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

11 TAWNYA RODRIGUEZ, individually and on
behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 LEVEL UP NUTRITION LLC, a Utah limited
15 liability company, d/b/a
WWW.UPPERLIMITSUPPLEMENTS.COM,

16 Defendant.
17

Case No.: 26CU002832C

**CLASS ACTION COMPLAINT FOR: (1)
VIOLATION OF CONSUMERS LEGAL
REMEDIES ACT, CAL. CIVIL CODE § 1750
ET SEQ.; (2) VIOLATION OF CAL. BUS. &
PROF. CODE § 17500 ET SEQ.; AND (3)
VIOLATION OF CAL. BUS. & PROF. CODE
§ 17200 ET SEQ.**

18 Plaintiff Tawnya Rodriguez (“Plaintiff”) alleges as follows:

19 **I. NATURE OF ACTION**

20 1. Plaintiff brings this action after purchasing an automatically renewing paid subscription
21 at www.upperlimitsupplements.com (the “Website”), which caused Plaintiff to incur unlawful charges
22 from Defendant related to an automatic renewal or continuous service. Defendant made unlawful
23 automatic renewal and/or continuous service offers to consumers in California in violation of
24 California’s Automatic Renewal Law (the “ARL”), Cal. Bus. & Prof. Code § 17600 *et seq.*, by: (1)
25 failing to provide “clear and conspicuous” disclosures mandated by California law; and (2) failing to
26 provide an acknowledgment to consumers that includes the automatic renewal or continuous service
27 offer terms, the cancellation policy, and information regarding how to cancel in a manner that is capable
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1 of being retained by the consumer. The ARL imposed a statutory duty upon Defendant to disclose such
2 information to consumers who purchased subscriptions from Defendant or entered into continuous
3 service agreements with Defendant. The foregoing violations of the ARL by Defendant likewise
4 constitute violations of California’s Consumers Legal Remedies Act (the “CLRA”), California Civil
5 Code § 1750 *et seq.*, California’s Unfair Competition Law (the “UCL”), California’s False Advertising
6 Law (the “FAL”), California Business & Professions Code § 17500 *et seq.*, and California’s Unfair
7 Competition Law (the “UCL”), California Business & Professions Code § 17200 *et seq.*

8 2. Plaintiff seeks to enjoin Defendant from the ongoing violations of California law, as well
9 as seeks damages, punitive damages, restitution, and reasonable attorneys’ fees and costs.

10 **II. JURISDICTION AND VENUE**

11 3. Plaintiff is and was at all times mentioned herein a citizen of the State of California.

12 4. Plaintiff is informed and believes and based thereon alleges that Defendant is a limited
13 liability company incorporated under the laws of the State of Utah having its principal place of business
14 in the State of Utah.

15 5. Defendant is an online retailer that sells products nationwide and in California.
16 Defendant has substantial contacts with and receives substantial benefits and income from and through
17 the state of California. Defendant made, and continues to make, automatic renewal or continuous service
18 offers to consumers in California. Defendant operates the Website, which markets and sells workout
19 supplement products.

20 6. Defendant engaged in intentional acts by operating its Website and making it available
21 to California residents, deceptively advertising its products via its Website to California residents
22 including Plaintiff, expressly aiming its conduct toward California residents by conducting substantial
23 business with residents of the State of California via its Website, and causing economic harm to
24 California residents that Defendant knew would be likely to be suffered in California. Plaintiff is
25 informed and believes and thereon alleges that Defendant generates a minimum of eight percent of its
26 revenues from its Website based upon interactions with Californians, such that the Website “is the
27 equivalent of a physical store in California.” *Thurston v. Fairfield Collectibles of Georgia*, 53 Cal. App.
28 5th 1231, 1235 (2020), *review denied*, No. S264780 (Dec. 9, 2020). Plaintiff is informed and believes

1 and thereon alleges that Defendant sells products to Plaintiff and other California residents as part of its
2 regular course of business. Plaintiff is informed and believes and thereon alleges that Defendant sells
3 thousands of products to California residents each year. Plaintiff is informed and believes and thereon
4 alleges that Defendant exercises at least some level of control over the ultimate distribution of its
5 products sold via its Website to the end consumer including products shipped into California.

6 7. Venue is proper in this County because many class members were injured in this County.

7 **III. FACTUAL ALLEGATIONS**

8 **A. The Automatic Renewal Law, Cal. Business & Prof. Code §§ 17600-17606**

9 8. On December 1, 2010, the Automatic Renewal Law (“ARL”) at sections 17600-17606
10 of the Cal. Bus. & Prof. Code came into effect. The Legislature’s stated intent for this Article was to
11 end the practice of ongoing charges to consumers without consumers’ explicit consent for ongoing
12 shipments of a product or ongoing deliveries of service. *See* Cal. Bus. & Prof. Code § 17600.

13 9. Cal. Bus. & Prof. Code § 17602(a) makes it unlawful for any business making an
14 automatic renewal or continuous service offer to a consumer in this state to do any of the following:

15 (1) Fail to present the automatic renewal offer terms or continuous service offer terms in a clear
16 and conspicuous manner before the subscription or purchasing agreement is fulfilled and in
17 visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the
18 request for consent to the offer.

19 (2) Charge the consumer’s credit or debit card, or the consumer’s account with a third party, for
20 an automatic renewal or continuous service without first obtaining the consumer’s affirmative
21 consent to the agreement containing the automatic renewal offer terms or continuous service
22 offer terms.

23 (3) Fail to provide an acknowledgment that includes the automatic renewal or continuous service
24 offer terms, cancellation policy, and information regarding how to cancel in a manner that is
25 capable of being retained by the consumer. If the offer includes a free trial, the business shall
26 also disclose in the acknowledgment how to cancel and allow the consumer to cancel before the
27 consumer pays for the goods or services.

1 10. Cal. Bus. & Prof. Code § 17601(a)(1) defines the term “Automatic renewal” as a “plan,
2 arrangement, or provision of a contract that contains a free-to0pay conversion or in which a paid
3 subscription or purchasing agreement is automatically renewed at the end of a definite term for a
4 subsequent term.”

5 11. Cal. Bus. & Prof. Code § 17601(a)(2) requires that all “Automatic renewal offer terms”
6 and “continuous service offer terms” contain the following “clear and conspicuous” disclosures: (A)
7 “That the subscription or purchasing agreement will continue until the consumer cancels. (B) The
8 description of the cancellation policy that applies to the offer. (C) The recurring charges that will be
9 charged to the consumer’s credit or debit card or payment account with a third party as part of the
10 automatic renewal plan or arrangement, and that the amount of the charge may change, if that is the
11 case, and the amount to which the charge will change, if known. (D) The length of the automatic renewal
12 term or that the service is continuous, unless the length of the term is chosen by the consumer. (E) The
13 minimum purchase obligation, if any.”

14 12. Pursuant to Cal. Bus. & Prof. Code § 17601(a)(3), “[c]lear and conspicuous” or “clearly
15 and conspicuously” means “in larger type than the surrounding text, or in contrasting type, font, or color
16 to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols
17 or other marks, in a manner that clearly calls attention to the language.”

18 13. Cal. Bus. & Prof. Code § 17602(c)(1) provides: “A business that makes an automatic
19 renewal offer or continuous service offer shall provide a toll-free telephone number, email address, a
20 postal address if the seller directly bills the consumer, or it shall provide another cost-effective, timely,
21 and easy-to-use mechanism for cancellation that shall be described in the acknowledgment specified in
22 paragraph (3) of subdivision (a).”

23 14. Cal. Bus. & Prof. Code § 17603 provides: “In any case in which a business sends any
24 goods, wares, merchandise, or products to a consumer, under a continuous service agreement or
25 automatic renewal of a purchase, without first obtaining the consumer’s affirmative consent as described
26 in Section 17602, the goods, wares, merchandise, or products shall for all purposes be deemed an
27 unconditional gift to the consumer, who may use or dispose of the same in any manner he or she sees fit
28 without any obligation whatsoever on the consumer’s part to the business, including, but not limited to,

1 bearing the cost of, or responsibility for, shipping any goods, wares, merchandise, or products to the
2 business.”

3 **B. Defendant’s Pre-Transaction Violations of the ARL**

4 15. Defendant offers through the Website various subscriptions for products to consumers.
5 Defendant’s offerings constitute an “automatic renewal” because such offerings comprise of plans,
6 arrangements, or provisions of a contract that contains a free-to-pay conversion or in which a paid
7 subscription or purchasing agreement is automatically renewed at the end of a definite term for a
8 subsequent term for the purposes of Cal. Bus. & Prof. Code § 17601(a)(1).

9 16. At relevant times, an example of Defendant’s plan presented on its Website is as follows:

10
11 **25 servings per container.**
12 **382.5g (13.49 oz)**

13	One-time purchase \$42.99	Subscribe and save 15% \$36.54
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14

15 **Delivery**

16 Delivery every 1 month ▼

17 [Subscription details](#)


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21 **ADD TO CART**

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25 Free Return + Package Protection ⓘ

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1 <https://upperlimitsupplements.com/collections/all/products/bcaa-drink-mix> (last visited Dec. 26, 2025).

2 17. At relevant times, Defendant’s final checkout page in its order flow process is presented
3 on its Website as follows:

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Express checkout:



By continuing with your payment, you agree to the future charges listed on this page and the cancellation policy.

OR

Contact [Log in](#)

Email

Email me with news and offers.

Delivery

Country/Region
United States

First name

Last name

Company (optional)

Address

Apartment, suite, etc. (optional)

City

State
California

ZIP code

Phone

Save this information for next time

Shipping method

Enter your shipping address to view available shipping methods.

Payment

All transactions are secure and encrypted.

Credit card     +2

Card number

Expiration date (MM / YY)

Security code

Name on card

Use shipping address as billing address

PayPal 

[Pay now](#)

One or more items in your cart is a deferred or recurring purchase. By continuing with your payment, you agree that your payment method will automatically be charged at the price and frequency listed on this page until it ends or you cancel. All cancellations are subject to the cancellation policy.

[Refund policy](#) [Shipping](#) [Privacy policy](#) [Terms of service](#) [Cancellations](#)

 Pina Colada EAA/BCAA + Electrolyte Drink Mix \$109.62
Delivery every 1 month

Discount code or gift card

[Apply](#)

Subtotal \$109.62

Shipping  Enter shipping address

Total **USD \$109.62**

Recurring subtotal  \$109.62 every month

1
2 [https://upperlimitsupplements.com/checkouts/cn/hWN6siA8hzYj03Xw1qRP2CXq/en-](https://upperlimitsupplements.com/checkouts/cn/hWN6siA8hzYj03Xw1qRP2CXq/en-us?_r=AQABxsoxIBm95fbNGp8-bXq2FB3zohY7aTwEaYdQTZNXqZI)
3 [us?_r=AQABxsoxIBm95fbNGp8-bXq2FB3zohY7aTwEaYdQTZNXqZI](https://upperlimitsupplements.com/checkouts/cn/hWN6siA8hzYj03Xw1qRP2CXq/en-us?_r=AQABxsoxIBm95fbNGp8-bXq2FB3zohY7aTwEaYdQTZNXqZI) (last visited Dec. 26, 2025).

4 18. Defendant’s final checkout page presented to consumers violates the ARL. In particular,
5 such page violates Section 17602(a)(1) by failing to describe the “cancellation policy that applies to the
6 offer” as set forth in section 17601(a)(2)(B) via “clear and conspicuous” disclosures in compliance with
7 section 17601(a)(3) by failing to include the automatic renewal offer terms and continuous service offer
8 terms in a “clear and conspicuous” manner, *i.e.*, with “larger type than the surrounding text, or in
9 contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding
10 text of the same size by symbols or other marks, in a manner that clearly calls attention to the language.”

11 19. Although Defendant’s checkout page sets forth its purported automatic renewal offer
12 terms and continuous service offer terms below a large “Payment” header, Plaintiff’s investigation has
13 determined that such textual disclosure statements are in a comparatively small 10.5 point type size in
14 the System UI font in a gray color against a white background.

15 20. Although Defendant’s textual disclosure statement contains a hyperlink named
16 “cancellation policy,” with an underline beneath it, all such text is in a light gray color including the
17 name of the hyperlink as well as the underline beneath such hyperlink making such hyperlink difficult
18 to distinguish from the surrounding text.

19 21. Other elements on that same checkout webpage are in comparatively larger size such as
20 the “Pay now” button and text that is 18 point type size including a “Payment” heading. Such other
21 elements direct the user’s attention everywhere else besides the Website’s textual disclosure statement
22 on its final checkout page. *Berman v. Freedom Financial Network, LLC*, 30 F.4th 849, 857 (9th Cir.
23 2022) (determining that “comparatively larger font used in all of the surrounding text naturally directs
24 the user’s attention everywhere else”); *Dawson v. Target Corp.*, 2025 WL 1651940, at *3 (N.D. Cal.
25 June 11, 2025) (finding screenflows failed to provide reasonable notice of defendant’s hyperlinked terms
26 and preceding disclaimers because of “overwhelming inconspicuousness created by its small font size
27 and placement that otherwise causes the Terms & Conditions to blend into the screen”); *Strehl v. Guitar*
28 *Center, Inc.*, 2023 WL 9700041, at *7 (C.D. Cal. Nov. 3, 2023) (Kronstadt, J.) (noting that textual

1 disclosure statement on final order flow webpage “is in a smaller font” “relative to” other text on same
2 webpage and “Complete Order” button intended to manifest user’s assent); *Farmer v. Barkbox, Inc.*,
3 2023 WL 8522984, at *2 (C.D. Cal. Oct. 6, 2023) (Sykes, J.) (holding that website design did not satisfy
4 objective reasonableness standard because textual disclosure notice was “printed small” “with other
5 graphics and text more likely to attract the user’s attention”); *Chabolla v. ClassPass, Inc.*, 2023 WL
6 4544598, at *4 n.3 (N.D. Cal. June 22, 2023) (denying motion to compel arbitration in sign-in wrap
7 agreement even where terms were hyperlinked in blue font because “this [color] alone does not make
8 the text notice of the Terms conspicuous in light of the other deficits identified” such as the tiny font
9 size), *aff’d*, 129 F.4th 1147, 1154 (9th Cir. 2025).

10 22. Although the “cancellation policy” hyperlink, if clicked, takes the user to a window that
11 describes a portion of Defendant’s cancellation policy, such window fails to describe such policy
12 sufficiently in a manner that would allow a user to easily cancel the user’s subscription. For example,
13 such window states in relevant part, “If you want to cancel or change your subscription, you can do it at
14 any time. Your order confirmation emails have links to your order. You can manage your subscription
15 from there.” Nowhere on Defendant’s Website is a full version of instructions for cancellation given.

16 23. In actuality, cancelling requires consumers to confirm their decision to cancel the
17 subscription multiple times before actually completing the cancellation.

18 24. The foregoing irrefutably demonstrates that the “cancellation policy” hyperlink below
19 the large “Pay now” button is missing critical information regarding how users can cancel their
20 subscriptions via the Website.

21 25. In short, Defendant fails to properly present consumers with its automatic renewal offers
22 or continuous service offer terms prior to a consumer completing a purchase.

23 **C. Defendant’s Post-Transaction Violations of the ARL**

24 26. Defendant similarly violated the ARL by failing to provide to consumers the post-
25 transaction acknowledgement required by section 17602(a)(3). An excerpt of such post-transaction
26 email from Defendant, which has been redacted regarding identifying factors only, is as follows:
27
28

Thank you for your purchase.
Please review your subscription details below.

You may manage your subscription by clicking here:
[Manage subscription](#)

Subscription details

Piña Colada EAA/BCAA + Electrolyte Drink Mix \$36.54

- Charges every month
- Next charge on Oct 3, 2025

Subtotal \$36.54

Shipping \$6.95

Taxes \$0.00

Total **\$43.49**

Please email us [here](#) if you have any questions about your subscription.

**"Upper Limit™ Supplements" provides a subscription service. By subscribing to our service, you have confirmed that you accept our Terms of Service. Your subscription will automatically renew on a recurring basis at which time your credit card will be charged automatically for the subscription products until you cancel your subscription. Taxes and shipping fees may apply. You may cancel your subscription at any time from the Subscriptions section of your account or email help@upperlimitsupplements.com and we'll cancel or update for you*

27. Defendant violates the following sections with its post transaction email to consumers:
- (1) Section 17602(a)(3) by failing to “provide an acknowledgment that includes the automatic renewal or continuous service offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer.”

1 **D. Plaintiff’s Transaction on the Website and Subsequent Recurring Charges**

2 28. On October 16, 2025, Plaintiff purchased “Pina Colada EAA/BCAA + Electrolyte Drink
3 Mix” (the “Product”) from Defendant via the Website at a price of \$45.47. On November 16, 2025,
4 Plaintiff’s credit card account was charged by Defendant for \$43.49 for the Product as part of a recurring
5 monthly charge. After discovering such second charge to Plaintiff’s credit card account by Defendant,
6 Plaintiff cancelled the subscription shortly thereafter.

7 **E. Plaintiff’s Legal Remedy Is an Inadequate Remedy at Law**

8 29. Plaintiff seeks damages and, in the alternative, restitution. Plaintiff is permitted to seek
9 equitable remedies in the alternative because Plaintiff has no adequate remedy at law. *Coleman v.*
10 *Mondelez Int’l Inc.*, 554 F. Supp. 3d 1055, 1065 n.9 (C.D. Cal. 2021) (Olguin, J.) (holding that
11 alternative pleading at the pleading stage is acceptable) (citing cases).

12 30. A legal remedy is not adequate if it is not as certain as an equitable remedy. *Coleman v.*
13 *Mondelez Int’l Inc.*, 554 F. Supp. 3d 1055, 1065 (C.D. Cal. 2021) (holding that “plaintiff has sufficiently
14 established at this stage that she lacks an adequate remedy at law with respect to her claims for equitable
15 relief” because “the court is persuaded that” “her allegations sufficiently plead that ‘restitution under the
16 CLRA or UCL would be more certain, prompt, or efficient’ than the monetary damages she seeks, but
17 may ultimately not attain”). In particular, the elements of Plaintiff’s equitable claims are different and
18 do not require the same showings as Plaintiff’s legal claim under the CLRA. *See Ostrovskaya v. St.*
19 *John Knits, Inc.*, 2022 WL 2102895, at *5 (C.D. Cal. Mar. 31, 2022) (Gee, J.) (“The FAL and the UCL
20 provide for only restitutionary and injunctive relief, whereas the CLRA also provides for monetary
21 damages. In many cases, liability under the three statutes will involve the same facts and elements. But
22 here, Plaintiff predicates her FAL claim largely on a specific statutory provision. . . . Plaintiff may be able
23 to prove these more straightforward factual elements, and thus prevail under the FAL, while still being
24 unable to convince a jury of the more subjective claim that ‘members of the public are likely to be
25 deceived,’ and therefore fail with respect to her CLRA claim. Plaintiffs alleges as much in her pleading.
26 Thus, she has shown how restitution—her only available remedy under the FAL—‘would be more
27 certain, prompt, or efficient than the legal remedies’ available under the CLRA.”) (internal citations
28 omitted); *Farmer v. BarkBox, Inc.*, 2023 WL 8522984, at *6 (C.D. Cal. Oct. 6, 2023) (“Plaintiff’s CLRA

1 claim includes more ‘stringent elements’ than her UCL claim, such that she may demonstrate her right
2 to restitution under the UCL but fall short of establishing her right to damages under the CLRA.”).

3 31. For example, Plaintiff’s claims under the UCL and FAL (equitable claims seeking
4 restitution) are predicated on specific statutory provisions under the ARL, which prohibit the failure to
5 include certain clear and conspicuous disclosures about automatic renewal offer terms including
6 cancellation policy before and after a transaction for such purchase occurs. (Cal. Bus. & Prof. Code §
7 17602(a)(1) & (3).) Plaintiff may be able to prove these more straightforward factual elements, and thus
8 prevail under the UCL and FAL, while not being able to prove one or more elements of Plaintiff’s legal
9 claim under the CLRA seeking damages governed by the reasonable consumer test.

10 32. Finally, legal damages are inadequate to remedy the imminent threat of future harm that
11 Plaintiff faces. Only an injunction can remedy this threat of future harm. Plaintiff would purchase either
12 the product or other products from Defendant again in the future if Plaintiff could feel sure that
13 Defendant’s checkout flow screens accurately reflected the true nature of Defendant’s offers. But,
14 without an injunction, Plaintiff has no realistic way to know which—if any—of Defendant’s offers are
15 not misleading especially whether such offers include all material facts or omit some of them. Thus,
16 Plaintiff is unable to rely on Defendant’s checkout flow screens in the future, and so Plaintiff cannot
17 purchase products that Plaintiff would like to purchase.

18 **IV. CLASS ACTION ALLEGATIONS**

19 33. Plaintiff brings this action on behalf of all persons similarly situated, and seeks
20 certification of the following class:

21 All persons who, while in California, purchased any product or service from Defendant’s
22 Website in response to an offer constituting an “Automatic renewal” as defined by § 17601(a)(1)
23 of the California Business and Professions Code within the statute of limitations period.

24 34. The above-described class of persons shall hereafter be referred to as the “Class.”
25 Excluded from the Class are any and all past or present officers, directors, or employees of Defendant,
26 any judge who presides over this action, and any partner or employee of Class Counsel. Plaintiff
27 reserves the right to expand, limit, modify, or amend this class definition, including the addition of one
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1 or more subclasses, in connection with his motion for class certification, or at any other time, based
2 upon, *inter alia*, changing circumstances and/or new facts obtained during discovery.

3 35. **Numerosity.** The Class is so numerous that joinder of all members in one action is
4 impracticable. The exact number and identities of the members of the Class is unknown to Plaintiff at
5 this time and can only be ascertained through appropriate discovery, but Plaintiff is informed and
6 believes, and thereon, alleges that there are at least 100 members of the Class.

7 36. **Typicality.** Plaintiff's claims are typical of those of other members of the Class, all of
8 whom have suffered similar harm due to Defendant's course of conduct as described in this Complaint.

9 37. **Adequacy of Representation.** Plaintiff is an adequate representative of the Class and
10 will fairly and adequately protect the interests of the Class. Plaintiff has retained attorneys who are
11 experienced in the handling of complex litigation and class actions, and Plaintiff and Plaintiff's counsel
12 intend to prosecute this action vigorously.

13 38. **Predominance of Common Questions of Law or Fact.** Common questions of law and
14 fact exist as to all members of the Class that predominate over any questions affecting only individual
15 members of the Class. These common legal and factual questions, which do not vary among members
16 of the Class, and which may be determined without reference to the individual circumstances of any
17 member of the Class, include, but are not limited to, the following:

- 18 A) Whether, during the Class period, Defendant failed to present the automatic renewal offer
19 terms, or continuous service offer terms, in a clear and conspicuous manner before the
20 subscription or purchasing agreement was fulfilled and in visual proximity to the request
21 for consent to the offer in violation of Cal. Bus. & Prof. Code § 17602(a)(1);
- 22 B) Whether, during the Class period, Defendant failed to provide an acknowledgement that
23 included the automatic renewal or continuous service offer terms, cancellation policy, and
24 information on how to cancel in a manner that is capable of being retained by Plaintiff and
25 Class members, in violation of Cal. Bus. & Prof. Code § 17602(a)(3);
- 26 C) Whether Defendant's order flow screens and post-transaction acknowledgment constitute
27 unfair business practices in violation of the UCL under Business & Professions Code §
28 17200 *et seq.*;

- 1 D) Whether Defendant's order flow screens and post-transaction acknowledgment constitute
2 false advertising in violation of the FAL under California Business & Professions Code §
3 17500 *et seq.*;
- 4 E) Whether Defendant's order flow screens and post-transaction acknowledgment constitute
5 violations of the CLRA under California Civil Code § 1750 *et seq.*;
- 6 F) Whether Plaintiff and Class members are entitled to injunctive relief under Cal. Bus. &
7 Prof. Code §§ 17203, 17535 and Cal. Civil Code § 1780(a)(2);
- 8 G) Whether Plaintiff and the Class members are entitled to monetary relief insofar as the
9 goods or services provided by Defendant are deemed an unconditional gift in accordance
10 with Cal. Bus. & Prof. Code § 17603;
- 11 H) Whether Plaintiff and Class members are entitled to restitution in accordance with Cal.
12 Bus. & Prof. Code §§ 17203, 17535 and Cal. Civil Code § 1780(a)(3);
- 13 I) The proper formula(s) for calculating the restitution owed to Class members;
- 14 J) Whether Plaintiff and Class members are entitled to damages under Cal. Civil Code §
15 1780(a)(1);
- 16 K) Whether Plaintiff and the Class members are entitled to total damages of at least \$1,000 in
17 accordance with Cal. Civil Code § 1780(a)(1);
- 18 L) Whether Plaintiff and Class members are entitled to punitive damages under Cal. Civil
19 Code § 1780(a)(4) and Cal. Civil Code § 3294(a);
- 20 M) Whether Plaintiff and Class members are entitled to any other relief that the Court deems
21 proper in accordance with Cal. Civil Code § 1780(a)(5); and
- 22 N) Whether Plaintiff and Class members are entitled to attorneys' fees and costs under Cal.
23 Civil Code § 1780(e) and California Code of Civil Procedure § 1021.5.

24 39. **Superiority.** A class action is superior to other available methods for the fair and
25 efficient adjudication of this controversy because individual litigation of the claims of all members of
26 the Class is impracticable.
27
28

1 and (a)(9), Cal. Civ. Code § 1770(a)(5), (9), predicated on Optavia’s violation of the ARL....” *Zeller*,
2 2024 WL 1207461, at *5; *see also Zeichner v. Nord Security Inc.*, 2024 WL 4951261, at *6 (N.D. Cal.
3 Dec. 2, 2024) (holding that allegations of ARL violations plausibly stated a CLRA claim based upon
4 unlawful practices particularly sections 1770(a)(5) and (9)) (“Plaintiff alleges Defendants advertised
5 their product as though it did not automatically renew without consumer consent, when in actuality, the
6 subscription did renew, and Defendants intended as much. These alleged violations of the ARL
7 constitute material omissions by Defendants arising from a statutorily prescribed duty.”); *Price v.*
8 *Synapse Group, Inc.*, 2017 WL 3131700, at *8 (S.D. Cal. July 24, 2017) (“Plaintiffs allege that
9 Defendants advertised discounted magazine subscriptions without adequately disclosing the terms of the
10 automatic renewal features attached to those subscriptions. Put another way, Plaintiffs allege that by not
11 adequately disclosing the automatic renewal features tied to the subscriptions, Defendants represented
12 that the subscriptions had a characteristic they did not have—namely, the absence of an automatic
13 renewal feature. The Court finds these allegations sufficient to state a claim under § 1770(a)(5).”)
14 (denying motion to dismiss CLRA claim under sections 1770(a)(5) and (9)).

15 45. Plaintiff is an individual who acquired, by purchase, the Product, which is a “good[,]”
16 *i.e.*, a tangible chattel bought for use primarily for personal, family, or household purposes within the
17 meaning of Civil Code § 1761(a).

18 46. “A duty to disclose a material fact can arise if ... it is imposed by statute....” *Zeichner*,
19 2024 WL 4951261, at *6 (quoting *Rattagan v. Uber Techs., Inc.*, 17 Cal. 5th 1, 40 (2024)). Here, the
20 ARL imposed upon Defendant multiple duties to disclose certain material facts. Under the ARL,
21 Defendant owed Plaintiff a statutory duty to present automatic renewal offer terms and continuous
22 service offer terms in a clear and conspicuous manner before fulfilling the subscription or purchasing
23 agreement in visual proximity to the request for consent to the offer under section 17602(a)(1) of the
24 California Business and Professions Code. In addition, under the ARL, Defendant owed Plaintiff a
25 statutory duty to provide an acknowledgment that includes automatic renewal offer terms or continuous
26 service offer terms, cancellation policy, and information regarding how to cancel in a manner that is
27 capable of being retained by the consumer under California Business and Professions Code §
28 17602(a)(3).

1 47. Defendant violated the foregoing ARL requirements under subdivisions (a)(1) and (3) of
2 section 17602 by failing to disclose key details of its cancellation policy and how to cancel in the fine
3 print on the Website at the time of the consumer online checkout process and in its post-transaction
4 acknowledgment. Such violations of the ARL constitute material omissions by Defendant arising from
5 a statutorily prescribed duty.

6 48. In addition, Defendant's textual disclosure statements on the final order flow screen of
7 its checkout process are misleading because they omit statutorily-required information about
8 Defendant's cancellation policy, including how to cancel, in a clear and conspicuous manner before the
9 subscription or purchasing agreement is fulfilled and in visual proximity to the request for consent to
10 the offer. In addition, Defendant's post-transaction acknowledgment is misleading because it omits
11 statutorily-required information about Defendant's automatic renewal offer terms or continuous service
12 offer terms including Defendant's cancellation policy and information regarding how to cancel in a
13 manner that is capable of being retained by the consumer in a clear and conspicuous manner. Thus, the
14 automatic-renewal process on the Website and post-transaction acknowledgment create the misleading
15 impression that the amount paid by a consumer is a one-time charge, rather than an automatically
16 recurring monthly charge, and, thus, are unlawful misrepresentations in violation of the CLRA. Put
17 differently, Defendant advertised the Product as though it did not automatically renew without consumer
18 consent even though, in actuality, the subscription to the Product did renew, which is what Defendant
19 intended.

20 49. In doing so, Defendant intentionally misrepresented and concealed material facts from
21 Plaintiff and Class members. Said misrepresentations and concealment were done with the intention of
22 deceiving Plaintiff and Class members, and depriving Plaintiff and Class members of their rights and
23 money.

24 50. Defendant knew that the advertising of its products on the order flow screens on its
25 Website and in its post-transaction acknowledgment were misleading, deceptive, and omitted material
26 information. Defendant also knew that its post-transaction acknowledgment of products advertised on
27 its Website were misleading, deceptive, and omitted material information.

1 to make or disseminate or cause to be made or disseminated from this state before the public in any state,
2 in any newspaper or other publication, or *any advertising device*, or by public outcry or proclamation,
3 or *in any other manner or means whatever, including over the Internet, any statement*, concerning
4 that real or *personal property* or those services, professional or otherwise, or *concerning any*
5 *circumstance or matter of fact connected with the proposed* performance or *disposition thereof, which*
6 *is untrue or misleading, and which is known, or which by the exercise of reasonable care should be*
7 *known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate*
8 *or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent*
9 *not to sell that personal property* or those services, professional or otherwise, *so advertised at the price*
10 *stated therein, or as so advertised.*” (Cal. Bus. & Prof. Code § 17500) (emphasis added).

11 58. By committing the acts alleged in this operative Complaint, Defendant has violated
12 Business and Professions Code §§ 17500 *et seq.* In particular, Defendant’s textual disclosure statements
13 on the final order flow screen of its checkout process are misleading because they omit statutorily-
14 required information about Defendant’s cancellation policy, including how to cancel, in a clear and
15 conspicuous manner before the subscription or purchasing agreement is fulfilled and in visual proximity
16 to the request for consent to the offer. In addition, Defendant’s post-transaction acknowledgment is
17 misleading because it omits statutorily-required information about Defendant’s automatic renewal offer
18 terms or continuous service offer terms including Defendant’s cancellation policy and information
19 regarding how to cancel in a manner that is capable of being retained by the consumer in a clear and
20 conspicuous manner.

21 59. As a direct and proximate result of Defendant’s misleading order flow screens on its
22 Website and misleading post-transaction acknowledgment, which contain omissions prohibited by the
23 ARL, Plaintiff and members of the Class have suffered injury in fact and have lost money.

24 60. Plaintiff is entitled to restitution pursuant to Cal. Bus. & Prof. Code § 17535 for all
25 monies paid by Plaintiff under the subscription agreement or purchasing agreement. Defendant should
26 be required to disgorge all the profits and gains it has reaped and restore such profits and gains to Plaintiff
27 and Class members, from whom they were unlawfully taken.

28 **THIRD CLAIM FOR RELIEF**

1 **Violation of Unfair Competition Law**

2 **Cal. Bus. & Prof. Code § 17200 *et seq.***

3 **(By Plaintiff, on Plaintiff’s own behalf and on behalf of the Class, against All Defendants)**

4 61. Plaintiff incorporates by reference the foregoing paragraphs as if set forth hereinafter.

5 62. The UCL prohibits unfair competition in the form of any unlawful, unfair, or fraudulent
6 business act or practice, any unfair, deceptive, untrue or misleading advertising, and any act prohibited
7 by the FAL. Cal. Bus. & Prof. Code § 17204 allows “a person who has suffered injury in fact and has
8 lost money or property” to prosecute a civil action for violation of the UCL. Such a person may bring
9 such an action on behalf of himself or herself and others similarly situated who are affected by the
10 unlawful and/or unfair business practice or act.

11 63. During the Class period, Defendant committed unlawful business acts or practices as
12 defined by the UCL by violating sections 17601 and 17602 of the California Business and Professions
13 Code.

14 64. As a direct and proximate result of Defendant’s deceptive, unfair, and unlawful acts or
15 practices described herein, including its misleading and incomplete order flow screens on its Website
16 and misleading and incomplete post-transaction acknowledgment, Plaintiff and members of the Class
17 have suffered injury in fact and have lost money.

18 65. Defendant has received, and continues to hold, unlawfully obtained property and money
19 belonging to Plaintiff in the form of payments made for the insufficiently disclosed subscription
20 agreement by Plaintiff. Defendant has profited from its unlawful acts or practices in the amount of those
21 business expenses and interest accrued thereon.

22 66. Plaintiff is entitled to restitution pursuant to Cal. Bus. & Prof. Code § 17203 for all
23 monies paid by Plaintiff under the subscription agreement. Defendant should be required to disgorge
24 all the profits and gains it has reaped and restore such profits and gains to Plaintiff and Class members,
25 from whom they were unlawfully taken.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff seeks judgment against Defendant as follows:

- 28 a. For an order certifying that the action be maintained as a class action, that Plaintiff be

1 designated as the class representative, and that undersigned counsel be designated as class
2 counsel;

3 b. For all available declaratory, legal, and equitable relief including injunctive relief;

4 c. For statutory damages;

5 d. For punitive damages;

6 e. For attorneys' fees and costs as allowed by law; and

7 f. For any and all other relief at law or equity that may be appropriate.

8
9 Dated: January 20, 2026

PACIFIC TRIAL ATTORNEYS, APC

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11 By:  _____
12 Scott J. Ferrell
13 Attorneys for Plaintiff and the Proposed Class
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