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County of San Diego
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Clerk of the Superior Court
By G. Lopez ,Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10

11 MARY RICKEY,
12 individually and on behalf of all others
similarly situated,

13 Plaintiff,

14 vs.

15 BALLER, INC.,
16 a Delaware corporation;
17 and DOES 1-50, inclusive,

18 Defendants.
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21
22

CASE NO. 37-2022-00044840-CU-BT-CTL

CLASS ACTION

SECOND AMENDED CLASS ACTION
COMPLAINT FOR :

(1) FALSE ADVERTISING

[Bus. & Prof. Code, § 17500 & § 17535];

(2) FALSE ADVERTISING – BASED ON
VIOLATION OF THE CALIFORNIA
AUTOMATIC RENEWAL LAW

[Bus. & Prof. Code, § 17600 et seq. & § 17535];
and

(3) UNFAIR COMPETITION

[Bus. & Prof. Code, § 17200 et seq.]

[IMAGED FILE]

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INTRODUCTION

1. Defendant Baller, Inc. (“Baller” or “Defendant”) provides live video, replays, recorded video downloads, and other recorded video material of certain youth and collegiate athletic events, for which Baller offers and sells subscriptions to the general public. Baller offers its goods and services under trade name “BallerTV,” and conducts business through the website www.ballertv.com.

2. In this complaint, Plaintiff alleges that Baller violates California law by (without limitation) falsely advertising the pricing of its subscriptions; enrolling consumers in automatic renewal subscriptions without first providing the clear and conspicuous disclosures mandated by California law; charging consumers for automatic renewal subscriptions without first obtaining the consumer’s affirmative consent to an agreement that contains clear and conspicuous disclosure of required automatic renewal offer terms; and failing to provide consumers with an acknowledgment mandated by California law. This conduct violates several California consumer protection statutes, including but not limited to Business and Professions Code § 17500 (false advertising); the California Automatic Renewal Law (Bus. & Prof. Code, § 17600 et seq.) (“ARL”), which is part of the False Advertising Law; and the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) (“UCL”).

3. This action seeks restitution for Plaintiff and other affected California consumers. Plaintiff also seeks a public injunction for the benefit of the general public.

THE PARTIES

4. Plaintiff Mary Rickey (“Plaintiff”) is an individual residing in San Diego County, California.

5. Baller, Inc. is a corporation organized under the laws of Delaware and maintains its principal place of business in Pasadena, California. Baller does business in San Diego County, including the advertising, promotion, and sale of subscriptions and video material.

6. Plaintiff does not know the names of the defendants sued as DOES 1 through 50 but will amend this complaint when that information becomes known. Plaintiff alleges on information and belief that each of the DOE defendants is affiliated in some respect with the named defendant

1 and is in some manner responsible for the wrongdoing alleged herein, either as a direct participant,
2 or as the principal, agent, successor, alter ego, or co-conspirator of or with one or more of the other
3 defendants. For ease of reference, Plaintiff will refer to the named defendant and the DOE
4 defendants collectively as “Defendants.”

5 **VENUE**

6 7. Venue is proper in this judicial district because Baller does business in this judicial
7 district and a material part of the conduct at issue occurred in this judicial district.

8 **BALLER’S SUBSCRIPTION OFFERS**

9 8. Through the website www.ballertv.com, Baller presents consumers with subscription
10 options. Relevant to Plaintiff’s transaction, Baller offered a “Gold” plan offered at \$19.99 per
11 month; a “Silver” plan offered at \$12.99 per month; and a “Bronze” plan offered at \$7.99 per month.
12 The plans vary in terms of the number of live events and the number of downloads that can be
13 accessed or made per month, the number of allowable simultaneous viewers, and a few other details.
14 After selecting a plan, the consumer can enter credit or debit card information to complete the
15 purchase.

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1 9. The pertinent portion of the BallerTV website order page is shown below, a true and
2 correct copy of which is attached hereto as Exhibit 1.

The screenshot displays three membership tiers for BallerTV. The Silver tier is selected, indicated by a blue checkmark and a blue border. Each tier lists its price per month and a set of features, some with green checkmarks and others with red X marks. The Silver tier includes 3 live events, 3 game downloads, unlimited HD replays, up to 3 simultaneous viewers, event viewership stats, and no recruiting view report. The Gold tier includes unlimited live events, 5 game downloads, unlimited HD replays, up to 5 simultaneous viewers, event viewership stats, and a recruiting view report. All plans include unlimited HD replays and game highlights for all games on BallerTV.

Plan	Price	Key Features
Bronze (The Basic)	\$7.99 per month	1 live event per month, 1 game download per month, Unlimited HD replays, No simultaneous viewers, No Event Viewership Stats, No Recruiting View Report
Silver (The Super Fan)	\$12.99 per month	3 live events per month, 3 game downloads per month, Unlimited HD replays, Up to 3 simultaneous viewers, Event Viewership Stats, No Recruiting View Report
Gold (The Recruit)	\$19.99 per month	Unlimited live events per month, 5 game downloads per month, Unlimited HD replays, Up to 5 simultaneous viewers, Event Viewership Stats, Recruiting View Report

15 All plans include unlimited HD replays and game highlights for all games on BallerTV

The screenshot shows a payment information form on a blue background. It includes a 'Payment Info' header with logos for VISA, AMEX, and Mastercard. There are input fields for 'Card number' and 'MM / YY CVC'. A link for 'Have a Promo Code?' is present. A prominent blue button reads 'Subscribe Now - Silver'. Below the button, a disclaimer states: 'Upon clicking Subscribe you will be charged for a BallerTV membership. At the end of your membership, your subscription will automatically renew and your payment method on file will be charged \$155.88 each billing period.' A final line of text says: 'You may pause or cancel your subscription at any time by self-service via your Account Settings or by contacting support@ballertv.com'.

1 **SUMMARY OF APPLICABLE LAW**

2 **False Advertising (Bus. & Prof. Code, § 17500)**

3 10. California’s False Advertising Law (“FAL”) makes it unlawful, in connection with
4 any effort to induce the public to enter into any obligation relating to property or services, to
5 disseminate any statement that is known to be untrue or misleading, or that through the exercise of
6 reasonable care should be known to be untrue or misleading. (Bus. & Prof. Code, § 17500.) The
7 prohibition of false advertising encompasses not only statements that are literally false, but also
8 statements that, although true, are either actually misleading or that have the capacity, likelihood,
9 or tendency to deceive or confuse the consuming public.

10 11. Violation of Section 17500 gives rise to restitution and injunctive relief pursuant to
11 Business and Professions Code § 17535. These remedies are cumulative to each other and to the
12 remedies available under all other laws of California. (Bus. & Prof. Code, § 17534.5.)

13 **Automatic Renewal Law (Bus. & Prof. Code, § 17600 et seq.)**

14 12. In 2009, the California Legislature passed Senate Bill 340, which took effect on
15 December 1, 2010 as Article 9 of Chapter 1 of the False Advertising Law. (Bus. & Prof. Code,
16 § 17600 *et seq.* (the California Automatic Renewal Law or “ARL”).) SB 340 was introduced
17 because:

18 It has become increasingly common for consumers to complain about unwanted
19 charges on their credit cards for products or services that the consumer did not
20 explicitly request or know they were agreeing to. Consumers report they believed
21 they were making a one-time purchase of a product, only to receive continued
22 shipments of the product and charges on their credit card. These unforeseen charges
23 are often the result of agreements enumerated in the “fine print” on an order or
24 advertisement that the consumer responded to.

25 (See Exhibit 2 at p. 5.)

26 13. The Assembly Committee on Judiciary provided the following background for the
27 legislation:

28 This non-controversial bill, which received a unanimous vote on the Senate floor,
seeks to protect consumers from unwittingly consenting to “automatic renewals” of
subscription orders or other “continuous service” offers. According to the author and
supporters, consumers are often charged for renewal purchases without their consent
or knowledge. For example, consumers sometimes find that a magazine subscription
renewal appears on a credit card statement even though they never agreed to a
renewal.

1 (See Exhibit 3 at p. 9.)

2 14. The ARL seeks to ensure that, before there can be a legally-binding automatic
3 renewal or continuous service arrangement, there must first be clear and conspicuous disclosure of
4 certain terms and conditions and affirmative consent by the consumer. To that end, Business and
5 Professions Code § 17602(a) makes it unlawful for any business making an automatic renewal offer
6 or a continuous service offer to a consumer in California to do any of the following:

7 a. Fail to present the automatic renewal offer terms or continuous service offer
8 terms in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled
9 and in visual proximity to the request for consent to the offer. For this purpose, “clear and
10 conspicuous” means “in larger type than the surrounding text, or in contrasting type, font, or color
11 to the surrounding text of the same size, or set off from the surrounding text of the same size by
12 symbols or other marks, in a manner that clearly calls attention to the language.” (Bus. & Prof. Code,
13 § 17601(c).) The statute defines “automatic renewal offer terms” to mean the “clear and
14 conspicuous” disclosure of the following: (a) that the subscription or purchasing agreement will
15 continue until the consumer cancels; (b) the description of the cancellation policy that applies to the
16 offer; (c) the recurring charges that will be charged to the consumer’s credit or debit card or payment
17 account with a third party as part of the automatic renewal plan or arrangement, and that the amount
18 of the charge may change, if that is the case, and the amount to which the charge will change, if
19 known; (d) the length of the automatic renewal term or that the service is continuous, unless the
20 length of the term is chosen by the consumer; and (e) the minimum purchase obligation, if any.
21 (Bus. & Prof. Code, § 17601(b).)

22 b. Charge the consumer’s credit or debit card or the consumer’s account with a
23 third party for an automatic renewal or continuous service without first obtaining the consumer’s
24 affirmative consent to the agreement containing the automatic renewal offer terms or continuous
25 service offer terms, including the terms of an automatic renewal offer or continuous service offer
26 that is made at a promotional or discounted price for a limited period of time. (Bus. & Prof. Code,
27 § 17602(a)(2).)

28

1 c. Fail to provide an acknowledgment that includes the automatic renewal or
2 continuous service offer terms, cancellation policy, and information regarding how to cancel in a
3 manner that is capable of being retained by the consumer. (Bus. & Prof. Code, § 17602(a)(3).)
4 Section 17602(b) requires that the acknowledgment specified in § 17602(a)(3) include a toll-free
5 telephone number, electronic mail address, or another “cost-effective, timely, and easy-to-use”
6 mechanism for cancellation.

7 15. As a species of false advertising, violation of the ARL gives rise to restitution and
8 injunctive relief pursuant to Business and Professions Code § 17535. If a business sends any goods,
9 wares, merchandise, or products to a consumer under an automatic renewal or continuous service
10 agreement without first obtaining the consumer’s affirmative consent to an agreement containing
11 clear and conspicuous disclosure of all automatic renewal offer terms, such material is deemed to
12 be an “unconditional gift” to the consumer. (Bus. & Prof. Code, § 17603.)

13 **Unfair Competition Law**

14 16. The Unfair Competition Law (“UCL”) defines unfair competition as including any
15 unlawful, unfair, or fraudulent business act or practice; any unfair, deceptive, untrue, or misleading
16 advertising; and any act of false advertising. (Bus. & Prof. Code, § 17200.)

17 17. Violation of the UCL gives rise to restitution and injunctive relief. (Bus. & Prof.
18 Code, § 17203.) The remedies of the UCL are cumulative to each other and to the remedies available
19 under all other laws of California. (Bus. & Prof. Code, § 17205.)

20 **FACTS GIVING RISE TO THIS ACTION**

21 18. In April 2022, Plaintiff’s two sons were members of a collegiate club volleyball team
22 scheduled to play in an out-of-town tournament. When Plaintiff learned that the games could be
23 viewed through BallerTV, she was interested in the possibility of watching the games remotely.
24 Plaintiff reviewed the options on the BallerTV website and decided to purchase a plan offered at
25 \$12.99 per month. To purchase that subscription, Plaintiff entered her debit card information on the
26 BallerTV webpage. When Plaintiff purchased that subscription, Plaintiff believed she would be
27 charged \$12.99, for one month.

1 19. After submitting her purchase, Plaintiff received an email stating that BallerTV had
2 posted a charge to Plaintiff’s debit card in the amount of \$155.88 for an “annual” membership. A
3 true and correct copy of that email is attached hereto as Exhibit 4.

4 20. Less than one hour after receiving that email, Plaintiff contacted BallerTV by email
5 to dispute the \$155.88 charge and request a refund. (Baller does not provide any telephone support,
6 and instead requires that all customer support communications with the company be conducted
7 through email.) In response, a BallerTV representative apologized for the “confusion on our
8 pricing.” Instead of a refund, however, the BallerTV representative offered Plaintiff “a free Custom
9 Highlight Reel (a \$99 value!).” Plaintiff responded that she wanted the charges reversed. To that
10 request, a BallerTV representative responded by asking whether Plaintiff would “be interested in
11 staying with us if we grant a complementary extension of your subscription for three months?” In
12 response, Plaintiff reiterated her request for cancellation and a refund.

13 21. In a follow-up email to Baller, Plaintiff explained that she was asking for a full refund
14 and for her account to be closed because the BallerTV sign-up process is misleading. Plaintiff
15 explained: “[I]t clearly states \$12.99 per month on your website (in far larger font than the \$155 or
16 whatever) during the sign-up process and that cancellation is available at any time.”

17 22. In response, a BallerTV representative explained that “[a]t the bottom of each plan
18 offering (the Bronze, Silver [sic] Gold cards), you will see the final billing amount. *I can see how*
19 *this might be missed*, but we do clearly state this final billing amount int [sic] total. We hope that
20 each user will read the text on each plan before entering their credit card information.” (Emphasis
21 added.) The BallerTV representative then asserted that “[t]he best and last option we can provide to
22 you for you to be able to have a refund at least is to process a downgrade of your current subscription,
23 Silver annual to Bronze Quarterly. This would represent a refund of \$110.91.”

24 23. Plaintiff responded that the offer was “not acceptable.” Plaintiff reiterated that on the
25 website screen, “[t]he font is huge for the monthly, and that is what is visible on sign up. The yearly
26 charge is in a light color and smaller font, and that is not even noticeable and wasn’t until you
27 mentioned it. The layout is very, well, I’d say deceptive almost.” Plaintiff reiterated her request for
28 a full refund.

1 24. In response to Plaintiff’s repeated request for a refund, a BallerTV representative
2 stated that under the BallerTV terms of use, a full refund could not be processed if an order is
3 received and a video has been viewed in whole or in part, and, instead, the “the best thing we can
4 do right now is to downgrade your account” from Silver Annual to Silver Quarterly, which would
5 represent a partial refund of \$110.91.

6 25. Plaintiff responded by asking where the terms of use appear on the screen during the
7 sign-up process, and reiterating her request for a full refund.

8 26. A BallerTV representative responded with a statement that “the most we can do is
9 downgrade your subscription to the lowest price plan that we offer which is bronze quarterly for a
10 partial refund of \$110.91,” further stating that “[t]he subscription is good for three months with 1
11 live event ticket and 1 download credit per 30 days.”

12 27. In response, Plaintiff reiterated her request for a full refund.

13 28. A few hours later, on April 16, 2022, Plaintiff sent an email to BallerTV Support
14 proposing that Baller charge her \$12.99 (i.e., the charge for one month) and refund the remainder.

15 29. A BallerTV representative responded that “the most we can offer you is a downgrade
16 to Bronze Quarterly for a partial refund of \$110.91 and then we will apply a 20% off after we process
17 the downgrade.”

18 30. In response, Plaintiff requested a refund of \$142, which would “get the amount paid
19 close to \$12.99.”

20 31. The BallerTV representative remained steadfast that there could be no prorated
21 refund for future months.

22 32. Believing that there was no other option to get at least some of her money back,
23 Plaintiff responded that she would proceed with the \$110 partial refund and 20% discount. On April
24 20, 2022, Baller credited back to Plaintiff’s debit card a total of \$119.90 in two transactions, one for
25 \$110.91 and the other for \$8.09. Thus, even though Plaintiff viewed only a few hours of a single
26 volleyball tournament in mid-April 2022, for which she expected to be charged \$12.99, Plaintiff
27 ended up being charged \$35.98.

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1 33. Thereafter, on July 19, 2022, Baller posted an additional charge to Plaintiff's debit
2 card in the amount of \$44.97, which Plaintiff did not authorize. Based on similarity to published
3 complaints made by other consumers, Plaintiff is informed and believes and thereon alleges that
4 Baller posted that charge for a purported renewal of a quarterly subscription. Plaintiff received no
5 value from that purported renewal.

6 34. On October 19, 2022, Baller posted yet another charge to Plaintiff's debit card in the
7 amount of \$44.97, which Plaintiff did not authorize. Based on similarity to published complaints
8 made by other consumers, Plaintiff is informed and believes and thereon alleges that Baller posted
9 that charge for a purported renewal of a quarterly subscription. Plaintiff received no value from that
10 purported renewal.

11 35. If Plaintiff had known that upon submission of her subscription order Baller was
12 going to charge her \$155.88, rather than \$12.99, Plaintiff would not have purchased the BallerTV
13 subscription and would not have paid any money to Baller.

14 36. If Plaintiff had known that Baller was going to enroll her in an annual subscription
15 for which Baller's cancellation policy precludes a refund of future months, Plaintiff would not have
16 purchased the BallerTV subscription and would not have paid any money to Baller.

17 37. If Plaintiff had known that Baller was going to enroll her in a program under which
18 Baller would automatically charge Plaintiff for a subsequent term and post associated charges to
19 Plaintiff's debit card, Plaintiff would not have purchased a BallerTV subscription and would not
20 have paid any money to Baller.

21 **COMPLAINTS BY OTHER CONSUMERS**

22 38. Plaintiff is not the only consumer to be duped in connection with Baller's pricing and
23 automatic renewal charges. Customer reviews of Baller posted on the Better Business Bureau
24 ("BBB") website illustrate that Baller's business practices have adversely affected many consumers.
25 On the BBB website alone, there are hundreds of consumer complaints that mirror Plaintiff's
26 experience. Consumer complaints about Baller on the BBB website include those set forth below:

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1 **Clay E. (July 26, 2022).** Complete ripoff, borderline fraud. If you asked your
2 grandmother to video a basketball game for you and the quality wasn't so good and
3 she didn't exactly follow the ball and sometimes only recorded the action on one end
4 and didn't notice that her videos only showed one of the baskets, you would be
5 disappointed. But if you were charged \$179.88 by a company posing as a
6 professional streaming service, you would feel ripped off. In addition, as is
7 mentioned in other reviews, it appears you are paying a reasonable monthly fee, but
in reality you are being charged an annual subscription. THEN, after canceling the
service and receiving a partial refund, 3 months later, I discovered a \$59.97 fee
charged to my account and the account was not canceled and is still active, though
there has been no activity. They claim that we requested a downgrade rather than a
cancellation. FRAUD.

8 A true and correct printout of that complaint is attached as Exhibit 5.

9 **Billing/Collection Issues (July 25, 2022).** March 2022: Like so many others, I
10 assumed I was paying ** per month, and could cancel after this one tournament =
11 two games. It is the only tournament I will watch all year. Like the others, I was
12 charged **** I have emailed Baller tv, and they send out boilerplate responses and
13 have not resolved the matter. Two additional points: 1. The fact that Baller TV has
14 NOT changed the pricing info on their website implies that this is INTENTIONAL.
15 If they wanted to make it clear to prospective customers that they only charge
16 annually, THEY COULD MAKE IT CLEAR. But...they would of course lose
customers who don't want to pay **** So they create boilerplate answers for those
of us who get tricked and hope that most of their victims are too busy to resist. 2. The
video quality was appalling. I haven't seen resolution this bad in decades. And at
times the play would move on and the video would be in the wrong place, as if the
operator wasn't paying attention.

17 A true and correct printout of that complaint is attached as Exhibit 6.

18 **Linda C. (July 23, 2022).** On 2/13/2021 I signed up Baller TV to watch my
19 granddaughter's club volley ball game. I checked the box for a single event for \$7.99.
20 I received an immediate email confirming a one year subscription and Visa charge
21 for \$95.88. I contacted Baller regarding the mistake. I received a response that the
22 shortest subscription was quarterly and was then credited \$50.91 (Visa) on
23 2/26/2021. I have contacted Baller numerous times and cancelled my subscription a
24 total of 4 times. It is now 1 1/2 years later and my Visa is still being charged \$44.97
25 quarterly. I have asked for a total of \$224.85 to be credited to my Visa for fraudulent
26 charges. Their Chat Line always malfunctions and dismisses me when I ask for a
credit for unauthorized charges. Miraculously 5 days ago the Chat Line dismissed
me again and a cancellation notice appeared on my email. They still owe me \$224.85
for all charges after 2/26/2021. I have lodged a complaint with my B of A Premium
Rewards card. As a footnote: the streaming was irregular, footage kept stopping,
camera problems, etc. Very disappointing company. Not many scruples for working
around young people.

27 A true and correct printout of that complaint is attached as Exhibit 7.

1 **Tina P. (July 15, 2022).** Super setup! The membership states \$12.99 but your
2 AUTOMATICALLY charged \$156 for the yearly subscription!?!??? You are not able
3 to get a refund of your money, nor are you able to talk to an actual customer service
representative to resolve the issue. The biggest scam of 2022

4 A true and correct printout of that complaint is attached as Exhibit 8.

5 **Problems with Product/Service (July 12, 2022).** I'm seeking a refund for a
6 misleading subscription. I was not aware that I would be billed for a yearly
7 subscription (\$124.70), when a monthly price (\$10.39) was displayed. I canceled
8 subscription 24 hrs (July 7-8, 2022) after I subscribed, when I noticed the the yearly
9 price charged to my credit card and not the monthly price that I thought. I only
10 watched 2 full games and the 3rd had poor connection at the venue and couldn't be
streamed. I fully acknowledge using the services, but my intent was to not use the
services beyond this month, because I have no need for the service once my teams
season is over in at the end of July. I feel the price advertisements are very misleading
and is definitely a display of predatory business practices by BallerTV.

11 A true and correct printout of that complaint is attached as Exhibit 9.

12 **Billing/Collection Issues (July 7, 2022).** BALLERTV subscription webpage is very
13 misleading. I saw same complaints from so many other customers, but I don't think
14 they were trying to fix the issue. I just wanted to watch one game, and I was willing
15 to pay \$6.39 per month for that - as the big bold font says, but I got charged for yearly
16 subscription \$76.70. I just chatted with customer support and was told that the best
17 they could do for me is downgrading from yearly to quarterly, charge me \$35.98
instead. But this is unfair, their webpage is very misleading, I don't think it meets
accessibility standard. Business should gain money from their products and services,
not by cheating customers. I feel very disappointed and want to have my \$70 back!

18 A true and correct printout of that complaint is attached as Exhibit 10.

19 **Billing/Collection Issues (June 29, 2022).** The initial cost for full access was *****
20 and I was billed a year long subscription at ***** After I filled out my card
21 information I was not informed on the site that it was for a year nor that I would be
22 charged at that full amount stated above. Just showing at ***** signing up. Due to
23 false advertising I was scammed into signing up. I wasn't able to watch a full game
24 due difficulties on their site. I emailed them to cancel subscription the same day few
hours after I was made aware. Once the card information was entered I was redirected
to Ballerstv site immediately without verification of the charge. Nor what name was
on the card given.I would like a full refund.

25 A true and correct printout of that complaint is attached as Exhibit 11.

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1 **CLASS ACTION ALLEGATIONS**

2 39. Plaintiff brings this lawsuit as a class action under Code of Civil Procedure § 382 on
3 behalf of the following Class: “All individuals who, while residing in California and between
4 February 14, 2019 and June 6, 2023, inclusive, purchased a subscription through the website
5 www.BallerTV.com, limited to individuals who did not receive a full refund. Excluded from the
6 Class are all employees of Defendant, all employees of Plaintiff’s counsel, and the judicial officers
7 to whom this case is assigned.”

8 40. Ascertainability. The members of the Class may be ascertained by reviewing records
9 in the possession of Defendants and/or third parties, including without limitation Defendants’
10 marketing and promotion records, customer records, and billing records.

11 41. Common Questions of Fact or Law. There are questions of fact or law that are
12 common to the members of the Class which predominate over individual issues. Common questions
13 regarding the Class include, without limitation: (1) whether Defendants’ advertisement of
14 subscription plans on a “per month” basis is false, misleading, or has the capacity, likelihood, or
15 tendency to deceive or confuse the consuming public under the reasonable consumer standard in
16 view of Baller’s business practice of imposing at inception a charge that is a multiple of the
17 advertised monthly rate; (2) whether Defendants present all statutorily-mandated automatic renewal
18 offer terms in a manner that is clear and conspicuous within the meaning of California law and in
19 visual proximity to a request for consent to the offer; (3) whether, before charging a credit card,
20 debit card, or third-party payment account for an automatic renewal subscription, Defendants obtain
21 customers’ affirmative consent to an agreement containing clear and conspicuous disclosure of all
22 automatic renewal offer terms; (4) whether Defendants provide California consumers with an
23 acknowledgment that includes clear and conspicuous disclosure of all automatic renewal offer
24 terms, the cancellation policy, and information regarding how to cancel; (5) Defendants’ record-
25 keeping practices; and (6) the appropriate remedies for Defendants’ conduct.

26 42. Numerosity. The Class is so numerous that joinder of all Class members would be
27 impracticable. Plaintiff is informed and believes and thereon alleges that the Class consists of at
28 least 100 members.

1 43. Typicality and Adequacy. Plaintiff’s claims are typical of the claims of the other
2 Class members. Plaintiff alleges that Defendants enrolled Plaintiff and other Class members in
3 automatic renewal or continuous service subscriptions without disclosing all automatic renewal
4 offer terms required by law, and without presenting such automatic renewal terms in the requisite
5 clear and conspicuous manner; charged Plaintiff’s and Class members’ credit cards, debit cards, or
6 third-party payment accounts without first obtaining affirmative consent to an agreement containing
7 clear and conspicuous disclosure of all automatic renewal offer terms; failed to provide the
8 acknowledgment required by law; and failed to provide the requisite online and cost-effective,
9 timely, and easy-to-use mechanisms for cancellation as required by law. Plaintiff has no interest
10 adverse to the other Class members. Plaintiff will fairly and adequately protect the interests of the
11 Class members.

12 44. Superiority. A class action is superior to other methods for resolving this
13 controversy. Because the amount of restitution to which each class member may be entitled is low
14 in comparison to the expense and burden of individual litigation, it would be impracticable for class
15 members to redress the wrongs done to them without a class action forum. Furthermore, on
16 information and belief, class members do not know that their legal rights have been violated. Class
17 certification would also conserve judicial resources and avoid the possibility of inconsistent
18 judgments. Prosecution of separate actions by individual class members would create a risk of
19 inconsistent or varying adjudications with respect to individual class members, which would
20 establish incompatible standards of conduct for Defendants.

21 **FIRST CAUSE OF ACTION**

22 False Advertising

23 (Bus. & Prof. Code, § 17500 & § 17535)

24 45. Plaintiff incorporates the previous allegations as though fully set forth herein.

25 46. Defendants’ “per month” pricing representations as alleged herein were and are false,
26 misleading, and/or have the capacity, likelihood, or tendency to deceive or confuse the consuming
27 public, in violation of § 17500. Defendants knew, or should have known, that representing the
28 subscription pricing for BallerTV as a set dollar amount “per month” was false, misleading, and/or

1 had (and continues to have) the capacity, likelihood, or tendency to deceive or confuse the
2 consuming public when, in fact, Baller’s regular business practice was and is to charge at inception
3 a lump sum that is a multiple of the stated per-month amount.

4 47. Defendants made the representations alleged herein with the intent to induce Plaintiff
5 and Class members to purchase subscriptions to BallerTV.

6 48. Plaintiff purchased a subscription to BallerTV in reliance on the truth of Defendants’
7 representations concerning the price on a “per month” basis.

8 49. If Plaintiff had known that Baller would charge her an upfront lump sum of \$155.88,
9 rather than \$12.99, Plaintiff would not have purchased a subscription to BallerTV and would not
10 have paid any money to Baller.

11 50. Plaintiff has suffered injury in fact and lost money as a result of Defendants’ violation
12 of Business and Professions Code § 17500.

13 51. Pursuant to Business and Professions Code § 17535, Plaintiff and all Class members
14 are entitled to restitution of amounts that Defendants charged to Plaintiff and Class members during
15 the limitations period preceding the filing of the initial Complaint in this action and continuing until
16 Defendants’ statutory violations cease.

17 52. Pursuant to Business and Professions Code § 17535, for the benefit of the general
18 public of the State of California, Plaintiff seeks a public injunction prohibiting Defendants from
19 continuing their unlawful practices as alleged herein.

20 **SECOND CAUSE OF ACTION**

21 False Advertising – Based on Violation of the California Automatic Renewal Law

22 (Bus. & Prof. Code, § 17600 et seq. & § 17535)

23 53. Plaintiff incorporates the allegations of paragraphs 1-44 as though set forth herein.

24 54. During the applicable statute of limitations period, Defendants have enrolled Plaintiff
25 and other California consumers in automatic renewal subscriptions and have violated the ARL by,
26 among other things, (a) failing to present automatic renewal offer terms in a clear and conspicuous
27 manner before a subscription is fulfilled and in visual proximity to a request for consent to the offer;
28 (b) charging the consumer’s credit card, debit card, or third-party payment account for an automatic

1 renewal without first obtaining the consumer’s affirmative consent to an agreement containing clear
2 and conspicuous disclosure of all automatic renewal offer terms; and (c) failing to provide an
3 acknowledgment that includes clear and conspicuous disclosure of all automatic renewal offer
4 terms, the cancellation policy, and information regarding how to cancel, all in violation of Business
5 and Professions Code § 17602(a)(1)-(a)(3).

6 55. On information and belief, Baller purports to justify its automatic renewal practices
7 based on the following sentences, which appear beneath the “Subscribe Now” button on Baller’s
8 website purchase screen (Exhibit 1), in small and faint grey type set against a white background:

9 Upon clicking Subscribe you will be charged for a BallerTV membership. At the end of your
10 membership, your subscription will automatically renew and your payment method on file
will be charged \$155.88 each billing period.

11 You may pause or cancel your subscription at any time by self-service via your Account
Settings or by contacting support@ballertv.com

12 Those sentences fail to include all of the “automatic renewal offer terms” required by Business and
13 Professions Code § 17601(b), and they also fail to provide any disclosure in a “clear and
14 conspicuous” manner, within the meaning of Business and Professions Code § 17601(c).

15 56. Plaintiff has suffered injury in fact and lost money as a result of Defendants’
16 violations of the ARL.

17 57. Pursuant to Business and Professions Code § 17535, Plaintiff and all Class members
18 are entitled to restitution of all amounts that Defendants charged to Plaintiff’s and Class members’
19 credit cards, debit cards, or third-party payment accounts for BallerTV subscriptions during the
20 limitations period preceding the filing of the initial Complaint in this action and continuing until
21 Defendants’ statutory violations cease.

22 58. Pursuant to Business and Professions Code § 17535, for the benefit of the general
23 public of the State of California, Plaintiff seeks a public injunction prohibiting Defendants from
24 continuing their unlawful practices as alleged herein.

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1 **THIRD CAUSE OF ACTION**

2 Violation of the California Unfair Competition Law

3 (Bus. & Prof. Code, § 17200 et seq.)

4 59. Plaintiff incorporates the previous allegations as though fully set forth herein.

5 60. The Unfair Competition Law defines unfair competition as including any unlawful,
6 unfair or fraudulent business act or practice; any unfair, deceptive, untrue, or misleading advertising;
7 and any act of false advertising under § 17500. (Bus. & Prof. Code, § 17200.)

8 61. In the course of conducting business in California within the applicable limitations
9 period, Defendants committed unlawful, unfair, and/or fraudulent business practices, and engaged
10 in unfair, deceptive, untrue, or misleading advertising, by, inter alia and without limitation:
11 (a) failing to present automatic renewal offer terms in a clear and conspicuous manner before a
12 subscription or purchasing agreement is fulfilled and in visual proximity to a request for consent to
13 the offer, in violation of § 17602(a)(1); (b) charging the consumer’s credit card, debit card, or third-
14 party payment account in connection with an automatic renewal or continuous service without first
15 obtaining the consumer’s affirmative consent to an agreement containing clear and conspicuous
16 disclosure of all automatic renewal offer terms, in violation of § 17602(a)(2); (c) failing to provide
17 an acknowledgment that includes clear and conspicuous disclosure of all required automatic renewal
18 offer terms, the cancellation policy, and information regarding how to cancel, in violation of
19 § 17602(a)(3); and (d) failing to provide an online and cost-effective, timely, and easy-to-use
20 mechanism for cancellation, in violation of § 17602(c) and (d). Plaintiff reserves the right to identify
21 other acts or omissions that constitute unlawful, unfair, or fraudulent business acts or practices,
22 unfair, deceptive, untrue or misleading advertising, and/or other prohibited acts.

23 62. Defendants’ acts and omissions as alleged herein violate obligations imposed by
24 statute, are substantially injurious to consumers, offend public policy, and are immoral, unethical,
25 oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits
26 attributable to such conduct.

27 63. There were reasonably available alternatives to further Defendants’ legitimate
28 business interests, other than the conduct described herein.

1 64. Defendants’ acts, omissions, nondisclosures, and statements as alleged herein were
2 and are false, misleading, and/or likely to deceive the consuming public.

3 65. Plaintiff has suffered injury in fact and lost money as a result of Defendants’ acts of
4 unfair competition.

5 66. Pursuant to Business and Professions Code § 17203, Plaintiff and Class members are
6 entitled to restitution of all amounts that Defendants charged to Plaintiff’s and Class members’ credit
7 cards, debit cards, or third-party payment accounts for automatic renewal subscriptions during the
8 limitations period preceding the filing of this action and continuing until Defendants’ acts of unfair
9 competition cease.

10 67. Pursuant to Business and Professions Code § 17203, for the benefit of the general
11 public of the State of California, Plaintiff seeks a public injunction prohibiting Defendants from
12 continuing their unlawful practices as alleged herein.

13 **PRAYER**

14 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

15 On the First Cause of Action (False Advertising):

- 16 1. For restitution to Plaintiff and all Class members;
17 2. For a public injunction for the benefit of the People of the State of California;

18 On the Second Cause of Action (False Advertising – Based on Violation of the ARL):

- 19 3. For restitution to Plaintiff and all Class members;
20 4. For a public injunction for the benefit of the People of the State of California;

21 On the Third Cause of Action (Unfair Competition):

- 22 5. For restitution to Plaintiff and all Class members;
23 6. For a public injunction for the benefit of the People of the State of California;

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On All Causes of Action:

- 7. For reasonable attorneys' fees, pursuant to Code of Civil Procedure § 1021.5;
- 8. For costs of suit;
- 9. For pre-judgment interest; and
- 10. For such other relief as the Court may deem just and proper.

Dated: September 18, 2024

DOSTART HANNINK LLP



ZACH F. DOSTART
Attorneys for Plaintiff

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