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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF SAN DIEGO**

17 JAMIE ZELLER and ANGELICA
18 ALPERT, individually and on behalf of all
19 others similarly situated,

Plaintiffs,

20 vs.

21 OPTAVIA, LLC,

22 *Defendant.*

Case No. 37-2024-00013298-CU-BT-CTL

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1. False Advertising Law
2. Unfair Competition Law

General Jurisdiction – Civil

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15 misleads reasonable consumers. 10

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17 for cancellation.” Instead, Defendant systematically continues to charge

18 consumers who try to delay, cancel, or return shipments. 11

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1 **I. Introduction.**

2 1. Defendant Optavia, LLC (“Optavia”) runs a multi-level marketing business that sells
3 “Optavia” weight loss products and services (like packaged meals) to consumers. This business,
4 however, is fueled by an illegal automatic renewal scheme.

5 2. When consumers purchase any Optavia product, Defendant uses dark patterns¹ to enroll
6 consumers in an automatic renewal plan called “Optavia Premier.” Once enrolled, either directly
7 online or through Optavia “coaches,” consumers are automatically shipped products and charged
8 hundreds of dollars each month. When enrolling customers, Defendant fails to provide the disclosures
9 required by law and fails to obtain sufficient consent. As a result, Defendant signs consumers up for
10 automatically-renewing charges without their knowledge. Then, when consumers try to cancel or
11 return products, Defendant gives them the runaround and continues to charge their payment methods.

12 3. This illegal automatic renewal scheme works. According to Defendant, the average
13 Optavia client spends thirty times more money on diet products compared to industry benchmarks.
14 More than 75% of Optavia’s customers get auto-enrolled for at least one renewal fee, and nearly 50%
15 of customers get charged four or more times.

16 4. This class action seeks to put an end to Defendant’s illegal auto-renewal practices and
17 hold Optavia accountable for the damages it has caused and continues to cause.

18 **II. Parties.**

19 5. Plaintiff Jamie Zeller is a citizen of California. She is domiciled in Escondido,
20 California. She was a customer of Optavia in August 2021, was enrolled in Optavia Premier without
21 her consent, and was automatically charged for recurring shipments.

22 6. Plaintiff Angelica Alpert is a citizen of California. She is domiciled in Redwood City,
23 California. She was a customer of Optavia in August 2020, was enrolled in Optavia Premier without
24 her consent, and was automatically charged for recurring shipments.

25 _____
26 ¹ Dark patterns are illegal tactics that companies employ to trick users by means of manipulative
27 interface designs that obscure, subvert, or impair autonomy and decision-making around buying choices.
28 See “FTC to Ramp up Enforcement against Illegal Dark Patterns that Trick or Trap Consumers into
Subscriptions,” Oct. 28, 2021, available at <https://www.ftc.gov/news-events/press-releases/2021/10/ftc-ramp-enforcement-against-illegal-dark-patterns-trick-or-trap> (last visited March 1, 2022).

1 7. Defendant Optavia, LLC is a Delaware Limited Liability Company headquartered at 100
2 International Drive, 18th Floor, Baltimore, Maryland 21202.

3 **III. Jurisdiction and Venue.**

4 8. The Court has personal jurisdiction over Defendant because Defendant purposefully
5 marketed and sold Optavia products to consumers in California, including Plaintiffs.

6 9. Venue is proper because Defendant does business in this county, Plaintiff Zeller resides
7 in San Diego County, and a substantial portion of the transactions occurred in this county.

8 **IV. Facts.**

9 **A. California Automatic Renewal Law.**

10 10. The California Automatic Renewal Law (ARL) is part of California’s False Advertising
11 Law. The purpose of the ARL is to “end the practice of ongoing” subscription charges “without the
12 consumers’ explicit consent for ongoing shipments of a product.” Cal. Bus. & Prof. Code §17600. To
13 this end, the law makes it illegal for companies to charge consumers for automatically-renewing
14 shipments of goods, unless the company meets strict disclosure requirements. This includes both pre-
15 purchase and post-purchase disclosures.

16 **Pre-Purchase Requirements**

17 11. A company must “present the automatic renewal offer terms or continuous service offer
18 terms in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled
19 and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the
20 request for consent to the offer.” Cal. Bus. & Prof. Code §17602(a)(1). The “automatic renewal offer
21 terms” that must be presented include:

- 22 1) “That the subscription or purchasing agreement will continue until the consumer
23 cancels.
- 24 2) The description of the cancellation policy that applies to the offer.
- 25 3) The recurring charges that will be charged to the consumer’s credit or debit card or
26 payment account with a third party as part of the automatic renewal plan or arrangement, and
27 that the amount of the charge may change, if that is the case, and the amount to which the
28 charge will change, if known.

1 4) The length of the automatic renewal term or that the service is continuous, unless the
2 length of the term is chosen by the consumer.

3 5) The minimum purchase obligation, if any.”

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

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

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

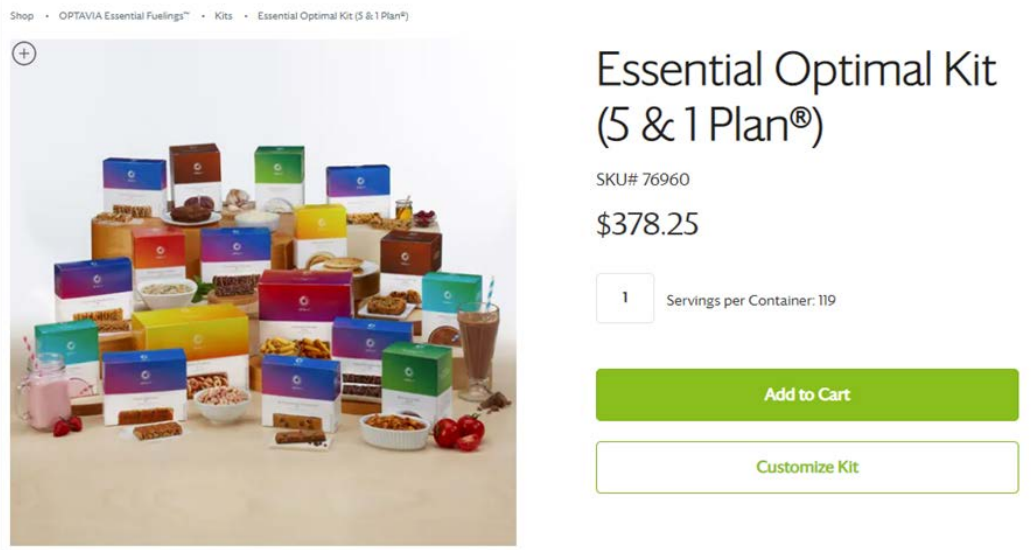
12 **Post-Purchase Requirements**

13 14. After the purchase, the company must provide “acknowledgment that includes the
14 automatic renewal offer terms or continuous service offer terms, cancellation policy, and information
15 regarding how to cancel in a manner that is capable of being retained by the consumer.” Cal. Bus. &
16 Prof. Code §17602(a)(3). In addition, the acknowledgment must provide a “cost-effective, timely, and
17 easy-to-use mechanism for cancellation.” Cal. Bus. & Prof. Code §17602(b).

18 **B. Defendant charges consumers for automatically-renewing weight loss products, in**
19 **violation of consumer protection laws.**

20 **1. Defendant uses multi-level marketing to sell subscription weight loss**
21 **products.**

22 15. At all relevant times, Defendant offered, via the Optavia website, various food products,
23 plans, and services related to weight loss. Defendant offered meal plans such as the Optimal Weight
24 5&1 Plan, Optimal Weight 4&2&1 Plan, and the Optimal Health 3&3 Plan, as well as individual food
25 products referred to as Fuelings, such as Essential Smoky BBQ Crunchers or Jalapeno Cheddar
26 Poppers. The 5 &1 Plan is pictured below:
27
28



16. Optavia is a multi-level marketing company. It recruits ordinary consumers to be Optavia “coaches,” to market and sell Optavia products to their friends and family. Optavia’s business is driven by automatically-renewing product subscriptions. According to Defendant’s January 2021 investor presentation, subscription-based purchases account for 92% of its total revenue. In this presentation, Defendant highlights that the average Optavia client spends thirty times more money on diet products compared to industry benchmarks. According to Defendant, more than 75% of Optavia’s customers are charged for at least one renewal fee and nearly 50% of customers get charged four or more times. The reason for these extreme results is Defendant’s illegal automatic renewal scheme.

17. Defendant’s automatic renewal scheme is called Optavia Premier. Defendant markets Optavia Premier as an exclusive program in which members can “enjoy exclusive perks like extra savings, rewards, free or reduced shipping and more!” Defendant refers to Optavia Premier as an “autoship program” and states that “Premier member orders ship automatically each month, so your progress will never be interrupted or delayed.” While Defendant refers to Optavia Premier as an “autoship program,” it is in every respect an automatically-renewing subscription and constitutes an automatic renewal and/or continuous service plan or arrangement under Cal. Bus. & Prof. Code §17601. The Optavia Premier membership can and does reach costs totaling \$500 per month.

2. Defendant's online Optavia Premier enrollment process violates the Automatic Renewal Law and misleads reasonable consumers.

18. One of the ways in which consumers purchase Optavia products and services is directly from the Optavia website. Through this purchase method, Optavia systematically enrolls consumers in its Optavia Premier program, in violation of the Automatic Renewal Law and other consumer protection laws. As addressed below, an Optavia coach can also take a consumers' payment information and order for a consumer. In this situation, the coach places the order through the Optavia website.

19. On the Optavia website, Defendant's automatic renewal program works as follows. Any consumer who selects a product for purchase is directed to a checkout page on the Optavia website, illustrated below:

PRODUCT	UNIT PRICE	QTY	SUBTOTAL
Your free item(s)			
OPTAVIA Guide SKU# 37883	FREE	1	FREE
Journey Kickoff Card Insert SKU# 50038	FREE	1	FREE
OPTAVIA Guide Top Tips Insert SKU# 50039	FREE	1	FREE
Get 1 Week FREE with your OPTAVIA Premier order (up to \$121.25 Value!) SKU# 79938	FREE	1	FREE
Edit Free Meal	Free Meal includes: • 1 Essential Sour Cream & Chive Mashed Potatoes (Box) • 1 Select Buttermilk Cheddar Herb Biscuit Mix (Box) • 1 Select Honey Chili Cranberry Nut Bar with Flaxseeds, Pumpkin Seeds, and Almonds (Box) • 1 Select Chocolate Cherry Ganache Bar with Dried Cherries and Pomegranate (Box) • 1 Select Dark Chocolate Coconut Curry Bar with Almonds and Sea Salt (Box)		
OPTAVIA BlenderBottle® Classic SKU# 50015	FREE	1	FREE

Congratulations! You are now enrolled in OPTAVIA Premier.

These seasonal bundles are available for a limited time only. Add them to your order today!

Yes, I would like to join OPTAVIA Premier

I have reviewed and agree to the OPTAVIA Premier Terms and Conditions. I understand that OPTAVIA Premier is an auto-ship program and that by enrolling in OPTAVIA Premier I will automatically be charged for and receive an OPTAVIA Premier order each month unless I modify my order, change my ship date or cancel my membership. I also understand that I can modify my order or cancel my membership at any time by calling 1-888-OPTAVIA or by logging into my online OPTAVIA account.

ORDER SUMMARY

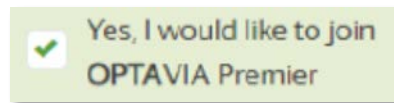
ENTER PROMO CODE →

Subtotal: \$428.20
 Delivery Charge: FREE
 Estimated tax: \$0.00
Order Total: \$428.20

[Checkout](#)

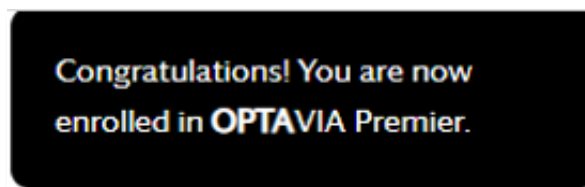
1 20. The purported disclosures fail to comply with the Automatic Renewal Law, in several
2 ways. The enrollment process also misleads reasonable consumers into thinking that they are not being
3 signed up for auto-renewing shipments and charges.

4 21. To begin, the option box to enroll in Optavia Premier is pre-checked. This is the
5 opposite of how an affirmative consent box is supposed to work. It is designed to, and does, cause
6 reasonable consumers to miss the fact that they are being auto-enrolled. In order to unenroll from
7 Optavia Premier, the consumer must affirmatively uncheck the box. In other words, instead of
8 affirmative consent (which is legally required), the process requires affirmative opt-out (which is
9 illegal).



10
11
12 22. In addition, as illustrated above, the information about the Optavia Premier program is
13 in the smallest font on the page, set off to the side, and with the least contrast against the background
14 compared to all the other text. The page is designed so that a reasonable consumer will click the
15 prominent "Checkout" button without noticing that they are being signed up for automatically-
16 renewing shipments and charges.

17 23. Next, regardless of the Optavia item that the consumer selects to purchase, the relevant
18 portion of the checkout page presents the consumer with a banner stating "Congratulations! You are
19 now enrolled in OPTAVIA Premier."



20
21
22
23
24 24. This box confusingly suggests to the consumer that they have already been enrolled in
25 Optavia Premier, before Defendant has obtained any kind of consent whatsoever. Again, this is the
26 opposite of clear and conspicuous, affirmative consent.

1 25. Beyond this, the page does not disclose the amount of the charge that will be recurring
2 on a month-to-month basis, the length of time that the auto-renewal subscription will remain in place,
3 or the minimum purchase.

4 26. Once the consumer clicks the “Checkout” button, the consumer is redirected to a
5 webpage to complete their purchase where, among other things, the consumer creates a username and
6 password, enters a delivery address, and inputs their payment method. Notably, once the consumer
7 clicks the “Checkout” button, no subsequent webpage for completion of the purchase discloses or
8 mentions the consumer’s enrollment in Optavia Premier or its terms and conditions. Once the
9 consumer inputs the requested information to complete the purchase, the consumer is enrolled in
10 Optavia Premier and, every month from that date forward, Defendant will automatically charge the
11 consumer’s payment method and ship products.

12 **3. Defendant’s process for enrolling customers in Optavia Premier through**
13 **coaches violates the Automatic Renewal Law and misleads reasonable**
14 **consumers.**

15 27. As mentioned above, one way for consumers to purchase Optavia products and services
16 is through a coach. Coaches are trained and instructed to take a consumer’s payment information and
17 place an order for the consumer using the Optavia website. Through this purchase method, Optavia
18 systematically enrolls consumers in its Optavia Premier program, in violation of the Automatic
19 Renewal Law and other consumer protection laws.

20 28. When customers are enrolled through coaches, the disclosures are equally deficient, if
21 not even more deficient. Coaches are systematically trained by Defendant to tell customers that the
22 coaches can purchase on their behalf, to take customers’ payment information, and to enroll customers.
23 In particular, Defendant trains coaches to: 1) learn about consumers’ weight loss and health goals; 2)
24 describe the health and weight loss benefits of the products; 3) instruct consumers how to use the
25 products (*e.g.*, what food to eat, timing of meals, recipes to use), and, crucially, to 4) affirmatively
26 represent to consumers that the coaches can take a consumer’s payment information and place an
27
28

1 order.² By affirmatively representing that they can place an order, coaches suggest to reasonable
2 consumers that they are placing a single order. This is, after all, how ordering a product normally
3 works.

4 29. But coaches systematically fail to even disclose to consumers that they are being auto-
5 enrolled, much less comply with the detailed requirements of the Automatic Renewal Law. This is
6 because Defendant intentionally does not train coaches to walk consumers through the requirements of
7 the ARL and obtain sufficient consent.

8 30. Furthermore, coaches are trained to enroll consumers in Optavia Premier (the automatic
9 renewal program) via the Optavia website. As detailed above, the website flow automatically enrolls
10 the consumer in Premier (using a pre-checked box). This is designed, by Defendant, so that the coach
11 does not have to affirm that the consumer affirmatively consented to automatic renewal.

12 31. In this way, Defendant systematically fails to train coaches to comply with the
13 Automatic Renewal Law.

14 32. Defendant has exclusive knowledge of material facts not known to Plaintiffs and other
15 reasonable consumers: that Defendant is enrolling consumers in an automatic renewal program, without
16 sufficient disclosures or consent. Defendant makes partial disclosures but omits material facts when it
17 actively trains coaches to give disclosures on all the information identified above, but does not train
18 coaches to comply with the ARL. And Defendant does train coaches to misleadingly suggest that they
19 are only placing an initial order, when in reality the website automatically enrolls the customer for
20 recurring orders.

21 33. Defendant's failure to train its coaches to comply with the ARL when selling
22 Defendant's products and services to a vulnerable cohort of consumers who seek solutions to weight
23 loss problems violates California law and specifically Section 17602(a)(3).

24
25
26
27 ² Before discovery, Defendant has unique access to any training or materials actually provided to
28 Plaintiffs' coaches, by Defendant. Plaintiffs make these allegations based on their own interactions with
their coaches, which are now described in detail below.

1 **4. Defendant’s post-order acknowledgment violates Automatic Renewal Law**
2 **and misleads reasonable consumers.**

3 34. After consumers are enrolled in Optavia Premier, Defendant sends consumers an email
4 confirming their purchase (the “Acknowledgement Email”). A true and correct copy of Plaintiff
5 Zeller’s Acknowledgement Email is attached hereto as Exhibit “A.” The subject line of the
6 Acknowledgement Email states: “Optavia Order confirmation:” with an order number listed. A
7 screenshot example of the Acknowledgement Email appears as follows:



12

13 Hi Jamie,

14 Thanks for your OPTAVIA® order US113512101. It's great to see you're making another healthy decision on the way to a healthier you, living your best life.

15 OPTAVIA's accelerated growth and increased product demands, as well as challenges in supply chains worldwide, have led to extremely high order volumes, longer processing times at distribution centers, and delivery delays. Your independent OPTAVIA Coach and OPTAVIA Support Teams cannot expedite order processing or delivery when calling.

16 Once we've shipped your order we'll send an email with tracking details. Transit times may vary depending on your location.

17 For additional information on order tracking, and more, please refer to this [HELP ARTICLE](#).

18 We are working around the clock to fill your order. We apologize for the delay and appreciate your patience and understanding.

19 Don't forget, if you're an OPTAVIA Premier member, your order qualifies for Rewards and even free shipping on qualifying orders. See below details.

20 Your OPTAVIA Team

21 For information about returns, please [click here](#).

22 **Don't miss out - thousands of people like you are already benefiting from OPTAVIA Premier membership.**

23 OPTAVIA Premier offers free shipping on all orders over \$250 and Rewards of \$5 shipping on all order between \$150 - \$249.99.

24 Interested? Talk to Susan, your OPTAVIA Coach, for more information.

25 *To receive all the benefits of OPTAVIA Premier place an order every 60 days. If you haven't placed an order in the past 60 days, your next OPTAVIA Premier order of \$150 or more will earn Rewards, but won't qualify for the free or flat rate of shipping discount. For more information please visit: [OPTAVIA Premier Terms and Conditions](#)*

26 35. The Acknowledgement Email does not contain any information to inform the consumer
27 about Defendant’s auto-renewal policy or cancellation policy. Most notably, the Acknowledgement
28 Email does not inform the consumer that she has enrolled in Optavia Premier and that it is a
membership program that will charge her payment method on a recurring and monthly basis. To the

1 contrary, the Acknowledgement Email appears to indicate that the consumer is not an Optavia Premier
2 member as the body of the email states: “Don’t miss out - thousands of people like you are already
3 benefiting from OPTAVIA Premier membership.” The Acknowledgement Email further states, “Don't
4 forget, if you're an OPTAVIA Premier member, your order qualifies for Rewards and even free
5 shipping on qualifying orders.” Given these confusing and misleading statements, a reasonable
6 consumer would conclude that she is not an Optavia Premier member. Additionally, the
7 Acknowledgement Email does not disclose the following information:

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

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

19 36. As such, the Acknowledgement Email fails to “include[] the automatic renewal offer
20 terms ..., cancellation policy, and information regarding how to cancel in a manner that is capable of
21 being retained by the consumer” in violation of Section 17602(a)(3).

22 **5. Defendant fails to provide a “cost-effective, timely, and easy-to-use**
23 **mechanism for cancellation.” Instead, Defendant systematically continues**
24 **to charge consumers who try to delay, cancel, or return shipments.**

25 37. As described above, the ARL requires that Defendant conspicuously present its full
26 cancellation policy at the time of purchase and provide a post-sale acknowledgment identifying an easy
27 and efficient mechanism for consumers to cancel their subscriptions. Defendant’s coaches, website and
28 Acknowledgement Email fail to satisfy either of these requirements. Instead, Defendant systematically

1 makes it confusing and difficult to cancel Optavia Premier subscriptions and continue to charge
2 consumers who have attempted to cancel.

3 38. With respect to cancellation, the relevant portion of the checkout page states: "I can
4 modify my order or cancel my membership at any time by calling 1-888-OPTAVIA or by logging into
5 my online Optavia account." This vague description of the cancellation procedure is not a sufficient
6 disclosure. Moreover, BBB complaints show that canceling Optavia's automatic renewals can be
7 difficult, frustrating, and time-consuming. Worse, Optavia fails to honor requests to delay, refund, or
8 cancel orders, and continues to fraudulently charge consumers.

9 39. The following screenshots of customer complaints from the BBB website are
10 illustrative:

11 12/01/2021

12 This company puts you automatically on an autoship policy. The order has not even
13 shipped and was in process just today. I called and wanted them to refund my money
14 and they were not helpful. I explained I do not want my account on autoship and if the
15 order has not shipped they should be able to cancel the order. I was given the run
16 around about opening a case and having to do a return to distributor on their end and
17 even so it wasn't 100% guaranteed to get my money back. If they are doing an "in
18 house" return then I should get my money!!! They shouldn't tie peoples money up with all
19 of this back and forth!!! It's ridiculous!! I just want the money taken from my account put
20 back in as the order has not even SHIPPED to me at all!!!

21 **Desired Outcome**

22 Refund

23 09/28/2021

24 On June 30th 2021 Optavia shipped a box of products to my home which was received
25 on July 12th. the cost of the box was \$299.67. I intern cancelled my services with
26 Optavia and returned the box to them. My bank card was not charged the \$299.67 at the
27 time. The box was returned via USPS with a tracking #XXXX XXXX XXXX XXXX XXXX
28 XX and received by them on July 26, 2021 at 11:30. On September 27, 2021 I received
an e-mail that Optavia stating that they were going to charge me for the 299.67. I called
them and gave them the tracking # but they still have made attempts to charge my card.
I have called 3 times only to be told they have forwarded the case to the operations
department without the case being resolved. I want my card information removed from
Optavias system and for them to stop attempting to put this charge on my card. My bank
has been made aware. At 9:30am 9/28 Optavia made another attempt to charge my
card.

Desired Outcome

No further contact by the business

07/20/2021

I was sent an email on on July 4th that my box was to ship. I called customer service and asked that they cancel cancel this shipment. I went in and canceled my account out. I was assured that The shipment would be stopped and the money would not come from my account. On July 17th I received an email that my Box was shipping. I called customer service was told they would try to stop the shipment. July 18th, the money was taken out of my account, but the tracking number showed that it had not yet shipped. I called customer service. Spoke w a supervisor, she samtated they would escalate the issue w their operations support team. 7/20, called again. Box still showing as label being created. Being told they still need to try to intercept box, but can't put money back into my acct. Even though, bills i paid are bouncing because they took the money w out my authorization or w out me receiving product. They give me the same scripted answer when i call. I need help!

Desired Outcome

Refund

07/16/2021

Date of transaction: 7/16/21 I ordered a nutrition program from Optavia 5/13/21 for \$364. On 7/1/21 I canceled my future orders. I noticed that \$419 was removed from my bank account from Optavia. I have been on the phone with their customer support all morning and the order HAS NOT even shipped yet and they refuse to issue a refund. Please help

Desired Outcome

Refund

07/14/2021

In lake June 2021 I received notice that my order was going to ship in seven days. I logged into my account and canceled the order, only to get notification on July 1, 2021, that my order is shipping. I called that morning and talked to client support, which told me they are canceling my order and future repeat orders. At that time I had not been charged. Today, July 14, 2021, I was charged \$633.61 for the order I canceled. When I called Client Support again today I was told they need to get the package, which has not been mailed, back before they can refund the money. 1) The order was canceled two weeks ago, and 2) the order still has not been shipped or filled as only a tracking label has been created. They cannot give me a time or estimate of when this will be fixed, even after it should not have happened.

Desired Outcome

Refund

07/02/2021

On June 30, 2021 at 10:00am a health coach from Optavia sold me on their food and health plan, she told me that my credit card would not be charged for 3 weeks when the food was mailed to me. She also said that I could cancel my order at anytime. On the same day, June 30, 2021 at 2:58pm I let the health coach know that I did not want the food and I wanted to cancel my order. The next morning, July 1, 2021 at 9:21am the health coach told me that my order could not be canceled. I then checked with my credit card company and my card was already charged but a customer representative from Optavia told me that my order was not shipped. Now I have to wait 3 weeks, receive the order, and then at my expense (because Optavia does not send prepaid return labels) return it and wait for a refund. I want my order canceled now and my credit card refunded- as it should not have been charged in the first place because nothing was shipped to me. This company is a scam to take my money.

Desired Outcome

Refund

* * *

40. In sum, for every subscription product purchased from the Optavia website, Defendant fails to make the legally required disclosures, fails to obtain affirmative consent for automatic recurring charges, misrepresents and conceals material facts regarding Optavia Premier, and misleads reasonable consumers into thinking that they are simply making a one-time purchase. Defendant then makes it difficult to cancel and fraudulently continues to charge consumers who seek refunds or cancellation. And as described next, Defendant does all of this knowingly.

6. Defendant knows that its automatic renewal scheme is misleading consumers.

41. Defendant is well aware that its auto-enrollment scheme is deceiving consumers. Through the BBB, Optavia has received hundreds of complaints from customers.

42. The complaints listed on the BBB website echo Plaintiffs' experience, as consumers complain that they were unaware that they would be auto-enrolled in a monthly subscription plan. The following complaints are illustrative:

Chayah M

★☆☆☆☆

12/02/2021

1 This company's dark pattern practices online results in holding your personal information and
2 credit info hostage leading to unwanted monthly orders. I've repeatedly requested my
3 information be deleted from their database only to be given a link to go to, on their policy
4 page, where you have to sift through paragraphs of irrelevant information to find the place to
5 then fill out another form that creates a "case #" to request your credit card and contact info be
6 removed from their database. Despite cancelling an order within 24 hours of my initial
7 introduction to this company, I had another order placed on my credit card 30 days later that I
8 then had to request be cancelled again and tried to get my information removed from their
9 system only to be emailed the same policy page link to ask for my information to be removed
10 again. I have stated unequivocally to this company that I will never do business with them yet
11 they continue to email me. This is a terrible company and there should be federal legislation
12 against this type of consumer abuse and privacy violations.

13 05/25/2021

14 My coach placed my order via debit card on May 15th for a \$416 dollar kit. My kit still
15 says it's "in processing" but my BF ordered after me (a week later) and his has been
16 shipped. I called customer service and was told " we are experiencing demands we can't
17 meet and deliveries are taking longer than usual. Most of our orders are being shipped
18 out without tracking" So, I paid \$416 and have no idea if it shipped or not and who knows
19 where it is? I went through my bank statements and it doesn't even show charged even
20 though I was told it was? Best thing? I found out that I was signed up for automatic
21 shipping/bill and I wasn't even informed of this? My next scheduled shipment is June
22 11th and I haven't even received my first box but they have me already scheduled? I
23 have no food and no way to track where it is but my bf who orders after me has tracking
24 and his box??? Help?

25 **Desired Outcome**

26 Contact by the business

27 05/03/2021

28 I did not sign up for "autoship" and feel this business practice is deceptive. I have
requested for order #***** to be canceled and NOT SHIPPED while it is still showing
as in process and has, in fact, not already shipped. The "customer service rep" denied
saying there is simply no way to do that. That she would send me a return label simply
so that I have to pay for shipping to Optivia and again to ship it back. I am requesting for
the \$341.59 to be immediately refunded to my credit card and if they continue to refuse
to cancel the order, that they send me a prepaid shipping return label for this false
shipment to be returned. Additionally, I am requesting for my credit card information to
be removed from the Optivia database to ensure no further unauthorized charges can be
made to my account.

Desired Outcome

I am requesting for the \$341.59 to be immediately refunded to my credit card and if they
continue to

1 Saadya H

2 ★☆☆☆☆

07/08/2020

3 Optavia products cause severe GI issues which aren't resolved by discontinuing their snack
4 bars or fuel bars. The ingredients in their products have caused severe GI issues starting from
5 day 2 and day 4th on their products was full blown symptoms that impaired functioning for that
6 day. Contacting the agency has long wait time which was already mentioned by their rep. One
7 wonders why the long wait time is predicted! Their selling involves zero disclosure as to what
8 the company name is, how much would be charged as a whole to one's cc and enrolling in
9 automatic renewal of products without client's consent. To cancel a cc on file isn't an option on
10 their website either. I was made aware by my cc company when I lost my wallet and found out
11 that my cc info was put on default on company's website and that I had no way of cancelling
12 my cc info. I do not appreciate being signed up for something based on trusting a rep and
13 given zero information/disclosure on company name, and cost of products in order to form my
14 own informed decision in the end.

06/12/2020

11 Billed for an order i did not want. They did auto re order and charged me \$447 that i did
12 not authorize or want. They refused to cancel the order. So i had my bank dispute the
13 charge. The charge was dropped from my pending. That was Monday 6/8. I woke up
14 today with a new charge for the same order.

13 **Desired Outcome**

14 I want my money back and for them to not do this to other people.

04/12/2019

16 Company sells products, with a return guarantee. Still waiting for a return filed months
17 ago... This is easy, their "coach" sets up their "auto order" system. It is auto populated to
18 continue sending you random products... it "auto ordered" us over \$500 worth of food,
19 that we did not want... Nobody will answer the phone, and nobody will give us our money
20 back. This is fraud, pure and simple...

19 **Desired Outcome**

20 A full refund.

03/05/2019

1
2 Automatically charged for a order I did not make or want On February 4th a order was
3 placed by my Optavia coach (can provide name if needed) for my starter kit costing
4 \$356.15. I was told he had to place my first order for me. Never was I told my card would
5 automatically be charged every month after. On March 4th I received a email at 3am that
6 I was charged for my second order #***** costing 425.28 which I did not place or
7 approve. I went online and got into my profile which my coach had set up and cancelled
8 the order at 4:56 am cancellation #*****. That same morning I called the 888-*****
9 which gave a busy signal. I called my Optavia coach and informed him and he said he
10 was sorry and would also call to have my order cancelled. I called the same number
11 multiple times till I got through after holding for 1 hour and 47 minutes. I spoke to
12 Marquis who could not give a last name. He said he saw the order was placed at 3am
13 that morning and was going to put in a form to have the order canceled but wasn't sure if
14 it would be in time. He said I was going to receive a email that this cancellation was
15 made. After not receiving the email today I called back and again got a busy signal. After
16 holding for 1 hour and 25 minutes I spoke to Marquis again and he then told me they
17 don't send out emails when a RT form is sent. I asked to speak to a supervisor and
18 spoke with Amika who said I would only receive a email if the cancellation was
19 successful or to let me know if it was not. I asked to have a second email added to my
20 information because I seemed to not be receiving any emails besides when being
21 charged. I also asked Amika for a direct email to Optavia and she said she did not have
22 one. They have you send emails through their website which leaves you no proof of ever
23 trying to contact them. This company is clearly a pyramid and scam company . The
24 coaches make money off everyone they get to join Optavia and that is why they place
25 your order and don't tell you of future charges. How can a order that has only been
26 placed hours before being cancelled not be cancelled on the company's end. Why are
27 there not emails provided or working phone numbers. They make it as hard as possible
28 to get your refund. After reading multiple complaints which I had wish I had seen prior. I
see that their next move is to still send the order and then when you return it say they
never got it. This company needs to be shut down so people don't continue to be
scammed.

Desired Outcome

All I want is my order to be cancelled. I don't want it sent and then have to play their
return game. I want my full refund of \$425.28 asap.

19 43. There are hundreds more similar complaints on the BBB website, and many of these
20 complaints contain various responses from Optavia, which demonstrates Optavia's knowledge of the
21 problems.

22 44. Thus, after receiving hundreds of complaints from customers who were misled about
23 Optavia's auto-recurring charges, Defendant knew or should have known that it was misleading
24 consumers.

7. Defendant misled and harmed Plaintiffs Zeller and Alpert.

25 45. As has been reported for years, the United States is facing an obesity epidemic. Excess
26 weight and obesity are major contributors to chronic diseases and present a serious public health
27
28

1 challenge. As a result, Americans spend billions of dollars every year on weight loss products and
2 services.

3 46. As a result, the weight loss industry is an area where consumers looking for a solution
4 are particularly vulnerable to deceptive sales tactics.

5 47. The law recognizes this vulnerability and seeks to protect consumers like Plaintiffs and
6 class members by mandating that companies like Defendant provide overt and conspicuous disclosures
7 to consumers before signing them up for continuous charges that automatically renew (ARL).

8 48. Like other reasonable consumers, Plaintiffs Zeller and Alpert were misled because they
9 believed they were only making a one-time purchase, when in fact Defendant and Defendant's agents
10 were signing Plaintiffs up for recurring monthly subscription charges without their knowledge or
11 consent.

12 **Plaintiff Zeller**

13 49. In the summer of 2021, Plaintiff Zeller was interested in losing weight. She was
14 solicited by her coach to try Optavia.³ Ms. Zellers' coach described the weight loss and health benefits
15 of the products and services, instructed Ms. Zeller to take body measurements and photos, pointed Ms.
16 Zeller to recipe resources, gave her hunger-management and diet tips, and instructed her on what
17 Optavia products to eat and when. Ms. Zeller's coach also told Ms. Zeller that the coach could place an
18 order for her, and took Ms. Zeller's payment information, without mention of automatic renewal. This
19 reasonably suggested to Ms. Zeller that her coach was just placing a one-time order. All of this was
20 pursuant to how Optavia trains its coaches.

21 50. On or about July 3, 2021, Plaintiff Zeller purchased the Optavia Essential Optimal Kit
22 (5&1 Plan) from the Optavia Website through her coach. Plaintiff Zeller was auto-enrolled in Optavia
23 Premier without her knowledge or consent (much less the required affirmative consent). At the time of
24 purchase and enrollment, Plaintiff Zeller provided her credit card information to Defendant, via her
25 coach.

27 ³ Plaintiffs are suing Defendant (not its coaches) and do not name their coaches here, to avoid
28 unnecessarily invading their privacy. Defendant knows the identity of Plaintiffs' coaches, through its
own records.

1 51. Prior to giving her consent to the offer to buy Defendant’s products and services through
2 Optavia Premier on or about July 3, 2021, Plaintiff Zeller did not receive any disclosures from her
3 coach or otherwise: (a) that Optavia Premier is a subscription program with automatic renewal terms;
4 (b) that delivery of Optavia products and services will continue every month until she cancels; (c) that
5 Optavia Premier has a cancellation policy with terms; (d) that recurring charges will be charged to
6 Plaintiff Zeller’s payment method every month in a specific amount; and/or (e) that monthly delivery of
7 the products and services with associated charges will be continuous with no expiration date.

8 52. After Plaintiff Zeller completed her initial purchase, Defendant sent Plaintiff Zeller an
9 Acknowledgement Email confirming that Defendant had processed a charge of \$409.60 to Plaintiff
10 Zeller’s credit card. Plaintiff Zeller’s Acknowledgement Email is misleading and defective in several
11 respects. As illustrated above, it does not disclose the renewal policy, or the renewal terms, or the
12 amount of the monthly charge, or the length of time that auto-renewal will continue. Plaintiff Zeller’s
13 Acknowledgement Email also failed to provide notice of the cancellation policy for Optavia Premier.

14 53. As a result of Defendant’s misrepresentations and deficient disclosures, when Plaintiff
15 Zeller was enrolled, she was unaware that Defendant had enrolled her in an “automatic renewal”
16 program under which she would be charged for products each month. Plaintiff believed she was just
17 signing up for a one-time purchase.

18 54. After Plaintiff Zeller’s initial purchase in July 2021, Defendant began automatically
19 charging her for renewals. Ms. Zeller’s card was automatically charged for the following Optavia
20 orders:

Date	Charge
8/5/21	\$421.67
9/2/21	\$386.83
10/1/21	\$202.27
10/29/21	\$190.19

21
22
23
24
25
26
27 55. In or around November 2021, Plaintiff sought to cancel her Optavia Premier
28 membership in order to cease the automatically-renewing and recurring charges. Optavia’s online

1 cancellation procedure was a multi-step process that was needlessly time-consuming. On or around
2 December 2, 2021, Plaintiff received confirmation of cancellation.

3 56. If Plaintiff Zeller had known that Defendant was automatically enrolling her in a
4 subscription program with monthly recurring charges to her payment method, she would not have
5 purchased any products from Optavia (much less recurring purchases).

6 **Plaintiff Alpert**

7 57. In the summer of 2020, Plaintiff Alpert was interested in losing weight. She was
8 solicited by her coach, to try Optavia. Plaintiff Alpert's coach advised her to not weigh herself more
9 than once per week and to manage her hunger by drinking more water. Just after the time she signed
10 up for Optavia, Plaintiff Alpert planned to leave on a camping vacation and her coach suggested that
11 Alpert could begin the diet meals after Alpert returned from her trip, and her order would be waiting for
12 her. Ms. Alpert's coach told Ms. Alpert that the coach could place an order for her, and took Plaintiff
13 Alpert's payment information, without mention of automatic renewal. This reasonably suggested to
14 Ms. Alpert that her coach was just placing a one-time order. All of this was pursuant to how Optavia
15 trains its coaches.

16 58. On or about August 9, 2020, Plaintiff Alpert purchased the Optavia Essential Optimal
17 Kit (5&1 Plan) and Habits of Health System from the Optavia Website through her coach. Plaintiff
18 Alpert was auto-enrolled in Optavia Premier without her knowledge or consent (much less the required
19 affirmative consent). At the time of purchase and enrollment, Plaintiff Alpert provided her credit card
20 information to Defendant, via her coach.

21 59. Prior to giving her consent to the offer to buy Defendant's products and services through
22 Optavia Premier on or about August 9, 2020, Plaintiff Alpert did not receive any disclosures from her
23 coach or otherwise: (a) that Optavia Premier is a subscription program with automatic renewal terms;
24 (b) that delivery of Optavia products and services will continue every month until she cancels; (c) that
25 Optavia Premier has a cancellation policy with terms; (d) that recurring charges will be charged to
26 Plaintiff Alpert's payment method every month in a specific amount; and/or (e) that monthly delivery
27 of the products and services with associated charges will be continuous with no expiration date.
28

1 60. After Plaintiff Alpert completed her initial purchase, Defendant sent her an
2 Acknowledgement Email confirming that Defendant had processed a charge of \$451.17 to her credit
3 card. This email was very similar to the email sent to Plaintiff Zeller, and was equally defective, as
4 described above.

5 61. Around September 16, 2020, Plaintiff Alpert's payment method was automatically
6 charged (for \$364.65) and shortly thereafter a new order showed up at her house that she did not want.
7 She told her coach that she wanted to cancel immediately, but her coach persuaded her to pause her
8 orders for a month.

9 62. In November, before she received another order, Ms. Alpert attempted to cancel online,
10 but was unable to cancel. She then instructed her coach to cancel for her. She received a confirmation
11 of cancellation on November 18, 2020.

12 63. If Plaintiff Alpert had known that Defendant was automatically enrolling her in a
13 subscription program with monthly recurring charges to her payment method, she would not have
14 purchased any products from Optavia (much less recurring purchases).

15 **V. Class action allegations.**

16 64. Plaintiffs bring this action on behalf of a class of similarly situated individuals. The
17 Class is defined as follows:

18 All Optavia customers in the state of California who purchased Optavia products and were
19 enrolled in Optavia Premier, within the governing statute of limitations period.

20 65. Excluded from the Class are officers and directors of Defendant, members of the
21 immediate families of the officers and directors of Defendant, and their legal representatives, heirs,
22 successors or assignees and any entity in which they have or have had a controlling interest. Also
23 excluded are all federal, state and local government entities; and any judge, justice or judicial officer
24 presiding over this action and the members of their immediate families and judicial staff.

25 ***Numerosity***

26 66. Plaintiffs do not know the exact size of the Class, since this information is in the
27 exclusive control of Defendant. Plaintiffs believe, however, that based on Defendant's assertions, the
28 Class encompasses hundreds of thousands of individuals whose identities can be readily ascertained

1 from Defendant's records. Accordingly, the members of the Class are so numerous that joinder of all
2 such persons is impractical.

3 ***Ascertainability***

4 67. The Class is ascertainable because its members can be readily identified using data and
5 information kept by Defendant in the usual course of business.

6 ***Typicality***

7 68. Plaintiffs Zeller and Alpert are typical and adequate class representatives. Their claims
8 are typical of the claims of the Class and do not conflict with the interests of any other members of the
9 Class. Plaintiffs and the other members of the Class were subject to the same or similar deceptive
10 marketing and billing practices. Further, Plaintiffs and members of the Class sustained substantially the
11 same injuries and damages arising out of Defendant's conduct, including unjust purchase and renewal
12 fees. Plaintiffs will fairly and adequately protect the interests of all Class members. Plaintiffs have
13 retained competent and experienced class action attorneys to represent their interests and those of the
14 Class.

15 ***Commonality and Predominance***

16 69. Questions of law and fact are common to the Class and predominate over any questions
17 affecting only individual Class members, and a class action will generate common answers to questions
18 that drive the resolution of this case. For example, common questions of law and fact include the
19 following:

- 20 • Whether Defendant's pre-purchase conduct constitutes unfair, unlawful and/or
21 fraudulent practices prohibited by the laws of California;
- 22 • Whether Defendant's post-purchase conduct constitutes unfair, unlawful and/or
23 fraudulent practices prohibited by the laws of California;
- 24 • The extent of class-wide injury and the measure of restitution for those injuries.

25 ***Superiority***

26 70. A class action is superior to all other available methods for resolving this controversy
27 because: i) the prosecution of separate actions by Class members will create a risk of adjudications with
28 respect to individual Class members that will, as a practical matter, be dispositive of the interests of the

1 other Class members not parties to this action, or substantially impair or impede their ability to protect
2 their interests; ii) the prosecution of separate actions by Class members will create a risk of inconsistent
3 or varying adjudications with respect to individual Class members, which will establish incompatible
4 standards for Defendant's conduct; iii) Defendant has acted or refused to act on grounds generally
5 applicable to all Class members; and iv) questions of law and fact common to the Class predominate
6 over any questions affecting only individual Class members.

7 **VI. Claims.**

8 **Count 1: False Advertising Law (FAL)**

9 **(by Plaintiffs and the Class)**

10 71. Plaintiffs re-allege and incorporate by reference each and every allegation contained in
11 Sections I-VI, as if fully set forth herein.

12 72. Plaintiffs bring this claim individually and on behalf of each member of the Class.

13 73. The FAL authorizes a private right of action for any violation of Chapter 1, of which the
14 California Automatic Renewal Law (ARL) is a part. *See* Cal. Bus. & Prof. Code § 17535.

15 74. As alleged in detail above, Defendant violated the ARL in numerous, independent ways:

- 16 • Defendant failed to present the terms of its automatic renewal or continuous service
17 offer in a clear and conspicuous manner before fulfilling the subscription and in visual
18 proximity to the request for consent to the offer, as required by Cal. Bus. & Prof. Code
19 §17602(a)(1);
- 20 • Defendant charged Plaintiffs and the Class's credit or debit cards, or the consumer's
21 account with a third party, for an automatic renewal or continuous service without first
22 obtaining the consumer's affirmative consent to the agreement containing the automatic
23 renewal offer terms or continuous offer terms, as required by Cal. Bus. & Prof. Code
24 §17602(a)(2);
- 25 • Defendant failed to provide an acknowledgment that includes the automatic renewal
26 offer terms or continuous offer terms, cancellation policy, and information regarding
27 how to cancel, and to allow Plaintiffs and the Class to cancel the automatic renewal or
28

1 continuous service before they paid for it, as required by Cal. Bus. & Prof. Code
2 §17602(a)(3); and

- 3 • Defendant failed to provide a cost-effective, timely, and easy-to-use mechanism for
4 cancellation described in Cal. Bus. & Prof. Code §17602(a)(3), as required by Cal. Bus.
5 & Prof. Code §17602(b).

6 75. Plaintiffs were injured by Defendant’s misconduct because it caused Plaintiffs to spend
7 money on Optavia products that they would not otherwise have spent.

8 76. As a result of Defendant’s misconduct, pursuant to Cal. Bus. & Prof. Code §17603, all
9 recurring Optavia Premier shipments are treated as unconditional gifts, and Plaintiffs and the Class are
10 entitled to restitution of all amounts that Defendant charged or caused to be charged to Plaintiffs and
11 Class members’ payment methods during the applicable statute of limitations and continuing until
12 Defendant’s statutory violations cease.

13 **Count 2: Unfair Competition Law (UCL)**

14 **(by Plaintiffs and the Class)**

15 77. Plaintiffs re-allege and incorporate by reference each and every allegation contained in
16 Sections I-VI, as if fully set forth herein.

17 78. Plaintiffs bring this claim on their own behalf and on behalf of each member of the
18 Class.

19 79. Cal. Bus. & Prof. Code §17200, *et seq.* (the “UCL”) prohibits acts of “unfair
20 competition,” including any unlawful, deceptive and unfair business acts or practices.

21 ***Unlawful***

22 80. Under the “unlawful” prong of the UCL, a violation of another law is treated as unfair
23 competition and is independently actionable. Defendant committed unlawful practices because, as
24 alleged above and incorporated here, it violated the California Automatic Renewal Law.

25 ***Unfair***

26 81. As alleged in detail above, Defendant committed “unfair” acts by deceiving consumers
27 into signing up for auto-recurring shipments, making it difficult to cancel, and continuing to charge
28 consumers who sought refunds or cancellations.

1 82. The harm to Plaintiffs and the Class greatly outweighs the public utility of Defendant’s
2 conduct. There is no public utility to deceptive automatic renewal practices. This injury was not
3 outweighed by any countervailing benefits to consumers or competition. Misleading auto-renewal
4 practices only injure healthy competition and harm consumers.

5 83. Plaintiffs and the Class could not have reasonably avoided this injury. As alleged above,
6 Defendant’s representations were deceiving to reasonable consumers like Plaintiffs. There were
7 reasonably available alternatives to further Defendant’s legitimate business interests, such as complying
8 with the Automatic Renewal Law and providing appropriate disclosures and an effective cancellation
9 policy.

10 *Deceptive*

11 84. Defendant’s acts, omissions, nondisclosures, and misleading statements, as alleged in
12 detail above, were false, misleading, and/or deceptive to reasonable consumers.

13 85. Plaintiffs saw and relied upon Defendant’s misleading representations and omissions, as
14 detailed above. Class-wide reliance can be inferred because Defendant’s misrepresentations and
15 omissions were material, i.e., a reasonable consumer would consider them important in deciding
16 whether to buy Optavia products.

17 86. Defendant’s unlawful, unfair, and deceptive conduct was a substantial factor and
18 proximate cause of damages and losses to Plaintiffs and Class members.

19 87. As a result of Defendant’s unlawful, deceptive, and unfair business practices, Plaintiffs
20 and the Class have suffered an injury and have lost money in an amount to be determined at the trial of
21 this action. Plaintiffs were injured by Defendant’s misconduct because it caused Plaintiffs to spend
22 money on Optavia products that they would not otherwise have spent.

23 88. As a result of Defendant’s misconduct, pursuant to Cal. Bus. & Prof. Code §17603, all
24 recurring Optavia Premier shipments are treated as unconditional gifts, and Plaintiffs and the Class are
25 entitled to restitution of all amounts that Defendant charged or caused to be charged to Plaintiffs and
26 Class members’ payment methods during the applicable statute of limitations and continuing until
27 Defendant’s statutory violations cease.

1 **VII. Prayer for Relief.**

2 89. Plaintiffs seek the following relief on behalf of themselves and the Class:

- 3 • An order certifying the asserted claims, or issues raised, as a class action;
- 4 • An order appointing Plaintiffs as Class Representatives, and designating Golomb Legal
- 5 and Dovel & Luner as Class Counsel;
- 6 • A judgment in favor of Plaintiffs and the Class on the claims and issues raised;
- 7 • Restitution, disgorgement, and other just equitable relief;
- 8 • An injunction commanding Defendant to comply with the ARL;
- 9 • Pre- and post-judgment interest, costs, reasonable attorneys' fees, costs, and expenses;
- 10 and
- 11 • All such other relief as the Court deems appropriate.

12 **VIII. Jury Demand.**

13 90. Plaintiffs and the Class demand the right to a jury trial on all claim so triable.

14
15 Dated: March 21, 2024

Respectfully submitted,

16 By:  _____

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