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SUPERIOR COURT OF THE STATE OF CALIFORNIA

9

COUNTY OF SAN DIEGO

10

11 LARRY NELSON and
12 JOHN DAUB,
13 individually and on behalf of all others
similarly situated,

14 Plaintiffs,

15 vs.

16 SYSTEM1, INC., a Delaware corporation;
17 TOTAL SECURITY LIMITED, a UK private
company;
18 PROTECTED.NET LLC, a Delaware limited
liability company;
19 and DOES 1-50, inclusive,

20 Defendants.

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County of San Diego
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Clerk of the Superior Court
By A. Villasenor ,Deputy Clerk

CASE NO. 37-2023-00045878-CU-BT-CTL

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

(1) FALSE ADVERTISING (BASED ON
VIOLATION OF THE CALIFORNIA
AUTOMATIC RENEWAL LAW)
[Bus. & Prof. Code, §§ 17535 et seq. &
17600]; and

(2) UNFAIR COMPETITION
[Bus. & Prof. Code, § 17200 et seq.]

1 **INTRODUCTION**

2 1. Defendants System1, Inc., Total Security Limited, and Protected.net LLC advertise
3 and sell software that (supposedly) protects computers or smartphones against unwanted ads,
4 viruses, or other online annoyances. In most instances, the software is offered as a low-cost “trial”
5 for a limited period (e.g., \$1.99 or \$2.99 for one month). However, when a consumer requests such
6 a trial, Defendants unlawfully enroll the consumer into an automatic renewal subscription and
7 thereafter charge recurring fees without the consumer’s consent. This conduct constitutes false
8 advertising, based on violation of the California Automatic Renewal Law (Bus. & Prof. Code,
9 § 17600 et seq.), and it also violates the Unfair Competition Law (Bus. & Prof. Code, § 17200 et
10 seq.). This action seeks restitution for Plaintiffs and other affected California consumers, and a
11 public injunction for the benefit of the People of the State of California.

12 **THE PARTIES**

13 2. Plaintiff Larry Nelson (“Nelson”) is an individual residing in San Diego County,
14 California.

15 3. Plaintiff John Daub (“Daub”) is an individual residing in San Diego County,
16 California.

17 4. Nelson and Daub are collectively referred to herein as “Plaintiffs.”

18 5. System1, Inc. (“System1”) is a Delaware corporation with an office in Los Angeles
19 County, California. However, System1 has not registered to do business in the State of California
20 and has not filed documents with the California Secretary of State that designate a principal office
21 in California.

22 6. Total Security Limited (“Total Security”) is a private company limited by shares
23 incorporated under the laws of England and Wales, Company Number 10161957, with offices in
24 England and in Los Angeles County, California. However, Total Security has not registered to do
25 business in the State of California and has not filed documents with the California Secretary of State
26 that designate a principal office in California. Total Security is a wholly-owned subsidiary of
27 System1.

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1 they were making a one-time purchase of a product, only to receive continued
2 shipments of the product and charges on their credit card. These unforeseen charges
3 are often the result of agreements enumerated in the “fine print” on an order or
4 advertisement that the consumer responded to.

4 (See Exhibit 1 at p. 4.)

5 12. The Assembly Committee on Judiciary provided the following background for the
6 legislation:

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

11 (See Exhibit 2 at p. 8.)

12 13. The ARL seeks to ensure that, before there can be a legally-binding automatic
13 renewal or continuous service arrangement, there must first be adequate disclosure of certain terms
14 and conditions and affirmative consent by the consumer. To that end, § 17602(a) makes it unlawful
15 for any business making an automatic renewal offer or a continuous service offer to a consumer in
16 California to do any of the following:

17 a. Fail to 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 to the request for consent to the offer. (Bus. & Prof. Code, § 17602(a)(1).)
20 For this purpose, “clear and conspicuous” means “in larger type than the surrounding text, or in
21 contrasting type, font, or color to the surrounding text of the same size, or set off from the
22 surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention
23 to the language.” (Bus. & Prof. Code, § 17601(c).) The statute defines “automatic renewal offer
24 terms” to mean the “clear and conspicuous” disclosure of the following: (a) that the subscription or
25 purchasing agreement will continue until the consumer cancels; (b) the description of the
26 cancellation policy that applies to the offer; (c) the recurring charges that will be charged to the
27 consumer’s credit or debit card or payment account with a third party as part of the automatic
28 renewal plan or arrangement, and that the amount of the charge may change, if that is the case, and

1 the amount to which the charge will change, if known; (d) the length of the automatic renewal term
2 or that the service is continuous, unless the length of the term is chosen by the consumer; and (e) the
3 minimum purchase obligation, if any. (Bus. & Prof. Code, § 17601(b).)

4 b. Charge the consumer’s credit or debit card, or the consumer’s account with a
5 third party, for an automatic renewal or continuous service without first obtaining the consumer’s
6 affirmative consent to the agreement containing the automatic renewal offer terms or continuous
7 service offer terms, including the terms of an automatic renewal offer or continuous service offer
8 that is made at a promotional or discounted price for a limited period of time. (Bus. & Prof. Code,
9 § 17602(a)(2).)

10 c. Fail to provide an acknowledgment that includes the automatic renewal or
11 continuous service offer terms, cancellation policy, and information regarding how to cancel in a
12 manner that is capable of being retained by the consumer. (Bus. & Prof. Code, § 17602(a)(3).) If the
13 offer includes a free trial, the business must also disclose in the acknowledgment how to cancel and
14 allow the consumer to cancel before the consumer pays for the goods or services. (*Ibid.*) Section
15 17602(c) requires that the acknowledgment specified in § 17602(a)(3) include a toll-free telephone
16 number, electronic mail address, a postal address if the seller directly bills the consumer, or it shall
17 provide another cost-effective, timely, and easy-to-use mechanism for cancellation.

18 14. Violation of the ARL gives rise to restitution and injunctive relief under the general
19 remedies provision of the False Advertising Law, § 17535. (Bus. & Prof. Code, § 17604(a).)

20 15. If a business sends any goods, wares, merchandise, or products to a consumer under
21 an automatic renewal or continuous service agreement without first obtaining the consumer’s
22 affirmative consent to an agreement containing clear and conspicuous disclosure of all automatic
23 renewal offer terms, such material is an “unconditional gift” to the consumer. (Bus. & Prof. Code,
24 § 17603.)

25 16. In this Complaint, references to an “automatic renewal” arrangement encompass a
26 “continuous service” arrangement, unless otherwise specified.

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1 **Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.)**

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

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

8 **OVERVIEW OF DEFENDANTS’ BUSINESS PRACTICES**

9 19. Defendants advertise and sell software products under tradenames including (without
10 limitation) Total Adblock (which operates through the website <https://totaladblock.com>), TotalAV
11 (which operates through the website <https://totalav.com>), and Total Password (which operates
12 through the website <https://www.totalpassword.com>). Defendants’ software products are offered for
13 sale through the respective websites.

14 20. On each website, the order flow consists of several screens. For example, for Total
15 Adblock, the first step is for the consumer to enter an email address on the screen depicted in Exhibit
16 3. Next, the consumer is shown a screen with a price (in this instance, represented to be “70% OFF”
17 with a “100% Risk-Free Guarantee”), as depicted in Exhibit 4. After the consumer clicks the
18 “CONTINUE SECURELY” button, the consumer is then presented with a payment screen for entry
19 of credit card, debit card, or other payment account details, as depicted in Exhibit 5. Exhibits 3-5
20 are incorporated herein by reference. The order flow for Defendants’ other products is in all material
21 respects similar to that shown in Exhibits 3-5.

22 21. It is evident that the screens shown in Exhibits 3-5 do not meet the requirements of
23 California law for creation of an automatic renewal subscription and do not constitute affirmative
24 consent for subsequent charges. In particular, and without limitation, there is no “clear and
25 conspicuous” disclosure that a subscription will continue until the consumer cancels, or of the
26 cancellation policy, or of recurring charges to be charged to the consumer’s credit or debit card or
27 third-party payment account. Rather, in violation of California law, Defendants’ screens mention
28 renewal only in type that is smaller than surrounding text, or in text that is the same size as

1 surrounding text but without contrasting type, font, or color, or in text that is not set off from
2 surrounding text of the same size by symbols or other marks, such as would clearly call attention to
3 the language.

4 22. Nevertheless, when a consumer completes the order flow, Defendants unilaterally
5 enroll the consumer in an automatic renewal program. Thereafter, without the consumer's
6 affirmative consent, Defendants post subsequent charges to the consumer's credit card, debit card,
7 or third-party payment account, in violation of California law.

8 **CONSUMER COMPLAINTS ABOUT DEFENDANTS' BUSINESS PRACTICES**

9 23. Many consumers report that they have been wrongfully charged by Defendants.
10 Some consumers report that they were charged without ever ordering Defendants' software. Other
11 consumers report that they ordered only a free or low-cost trial for a limited period, but were
12 thereafter charged without authorization. Still other consumers report that, after contacting
13 Defendants to cancel a subscription, Defendants thereafter continued to post charges to the
14 consumer's credit card, debit card, or third-party payment account. Regardless of the particular
15 circumstances, the common theme is that Defendants charge consumers for automatic renewal
16 subscriptions, without consent. This theme runs throughout the multitude of consumer complaints
17 posted on the Better Business Bureau ("BBB") website.

18 24. Illustrative customer complaints or reviews posted on the BBB website for TotalAV
19 (<<https://www.bbb.org/us/ca/venice/profile/computer-software/total-av-antivirus-1216-716805>>
20 [as of October 20, 2023]) include the following (copied verbatim):

21 **Problems with Product/Service. (Sept. 5, 2023).** Signed up for an introductory
22 offer, that included "Free" offers. There were no * to indicate that there were fine
23 prints, nor was there any mention that these free offers would auto-renew the NEXT
24 day at full prices. But that's not even the main part of my complaint. I tried calling
25 them to cancel, and was told by an automated assistant to visit their website at their
26 help address/URL. I can't even access it because it tells me that option isn't available
because my account is a free account. Yet I have invoices sent to my email that
specifically shows that I have been charged, and it also shows on my credit card
statement. So I paid for no access to any service, and their website just continuously
loops to other offers, when all I want to do is to cancel the service and reject any and
all auto-renewals.

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

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1 **Problems with Product/Service. (August 25, 2023).** There was an unauthorized
2 charge to my debit card by totalav.com. I requested a refund online and they said
3 they “have no record” I then made a phone call and it was VERY difficult to speak
4 to the person in the call center due to all the background noise and people talking. It
5 truly sounded like a scam. They requested my card # and I refused to give it to them.
I said you only need the last four digits; you took the money, you need to give it
back. They offered 80%, I refused and demanded a 100% refund. I was put on hold
and the person came back and said the refund had been issued. I still do not have it.
I have been trying to get it for almost a week.

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

7 **Problems with Product/Service. (August 17, 2023).** Ive been enrolled in a monthly
8 subscription without my knowledge. I wish to get it cancelled and charges refunded.

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

10 **Problems with Product/Service. (May 9, 2023).** I recently noticed that since
11 September 2022, my credit card was charged \$1.99 and then \$9.95 per month
12 thereafter for a TotalAV smartphone protection. I never requested or approved this
13 charge. I believe it was a scam through a pop up ad. The phone number provided to
the company on my credit card charge was false. I contacted the company for a
refund and they would not provide one.

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

15 **Problems with Product/Service. (March 27, 2023).** Totalav has been billing my
16 Discover card for \$9.95 monthly for approximately 6 months. I did not buy this
17 service. I do not have a computer and have no use for this service. I have called
18 Discover to dispute the charge. I have also called Totalav and spoke to a
19 representative that said I could not cancel by phone. He gave me a link, which I have
tried repeatedly to cancel but to no avail. Discover issued me a new card. Totalav
found a way to bill me. I WANT this Totalav acct. Canceled. I want a refund. I want
an apology from them for their service I don’t even have.

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

21 **Problems with Product/Service. (Dec. 14, 2022).** I have been getting charged by
22 TotalAV for a LONG time now, despite opening multiple tickets and emailing. I
23 have never used the product and I have never installed it on any of my devices,
therefore the continued charges are quite literally ridiculous. I want my account
24 canceled, and all of my charges refunded. I have received the following charges:
25 12/12/22: \$10.25 11/14/22: \$9.95 10/06/22: \$10.25 09/06/22: \$10.25 08/08/22:
\$10.25 07/05/22: \$10.25 06/03/22: \$9.95 04/18/22: \$9.26 03/23/22: \$9.26 02/18/22:
\$3.08

26 A true and correct printout of that complaint is attached as Exhibit 11.
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1 **Problems with Product/Service. (Nov. 10, 2022).** I discovered a charge on my
2 credit card and found it came from totalav and found charges every month from last
3 December. I have not used the service don't want it didn't sign up for it they can't
tell me how I joined and have the town I live in wrong. I have never received an
email or a notification that I am signed up.

4 A true and correct printout of that complaint is attached as Exhibit 12.

5 **Problems with Product/Service. (Oct. 9, 2022).** TotalAV has been charging me for
6 antivirus services that I never requested, nor authorized. They took monthly
7 payments for almost 2years. This is not my main checking account that I use
8 regularly. It was an account that I used for dividend deposits. I only caught the fraud
9 when the account was overdrawn. I couldn't believe that it was overdrawn when I
10 looked at the account. This started 1/21 through 9/22. TotalAV only refunded me
11 \$14.99 for the last month. I uploaded one of the emails that I sent them requesting
12 that they refund the entire amount that they stole from me. They took a total of
13 \$209.79 from my account in monthly payments. What's interesting is that if you look
14 at their pricing plans, the price for 1 yr is only \$19. for the year 2021. Yet they
withdrew much more than that with their monthly payments for the year. I never
even downloaded their virus protection on my phone. I didn't know that it existed. I
never received any correspondence from this company either. This company is
completely fraudulent and I wasn't surprised to see other people who were defrauded
also. Isn't there some way to expose this company for the thieves that they are?
Especially in this economy, we are all trying to save any way we can. We don't need
people stealing from us too. I would appreciate any help that you can give me.
Sincerely, *****

15 A true and correct printout of that complaint is attached as Exhibit 13.

16 **Problems with Product/Service. (Sept. 18, 2022).** I signed up for a free trial of
17 Totalav anti virus protective software. The program was garbage so I cancelled the
18 subscription. Two weeks ago, they tried to renew my subscription after i told them
19 last year to cancel it. They are trying desperately to get me to renew but they cannot
20 understand that I don't want their program. I want them to be told to stop the renewal
attempts and to never contact me again. I want it to be publicly known that it is my
OPINION that Totalav is a scam and they are ripoff artists. Because of their attempts
to renew the subscription, my debit card has been blocked and I'm going to have a
problem buying groceries this week. Please leash and muzzle them.

21 A true and correct printout of that complaint is attached as Exhibit 14.

22 **Billing/Collection Issues. (Feb. 18, 2022).** I noticed monthly charges of ***** from
23 this company on *** ** ***** The charges go way back to *** ***** I never
24 knowingly signed up for this service. Apple iPhones do not need antivirus protection.
I would like a refund back to *** ***** Customer ID XXXXXXXX

25 A true and correct printout of that complaint is attached as Exhibit 15.

26 **Billing/Collection Issues. (Dec. 15, 2021).** Total AV charged my account *****
27 on ***** without my consent for any type of renewal or continued service with
28 them. I want my money back. This automatic withdrawal was not approved. I do not
and did not want to continue any type of service from them. I want a full refund of

1 my money from them. I am not happy with a “business” that operates in this manner.
2 I feel it’s very deceitful. I want a complete refund and do not wish to have any open
account with Total AV

3 A true and correct printout of that complaint is attached as Exhibit 16.

4 **Problems with Product/Service. (Sept. 5, 2021).** I signed up for a trial order with
5 TotalAV not realizing they started to charge me after the trial period ends without
6 my consent and authorization . I was quite upset upon seeing half a year worth of
7 monthly charges on my credit card. Called to cancel today but was not offered a
refund. Their practice is very dishonest. Please assist me with a full refund from
them. Other people must know and be aware and not get ripped off.

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

9 **Problems with Product/Service. (Aug. 31, 2021).** I signed up for a trial of Total
10 AV for \$2.99 on 4/25/2021. Next thing I know I’m paying \$8.99/month in May. On
11 top of that I start receiving messages on my cell phone the repeatedly stating my
12 protection has expired, when in fact I’ve been paying \$8.99/mo. Finally, I had enough
13 and have been trying to cancel ever since. However, it seems to be impossible to get
14 these moron crooks off my back! As of today, on blocked the autopayment on
PayPal, obviously should have done that first thing -- lesson learned!!! This company
just won’t stop even if you try to do it exactly as explained! I will never use this
service again -- providing it can ever be stopped! Their practices are deceptive and
unwarranted!

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

16 **Problems with Product/Service. (July 28, 2021).** This company keep billing my
17 visa it took 8.99 today from my cash app. I have no subscription with them and
18 several months ago cancelled any subscription they thought I made with them. They
continue to bill my visa card. I want my refund for each month they took my money
and for this company to stop their predatory practice!

19 A true and correct printout of that complaint is attached as Exhibit 19.

20 **Billing/Collection Issues. (Nov. 7, 2020).** Total Av keeps billing my Visa without
21 my authorization. I never ordered it. B of A denies it thankfully. The keep on trying
22 to bill my visa. Stop it. My Visa was billed by Total AV without my authorization
23 and was declined by B of A. I changed to a new Visa card # and some how Total AV
24 hacked that new number and tried billing again and was denied. I never bought or
25 used Total AV but some how they find my Visa card # and keep trying. How are they
getting my Visa # when I never gave it to Total AV. This is illegal activity and must
be stopped immediately. B of A declines it because my 3 digit security pin on my
card is not supplied by Total AV so my bank declines it! They are illegally getting
my **** # by hacking or other illegal source.

26 A true and correct printout of that complaint is attached as Exhibit 20.

27 25. The persistent pattern of unauthorized charges reflected in the foregoing BBB
28 complaints aptly characterize what happened to Plaintiffs.

1 **FACTS GIVING RISE TO THIS ACTION**

2 **Plaintiff Larry Nelson's Transaction**

3 26. Nelson does not recall ordering any software from Defendants. If Nelson did submit
4 an order, it would have been done in San Diego County on or about October 2, 2022, which is the
5 date Defendants first charged him for Total Adblock. On information and belief, the order flow of
6 the Total Adblock website in October 2022 was in all material respects the same as the order flow
7 described above in paragraph 20 and depicted in Exhibits 3-5.

8 27. On October 2, 2022, Defendants posted a \$2.99 charge to Nelson's PayPal account,
9 which was described as a charge for Total Adblock. On information and belief, that \$2.99 charge
10 reflects Defendants' charge associated with a one-month "trial" of the Total Adblock software. If
11 Nelson submitted a request for a trial of Total Adblock, he nevertheless was not aware that
12 Defendants would enroll him in a subscription that would automatically renew and for which
13 Defendants would post subsequent charges to Nelson's PayPal account.

14 28. During the ensuing months, Defendants posted additional charges to Nelson's PayPal
15 account. To begin, Defendants posted charges for Total Adblock on November 2, 2022 and
16 December 2, 2022, both for \$9.95. Then, in January 2023, Defendants posted two charges (a \$1.99
17 charge on January 1, 2023, and a \$9.95 charge on January 2, 2023), both for Total Adblock. During
18 the ensuing months, from February 2023 through July 2023, Defendants posted two monthly charges
19 of \$9.95 each, both for Total Adblock. Then, on July 23, 2023, Defendants posted a \$1.99 charge
20 for Total AV. In August 2023, Defendants posted three charges of \$9.95 each (two for Total
21 Adblock on August 1 and August 2, respectively, and one for TotalAV on August 23). The charges
22 continued into September 2023, with \$9.95 charges posted on September 1 and September 2, both
23 for Total Adblock. Nelson did not authorize any of those charges, and he received no value in return
24 for any of those charges.

25 29. Nelson did not discover that he was being charged for Total Adblock and/or Total
26 AV until in or about September 2023. Upon discovering unauthorized charges, Nelson called
27 Defendants' customer service department to stop further charges and seek a refund. Initially, Nelson
28 encountered difficulty getting through to a live agent. Eventually, on or about September 20, 2023,

1 Nelson was able to get through to an agent to cancel the purported subscriptions.

2 30. Nelson did not consent to be enrolled in any automatic renewal subscription, and
3 Nelson did not authorize Defendants to post the foregoing charges to his PayPal account. Nelson
4 therefore seeks restitution all amounts paid to Defendants between October 2022 and September
5 2023.

6 **Plaintiff John Daub's Transaction**

7 31. Daub does not recall ordering any software from Defendants. If Daub did submit an
8 order, it would have been done in San Diego County on or about August 28, 2022, which is the date
9 Defendants first charged him for TotalAV. On information and belief, the order flow of the TotalAV
10 website in August 2022 was in all material respects the same as the order flow described above in
11 paragraph 20 and depicted in Exhibits 3-5.

12 32. On August 28, 2022, Defendants posted a \$2.99 charge to Daub's credit card, which
13 was described as a charge for TotalAV. On information and belief, that \$2.99 charge reflects
14 Defendants' charge associated with a one-month "trial" of the TotalAV software. If Daub submitted
15 a request for a trial of TotalAV, he nevertheless was not aware that Defendants would enroll him in
16 a subscription that would automatically renew and for which Defendants would post subsequent
17 charges to Daub's credit card.

18 33. During the ensuing months, Defendants posted unauthorized charges to Daub's
19 credit card in the amount of \$9.95 for each month from September 2022 through August 2023.

20 34. Daub did not discover the unauthorized charges until September 2023, at which time
21 Daub called TotalAV to request cancellation and a refund of prior charges. TotalAV agreed to
22 refund only the most recent charge of \$9.95 (charged in August 2023). Daub received no value in
23 return for the charges by Defendants.

24 35. Daub did not consent to be enrolled in any automatic renewal subscription, and did
25 not authorize Defendants to post the foregoing charges to his credit card. Daub therefore seeks
26 restitution all amounts paid to Defendants between August 2022 and July 2023.

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1 **CLASS ACTION ALLEGATIONS**

2 36. Plaintiffs bring this lawsuit as a class action under Code of Civil Procedure § 382 on
3 behalf of the following Class: “All California residents who, between October 20, 2019 and June
4 30, 2024, were enrolled in and charged for an automatic renewal or continuous service subscription
5 for Protected Software offered by any of the Defendants, limited to individuals who did not receive
6 a full refund of any amounts paid towards such automatic renewal or continuous service
7 subscription. Excluded from the Class are all employees of Defendants, all employees of Plaintiffs’
8 counsel, and the judicial officers to whom this case is assigned.” The term “Protected Software”
9 means one or more of the following software as a service products made available to consumers via
10 the internet for download or via application marketplaces: PC Protect, ScanGuard, Total Adblock,
11 TotalAV, Total Password, Total VPN, and Total WebShield.

12 37. Ascertainability. The members of the Class may be ascertained by reviewing records
13 in the possession of Defendants and/or third parties, including without limitation Defendants’
14 marketing and promotion records, customer records, and billing records.

15 38. Common Questions of Fact or Law. There are questions of fact or law that are
16 common to the members of the Class, which predominate over individual issues. Common questions
17 regarding the Class include, without limitation: (1) whether Defendants present all statutorily-
18 mandated automatic renewal offer terms, within the meaning of § 17601(b); (2) whether Defendants
19 present automatic renewal offer terms in a manner that is “clear and conspicuous,” within the
20 meaning of § 17601(c), and in “visual proximity” to a request for consent to the offer, as required
21 by § 17602; (3) whether Defendants obtain consumers’ affirmative consent to an agreement
22 containing clear and conspicuous disclosure of automatic renewal offer terms before charging a
23 credit card, debit card, or third-party payment account; (4) whether Defendants provide consumers
24 with an acknowledgment that includes clear and conspicuous disclosure of all statutorily-mandated
25 automatic renewal or continuous service offer terms, the cancellation policy, and information
26 regarding how to cancel; (5) whether Defendants provide an easy-to-use mechanism for
27 cancellation; (6) Defendants’ record-keeping practices; (7) the appropriate remedies for Defendants’
28 conduct; and (8) the appropriate terms of an injunction.

1 consumer's affirmative consent to an agreement containing clear and conspicuous disclosure of all
2 automatic renewal offer terms or continuous service offer terms, in violation of § 17602(a)(2); and
3 (c) failing to provide an acknowledgment that includes clear and conspicuous disclosure of all
4 required automatic renewal offer terms, the cancellation policy, and information regarding how to
5 cancel, in violation of § 17602(a)(3).

6 44. Plaintiffs have suffered injury in fact and lost money as a result of Defendants'
7 violations alleged herein.

8 45. Pursuant to §§ 17603 and 17535, Plaintiffs and class members are entitled to
9 restitution of all amounts paid to Defendants for any automatic renewal or continuous service
10 subscription during the four years preceding the filing of this Complaint and continuing until
11 Defendants' statutory violations cease.

12 46. Unless enjoined and restrained by this Court, Defendants will continue to commit
13 the violations alleged herein. Pursuant to § 17535, for the benefit of the general public of the State
14 of California, Plaintiffs seek a public injunction prohibiting Defendants from continuing the
15 unlawful practices as alleged herein.

16 **SECOND CAUSE OF ACTION**

17 Unfair Competition

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

19 47. Plaintiffs incorporate the previous allegations as though fully set forth herein.

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

23 49. During the applicable limitations period, Defendants committed unlawful and unfair
24 business practices, and engaged in unfair, deceptive, untrue, or misleading advertising, by, inter alia
25 and without limitation: (a) failing to present the automatic renewal or continuous service offer terms
26 in a clear and conspicuous manner before a subscription or purchasing agreement is fulfilled and in
27 visual proximity to a request for consent to the offer, in violation of § 17602(a)(1); (b) charging the
28 consumer in connection with an automatic renewal or continuous service without first obtaining the

1 consumer's affirmative consent to an agreement containing clear and conspicuous disclosure of
2 automatic renewal offer terms or continuous service offer terms, in violation of § 17602(a)(2); and
3 (c) failing to provide an acknowledgment that includes clear and conspicuous disclosure of all
4 required automatic renewal offer terms, the cancellation policy, and information regarding how to
5 cancel, in violation of § 17602(a)(3). Plaintiffs reserve the right to identify other acts or omissions
6 that constitute unlawful or unfair business acts or practices, unfair, deceptive, untrue or misleading
7 advertising, and/or other prohibited acts.

8 50. Defendants' acts and omissions as alleged herein violate obligations imposed by
9 statute, are substantially injurious to consumers, offend public policy, and are immoral, unethical,
10 oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits
11 attributable to such conduct.

12 51. There were reasonably available alternatives to further Defendants' legitimate
13 business interests, other than the conduct described herein.

14 52. Defendants' acts, omissions, nondisclosures, and misleading statements as alleged
15 herein were and are false, misleading, and/or likely to deceive the consuming public.

16 53. Plaintiffs have suffered injury in fact and lost money as a result of Defendants' acts
17 of unfair competition.

18 54. Pursuant to § 17203, Plaintiffs and the class members are entitled to restitution of all
19 amounts paid to Defendants for any automatic renewal or continuous service subscription during
20 the four years preceding the filing of this Complaint and continuing until Defendants' acts of unfair
21 competition cease.

22 55. Unless enjoined and restrained by this Court, Defendants will continue to commit
23 the violations alleged herein. Pursuant to § 17203, for the benefit of the general public of the State
24 of California, Plaintiffs seek a public injunction prohibiting Defendants from continuing the
25 unlawful and unfair practices as alleged herein.

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PRAYER

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

On the First Cause of Action:

1. For restitution to Plaintiff and all class members;
2. For a public injunction;

On the Second Cause of Action:

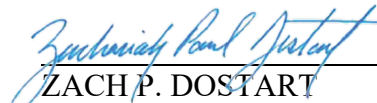
3. For restitution to Plaintiff and all class members;
4. For a public injunction;

On All Causes of Action:

5. For an award of attorneys' fees pursuant to Code Civ. Proc. § 1021.5;
6. For costs of suit;
7. For pre-judgment interest; and
8. For such other relief that the Court deems just and proper.

Dated: December 6, 2024

DOSTART HANNINK LLP


ZACH P. DOSTART
Attorneys for Plaintiffs

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