seq.*, as described
10 herein, were false and misleading such that the general public is and was likely to be
11 deceived. Plaintiff and members of the California Class were deceived and relied on
12 Defendant’s statements and omissions to their detriment when they signed up for
13 Defendant’s Products and were subsequently automatically enrolled in Defendant’s
14 auto-recurring subscription, and there is a strong probability that other California
15 consumers and members of the public were also or are likely to be deceived as well.
16 Any reasonable consumer would be misled by Defendant’s false and misleading
17 statements and material omissions. Plaintiff and members of the California Class did
18 not learn of Defendant’s cancellation and automatic payment policies until after they
19 had already signed up and were forced into paying for Defendant’s services.

20 61. Pursuant to Cal. Bus. & Prof. Code § 17535, this Court has the power to
21 award such equitable relief, including but not limited to, an order declaring
22 Defendant’s auto-renewal practices to be unlawful, an order enjoining Defendant
23 from engaging in any such further unlawful conduct, and an order directing Defendant
24 to refund to the Plaintiff and the Class all fees wrongfully assessed and/or collected
25 on its auto-renew subscription plan.

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THIRD CLAIM FOR RELIEF
Violation of California’s Unfair Competition Law (“UCL”),
California Business & Professions Code § 17200, *et seq.*
(for the California Class)

62. Plaintiff repeats the allegations contained in paragraphs 1-43 above as if fully set forth herein.

63. Plaintiff brings this claim individually and on behalf of the members of the proposed California Class against Defendant pursuant to California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.*

64. The UCL prohibits acts of “unfair competition,” including any unlawful and unfair business acts or practices.

65. The UCL, Cal. Bus. & Prof. Code § 17200, provides, in pertinent part, that “unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising . . .”

66. Under the UCL, a business act or practice is “unlawful” if it violates any established state or federal law. Defendant committed unlawful practices because it violated Cal. Bus. And Prof. Code § 17600, *et seq.*, California’s ARL, which declares unlawful “the practice of ongoing charging of consumer credit or debit cards or third party payment accounts without the consumers’ explicit consent for ongoing shipments of a product or ongoing deliveries of a service.” Defendant’s conduct as alleged in this Complaint violates Cal. Bus. & Prof. Code § 17602 because each of the following practices is an independent violation of the ARL:

a. Defendant failed to present the terms of its automatic renewal or continuous service offer in a clear and conspicuous manner before fulfilling the subscription and in visual proximity to the request for consent to the offer, as required by Cal. Bus. & Prof. Code § 17602(a)(1);

b. Defendant charges Plaintiff’s and the Class’s credit card or debit cards, or the consumer’s account with a third party, for an automatic

1 renewal or continuous service without first obtaining the consumer’s
2 affirmative consent to the agreement containing the automatic
3 renewal offer terms or continuous offer terms, as required by Cal.
4 Bus. & Prof. Code § 17602(a)(2);

5 c. Defendant failed to provide a post-transaction acknowledgement
6 including the automatic renewal or continuous offer terms,
7 cancellation policy, and clear, consumer-friendly cancellation
8 information. Cal. Bus. & Prof. Code § 17602(a)(3);

9 d. Defendant failed to provide a toll-free telephone number, electronic
10 mail address, a postal address or other cost-effective, timely, and easy-
11 to-use mechanism for cancellation as described in Cal. Bus. & Prof.
12 Code § 17602(a)(3), as required by Cal. Bus. & Prof. Code §
13 17602(b).

14 e. Defendant failed to provide a method for cancellation without
15 engaging in further steps that obstruct or delay the ability to terminate
16 the automatic renewal or continuous service immediately as required
17 by Cal. Bus. & Prof. Code §17602(d)(1)(A)-(B).

18 67. Under the UCL, a business act or practice is “unfair” if the defendant’s
19 conduct is substantially injurious to consumers, offends public policy, and is immoral,
20 unethical, oppressive, and unscrupulous, as the benefits for committing such acts or
21 practices are outweighed by the gravity of the harm to the alleged victims.
22 Defendant’s conduct was and continues to be of no benefit to purchasers of the
23 Product, as it is misleading, unfair, unlawful, and is injurious to consumers who rely
24 on the Product’s advertising. Deceiving consumers as to the automatic enrollment in
25 Defendant’s Products is of no benefit to consumers. Therefore, Defendant’s conduct
26 was and continues to be “unfair.” As a result of Defendant’s unfair business acts and
27 practices, Defendant has and continues to unfairly obtain money from Plaintiff and
28 members of the Class.

1 74. As alleged herein, Defendant has intentionally and recklessly made
2 misleading representations to Plaintiff and members of the California Class, to induce
3 them to subscribe to the Products. Plaintiff and members of the California Class have
4 reasonably relied on Defendant's misleading representations and been deceived as a
5 result. Plaintiff and members of the California Class have been induced by
6 Defendant's misleading and deceptive representations about the subscriptions and
7 paid money to Defendant for these subscriptions that they would have not paid.

8 75. Plaintiff and members of the California Class have conferred a benefit
9 upon Defendant, as Defendant has retained monies paid to it by Plaintiff and members
10 of the California Class.

11 76. The monies received were obtained under circumstances that were at the
12 expense of Plaintiff and members of the California Class – i.e., Plaintiff and members
13 of the California Class did not receive full and adequate disclosure as to the nature of
14 the automatic enrollment subscription plan.

15 77. Therefore, it is inequitable and unjust for Defendant to retain the profit,
16 benefit, or compensation conferred upon them without paying Plaintiff and the
17 members of the California Class back for cost of the deceptive and unjust enrollment.

18 78. As a direct and proximate result of Defendant's unjust enrichment,
19 Plaintiff and members of the California Class are entitled to restitution, disgorgement,
20 and/or the imposition of a constructive trust upon all profits, benefits, and other
21 compensation obtained by Defendant from its deceptive, misleading, and unlawful
22 conduct as alleged herein.

23 **FIFTH CLAIM FOR RELIEF**

24 **Violations of the Electronic Funds Transfer Act (“EFTA”), 15 U.S.C. §**
25 **1693 *et seq.***
26 **(for the California Class)**

27 79. Plaintiff repeats the allegations contained in paragraphs 1-43 above as if
28 fully set forth herein.

1 80. Plaintiff brings this claim individually and on behalf of the members of
2 the proposed California Class against Defendant pursuant to the Electronic Funds
3 Transfer Act (“EFTA”), 15 U.S.C. 1693 *et seq.*

4 81. The EFTA provides a framework establishing the rights, liabilities, and
5 responsibilities of participants in an electronic fund transfer system. 15 U.S.C. §§
6 1693 *et seq.* The “primary objective” of the EFTA is “the provision of individual
7 consumer rights.” *Id.* § 1693(b).

8 82. Any waiver of EFTA rights is void. “No writing or other agreement
9 between a consumer and any other person may contain any provision which
10 constitutes a waiver of any right conferred or cause of action created by this
11 subchapter.” 15 U.S.C. § 1693l.

12 83. Defendant’s transfers of money from the bank accounts of Plaintiff and
13 members of the California Class, as alleged herein, are “electronic fund transfers”
14 within the meaning of the EFTA and the EFTA’s implemented regulations, known as
15 Regulation E and codified at 12 C.F.R. §§ 205 *et seq.* An “electronic fund transfer”
16 means “any transfer of funds, other than a transaction originated by check, draft, or
17 similar paper instrument, which is initiated through an electronic terminal, telephonic
18 instrument, or computer or magnetic tape so as to order, instruct, or authorize a
19 financial institution to debit or credit an account.” 15 U.S.C. § 205.3(b)(v).

20 84. The EFTA defines the term “preauthorized electronic transfer” as “an
21 electronic fund transfer authorized in advance to recur at substantially regular
22 intervals.” 15 U.S.C. § 1693a(9). The Official Staff Interpretation of Regulation E
23 describes a “preauthorized electronic transfer” as “one authorized by the consumer in
24 advance of a transfer that will take place on a recurring basis, at substantially regular
25 intervals, and will require no further action by the consumer to initiate the transfer.”
26 12 C.F.R. Part 205, Supp. I, § 205.2(k), cmt. 1.

27 85. Section 1693e(a) of the EFTA prohibits preauthorized electronic
28 transfers without written authorization: “A preauthorized electronic fund transfer

1 from a consumer’s account may be authorized by the consumer only in writing, and a
2 copy of such authorization shall be provided to the consumer when made.” 15 U.S.C.
3 § 1693e(a). Similarly, Regulation E provides: “Preauthorized electronic fund
4 transfers from a consumer’s account may be authorized only by a writing signed or
5 similarly authenticated by the consumer. The person that obtains the authorization
6 shall provide a copy to the consumer.” 12 C.F.R. § 205.10(b).

7 86. Plaintiff and members of the California Class each maintained an
8 “account” as that term is defined in 15 U.S.C. § 1693a(2) and are “consumers” within
9 the meaning of 15 U.S.C. § 1693a(5).

10 87. Defendant uniformly and routinely initiated preauthorized electronic
11 fund transfers and took money from the bank accounts of Plaintiff and members of
12 the California Class without obtaining written authorization for the transfers, as
13 required by the EFTA and Regulation E. Defendant also uniformly and routinely
14 failed to provide a copy of such written authorization to Plaintiff and the members of
15 the California Class from whose bank accounts Defendant took preauthorized
16 electronic fund transfers for the Products.

17 88. In March of 2023, Defendant took \$71.64 from Plaintiff’s account via
18 her debit card. Defendant did not obtain Plaintiff’s written authorization, nor did
19 Defendant provide Plaintiff with copies of any such authorizations.

20 89. The Official Staff Interpretation of Regulation E explains, “when a third-
21 party payee,” such as Defendant, “fails to obtain the authorization in writing or fails
22 to give a copy to the consumer...it is the third-party payee that is in violation of the
23 regulation.” 12 C.F.R. Part 205, Supp. I, § 205.10(b), cmt. 2.

24 90. As a direct and proximate result of Defendant’s violations of the EFTA
25 and Regulation E, Plaintiff has suffered damages in the amount of the unauthorized
26 debits taken by Defendant from her bank account. 15 U.S.C. § 1693m. As a further
27 direct and proximate result of Defendant’s violations of the EFTA and Regulation E,
28 Plaintiff and the California Class are entitled to recover statutory damages in the

1 amount of “the lesser of \$500,000 or 1 per centum of the net worth of the defendant.”
2 *Id.* § 1983m(a)(2)(B).

3 91. Pursuant to 15 U.S.C. § 1693m, Plaintiff and the California Class are
4 also entitled to recover costs of suit and attorneys’ fees from Defendant.

5
6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiff, individually and on behalf of the Class, respectfully
8 prays for the following relief:

- 9 (a) Certification of this case as a class action on behalf of the Class defined
10 above, appointment of Plaintiff as Class representative, and appointment
11 of her counsel as Class counsel;
- 12 (b) A declaration that Defendant’s actions, as described herein, violate the
13 claims described herein;
- 14 (c) An award of injunctive and other equitable relief as is necessary to protect
15 the interests of Plaintiff and the Class, including, *inter alia*, an order
16 prohibiting Defendant from engaging in the unlawful acts described
17 above;
- 18 (d) An award to Plaintiff and the proposed Class of restitution and/or other
19 equitable relief, including, without limitation, restitutionary
20 disgorgement of all profits and unjust enrichment that Defendant obtained
21 from Plaintiff and the proposed Class as a result of its unlawful, unfair
22 and fraudulent business practices described herein;
- 23 (e) An award of all economic, monetary, actual, consequential,
24 compensatory, and treble damages caused by Defendant’s conduct;
- 25 (f) An award of punitive damages;
- 26 (g) An award to Plaintiff and her counsel of their reasonable expenses and
27 attorneys’ fees;
- 28

- 1 (h) An award to Plaintiff and the proposed Class of pre and post-judgment
- 2 interest, to the extent allowable; and
- 3 (i) For such further relief that the Court may deem just and proper.
- 4

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff, on behalf of herself and the Class, hereby demands a jury trial with
7 respect to all issues triable of right by jury.
8

9
10 **CUSTODIO & DUBEY, LLP**

11 DATED: April 17, 2024 By: /s/ Robert Abiri

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