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14  
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF LOS ANGELES**

17 STEPHANIE NYGARD, on behalf of herself )  
and all others similarly situated, )

18 Plaintiff, )

19 v. )

20 TOTAL SECURITY LIMITED, SYSTEM 1, )  
21 INC., )

22 Defendants. )  
23  
24  
25  
26  
27  
28

Case No. **23STCV29131**

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Stephanie Nygard (“Plaintiff”), on behalf of herself and all others similarly situated,  
2 brings this action against Defendant Total Security Limited (“Total Security”) and Defendant  
3 System1, Inc. (“System1”) (collectively, “Defendants”) and alleges the following:

4 **INTRODUCTION**

5 1. Plaintiff brings this action on behalf of herself the general public, and a class of  
6 similarly situated consumers against Total Security and System1, regarding its automatic renewal  
7 scheme with respect to its Total AV subscriptions.

8 2. Specifically, Total Security fails to cancel subscription plans of subscribers that cancel  
9 their paid monthly subscription. Instead, Total Security continues to charge consumers unwanted  
10 monthly fees even after they attempt to cancel their membership.

11 3. In so doing, Total Security systematically violates state automatic renewal laws and  
12 consumer protection laws, by engaging in a pattern and practice of exploiting its members by  
13 continuing to charge them monthly fees, without consumers’ consent, after they have canceled their  
14 memberships.

15 4. On behalf of herself and the proposed class, Plaintiff seeks damages, restitution,  
16 statutory damages, attorneys’ fees, and public injunctive relief, as set forth more fully below.

17 **PARTIES**

18 5. Plaintiff Stephanie Nygard is a citizen and resident of Encino, CA.

19 6. Defendant Total Security Limited is a British corporation with its United States based  
20 principal place of business and headquarters in Venice, California. Total Security is a subsidiary of  
21 System1, Inc.

22 7. Defendant System1, Inc. is a Delaware corporation with its principal place of business  
23 and headquarters in Los Angeles, California. System1 is the parent organization of Total Security.

24 **JURISDICTION AND VENUE**

25 8. This Court has original jurisdiction over Defendants and the claims set forth below  
26 pursuant to Code of Civil Procedure § 410.10 and the California Constitution, Article VI § 10, because  
27 this case is a cause not given by statute to the other trial courts.

28 9. Plaintiff is informed and believes that the State of California has personal jurisdiction

1 over the Defendants named in the action because Defendants are companies authorized to conduct  
2 and does conduct business in this State. Defendants are registered with the California Secretary of  
3 State to do sufficient business with sufficient minimum contacts in California, and/or otherwise  
4 intentionally avails itself of the California market, including in the County of Los Angeles, which has  
5 caused both obligations and liability of Defendants to arise in the County of Los Angeles.

6 10. The amount in controversy exceeds the jurisdictional minimum of this Court.

7 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

8 **I. CALIFORNIA AUTOMATIC RENEWAL LAW**

9 11. The Automatic Renewal Law (“ARL”) is part of California’s False Advertising Law.  
10 The purpose of the ARL is to “end the practice of ongoing” subscription charges “without the  
11 consumers’ explicit consent.” Cal. Bus. & Prof. Code §17600. To this end, the law makes it illegal for  
12 companies to charge consumers for automatically renewing subscriptions, unless the company meets  
13 strict disclosure and consent requirements.

14 12. Under the ARL, a company must “present the automatic renewal offer terms or  
15 continuous service offer terms in a clear and conspicuous manner before the subscription or purchasing  
16 agreement is fulfilled and in visual proximity, or in the case of an offer conveyed by voice, in temporal  
17 proximity, to the request for consent to the offer.” Cal. Bus. & Prof. Code §17602(a)(1).

18 13. The “automatic renewal offer terms” that must be presented include:

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

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

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

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

9 16. The ARL also includes post-purchase acknowledgment requirements (required in  
10 addition to the pre-purchase requirements described above). Cal. Bus. & Prof. Code §17602(a)(3) & (b).

11 **II. OVERVIEW OF TOTAL SECURITY**

12 17. Total Security offers a variety of cybersecurity products “designed to offer superior  
13 protection against a broad spectrum of online threats.”<sup>1</sup>

14 18. TotalAV is Total Security’s premier software product, which is designed to protect  
15 computers against hackers, viruses, and malware.

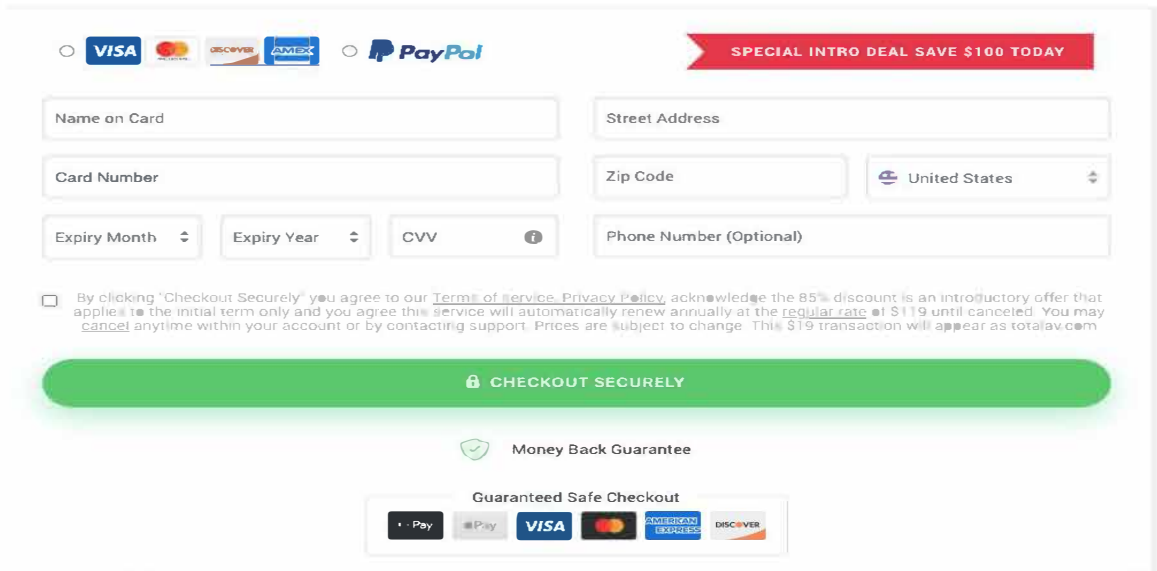
16 19. TotalAV represents that subscriptions may be cancelled by logging into the customers’  
17 account, emailing the Help Center, or calling its toll-free number. TotalAV further represents that  
18 customers can cancel for any reason within thirty (30) days if they are on a 12-month plan and within  
19 14 days if they are on a monthly plan, and those customers will receive a full refund of any payments  
20 made within the cancelation period.

21 20. When customers sign up for an account, the only mention of automatic renewal is in  
22 the tiniest, faint font at the bottom of the page. It is also in pale grey text that blends into the white  
23 background (in contrast to the black, bold, colored, or all capitals text used to convey other  
24 information). Contrary to customary website design practice, the hyperlinks are not in a difference  
25 color than the other text in that paragraph. It is designed to go unnoticed.

26

27

28 <sup>1</sup> <https://www.totalsecurity.com/company> (last accessed October 20, 2023).



21. The disclosures are not made in a clear and conspicuous manner. A “clear and conspicuous” disclosure “means in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that clearly class attention to the language.” Cal. Bus. & Prof. Code. § 17601(c).

22. Here, the disclosures are in a smaller type than the surrounding text, and are in low contrast. The text is in very faded, light gray text against a white background, making it hard to read. The text is not set off from the surrounding text in a manner that clearly calls attention to it. Instead, the hidden location, small font size, and low contrast color are designed to go unnoticed. This is in contrast to, for example, the large, all capital “SPECIAL INTRO DEAL SAVE \$100 TODAY” in white font set against a red banner to highlight its promotion or the large, bright green button that urges uses to “CHECKOUT SECURLY” and purchase a subscription.

**III. TOTAL SECURITY VIOLATES AUTOMATIC RENEWAL LAWS AND FAILS TO HONOR CANCELLATION REQUESTS.**

23. Defendant routinely fails to cancel paid Total Security subscriptions despite its promise to do so. Plaintiff’s experience is informative.

24. In July of 2021, Plaintiff cancelled her TotalAV subscription by sending a message through Total Security’s Help Center.

25. Despite cancelling her subscription, Plaintiff found that Total Security had not honored

1 her cancellation request and was billed for several more months.

2 26. If Plaintiff knew that her cancellation request would not be honored, Plaintiff would  
3 not have purchased a TotalAV subscription.

4 **IV. ONLINE CONSUMER COMPLAINTS CONFIRM TOTAL SECURITY'S**  
5 **DECEPTIVE CANCELLATION PRACTICES.**

6 27. Defendant is well aware that its membership cancellation scheme deceives consumers.  
7 Hundreds of Total Security paid subscribers have complained of Defendant's failure to honor  
8 consumer cancellations. The following online consumer complaints are indicative of a broader  
9 problem:

10  
11 Total AV is should not be allowed to operate as a company. It has taken 3 years to  
12 cancel my subscription with them. I initially joined as the rate was very reasonable the  
13 first year, something like \$40 for the year. Then they did an auto renewal for \$130 for  
14 the following year. I Contacted them to cancel it and receive a refund. Their policy is  
15 if you dont contact them within 30 days, they do not provide refunds. I said fine, keep  
16 the service for that year but I asked to cancel the auto renewal. Of course they did not  
17 take the auto renewal off and I was billed again. I then canceled my service outright. I  
18 then had a new renewal for some \$140 the following year . I had canceled this service  
19 per what there website required, I have just received a conversation with one of there  
20 representatives saying you need a special link from them and canceling on the website  
21 does not really cancel the service!!!! Not sure where this company is based, certainly  
22 not legitimate.

23  
24 You request to cancel and get a refund within their policy terms, and they harass you  
25 for 46 minutes. You tell them you are 100% sure you want the refund and will not be  
26 using their company again because of their awful customer service. \*\*\*\* didn't bother  
27 to remove quotations around the information he was copying and pasting into the chat.  
28 Told me I would get an email to confirm some information to get a refund and cancel  
my account. I never got the Email and he disconnected from the chat. -1000 out of 5  
stars Spent 46 minutes in an online chat to be offered the same service at 6 different  
price points after I told them I was charged for two whole years I never used, and just  
wanted the money back that I was charged for Today for the new subscription. STAY  
CLEAR of this company

I have never been more frustrated with a company not willing to cancel the service. I  
requested cancellation in November of 2022 and in July 2023 was billed for a full  
subscription. Their reason being I did not state why I wanted to cancel the service.  
This company takes advantage of people and I would not recommend the service.

I have been trying to Cancel and Unsubscribe for months but the link will NOT allow  
me access and there is NO phone # to speak to anyone. This company \*\*\*\*\* and they  
continue to take \$ from my account and will not allow me access to cancel and  
unsubscribe. I would leave a zero rating if I could. DO NOT GET THIS SERVICE.

1 Typical cheap recurring service fee that tricks you into thinking you have canceled  
2 then after you find out they are still billing you, set aside a good hour and your  
3 frustration to cancel this service. Basically a free trial will cost you about \*\*\*\*\* if  
4 you dont click the right button at cancelation.. click the red button instead of the green  
5 thats the fish hook. the changed the color of the buttons to fool you.

6 28. These reviews are merely a sampling of the negative comments consumers have left  
7 about Defendants' deceptive cancellation policies and practices.

8 **CLASS ALLEGATIONS**

9 29. Plaintiff brings this action on behalf of herself and all others similarly situated, on  
10 behalf of the below-defined Class.

11 30. The proposed class ("Class") is defined as follows:

12 The Cancellation Class: All persons in the United States who, within the applicable  
13 statute of limitations period, cancelled their Total Security paid subscription but were  
14 subsequently charged by Defendants ("Cancellation Class").

15 31. Excluded from the Class are (i) Defendant and Defendant's subsidiaries and affiliates;  
16 (ii) Defendant's officers, directors, and employees; (iii) entities in which Defendant has a controlling  
17 interest; (iv) the judicial officer(s) to whom this action is assigned; and (v) the immediate family  
18 members, legal representatives, heirs, successors, or assigns of any party excluded under (i)–(iv).

19 32. Plaintiff reserves the right to modify or amend the definition of the proposed Class  
20 and to add subclasses before this Court determines whether certification is appropriate.

21 33. This case is appropriate for class treatment because Plaintiff can prove the elements of  
22 their claims on a class wide basis using the same evidence as would be used to prove those elements  
23 in individual actions alleging the same claims.

24 34. **Numerosity:** The parties are numerous such that joinder is impracticable. Upon  
25 information and belief, and subject to class discovery, the Class consists of thousands of members or  
26 more, the identity of whom are within the exclusive knowledge of and can be ascertained only by  
27 resort to Total Security's records. Total Security has the administrative capability through its computer  
28 systems and other records to identify all members of the Class, and such specific information is not  
otherwise available to Plaintiff.

35. **Commonality:** The questions here are ones of common or general interest such that

1 there is a well-defined community of interest among Class members. These questions predominate  
2 over questions that may affect only individual class members because Total Security has acted on  
3 grounds generally applicable to the class. Such common legal or factual questions include, but are  
4 not limited to: (i) whether Defendant engaged in the conduct alleged herein; (ii) whether Defendant's  
5 conduct was deceptive, (iii) whether Defendant's conduct caused class members harm; (iv) whether  
6 Defendant's automatic renewal plans violate the ARL and state consumer protection laws; (v) the  
7 appropriate measure of damages; and (vi) whether Plaintiff and the class are entitled to declaratory  
8 relief, injunctive relief, restitution, or a combination of these.

9       36.     **Typicality:** Plaintiff's claims are typical of the claims of the other members of the Class  
10 in that they arise out of the same wrongful business practices by Total Security, as described herein.  
11 The evidence and the legal theories regarding Defendant's alleged wrongful conduct committed  
12 against Plaintiff and absent Class members are substantially the same because the challenged practices  
13 are uniform for Plaintiff and Class members. Accordingly, in pursuing their own self-interest in  
14 litigating the claims, Plaintiff will also serve the interests of the Class.

15       37.     **Adequacy:** Plaintiff is a more than adequate representative of the Class in that Plaintiff  
16 is a Total Security owner and has suffered damages as a result of Total Security's deceptive practices.  
17 Additionally, (i) Plaintiff is committed to the vigorous prosecution of this action on behalf of herself  
18 and all others similarly situated; (ii) Plaintiff has retained competent counsel experienced in the  
19 prosecution of class actions; (iii) there is no conflict of interest between Plaintiff and the unnamed  
20 members of the Class; (iv) Plaintiff anticipates no difficulty in the management of this litigation as a  
21 class action; and (v) Plaintiff's legal counsel has the financial and legal resources to meet the  
22 substantial costs and address the legal issues associated with this type of litigation.

23       38.     **Predominance:** The matter is properly maintained as a class action because the  
24 common questions of law and fact identified herein and to be identified through discovery  
25 predominate over questions that may affect only individual Class members.

26       39.     **Superiority:** A class action is superior to all other available methods for the fair and  
27 efficient adjudication of this matter because the injuries suffered by the individual Class members are  
28 relatively small. As such, the expense and burden of individual litigation would make it virtually

1 impossible for Plaintiff and Class members to individually seek redress for Defendant’s wrongful  
2 conduct.

3 40. Additionally, the class is numerous enough to render joinder of all members or the  
4 maintenance of separate suits impracticable. Even if any individual person or group of Class members  
5 could afford individual litigation, it would be unduly burdensome to the courts in which the individual  
6 litigation would proceed. The class action device is preferable to individual litigation because it  
7 provides the benefits of unitary adjudication, economies of scale, and comprehensive resolution by a  
8 single court. Further, the difficulties likely to be encountered in the management of this action as a  
9 class action are minimal.

10 41. In contrast, the prosecution of separate actions by individual Class members would  
11 create a risk of inconsistent or varying adjudications with respect to individual Class members that  
12 would establish incompatible standards of conduct for the party or parties opposing the Class and  
13 would lead to repetitious trials of many common questions of law and fact.

14 42. Plaintiff knows of no difficulty to be encountered in the management or maintenance  
15 of this action that would preclude its maintenance as a class action. But absent a class action, Plaintiff  
16 and Class members will continue to suffer losses, thereby allowing Defendant’s violations of law to  
17 proceed without remedy and allowing Defendant to retain the proceeds of their ill-gotten gains.

18 43. For all these reasons, a class action is superior to other available methods for the fair  
19 and efficient adjudication of this action.

20 44. As stated above, Total Security has acted or refused to act on grounds generally  
21 applicable to the class, thereby making appropriate corresponding declaratory relief with respect to  
22 the Class as a whole.

23 45. All conditions precedent to bringing this action have been satisfied, waived, or both.

24 **CLAIMS FOR RELIEF**

25 **FIRST CLAIM FOR RELIEF**

26 **Violation of California’s Unfair Competition Law**  
27 **(Cal. Bus. & Prof. Code § 17200, *et seq.*)**  
28 **(On Behalf of Plaintiff and the Class)**

28 46. Plaintiff hereby incorporates by reference the preceding paragraphs as if fully restated

1 here.

2 47. California law applies to the class because California has a significant interest in  
3 regulating the conduct of businesses operating within its borders. Moreover, the principal place of  
4 business of Defendants are in California, which constitutes the “nerve center” of its business  
5 activities—the place where its high-level officers direct, control, and coordinate the corporation’s  
6 activities, including decisions related to cancellation policies.

7 48. Defendants’ conduct described herein violates the Unfair Competition Law (“UCL”),  
8 codified at California Business and Professions Code § 17200, *et seq.*

9 49. The UCL prohibits, and provides civil remedies for, unfair competition. Its purpose is  
10 to protect both consumers and competitors by promoting fair competition in commercial markets for  
11 goods and services. In service of that purpose, the Legislature framed the UCL’s substantive  
12 provisions in broad, sweeping language.

13 50. The UCL imposes strict liability. Plaintiff need not prove that Defendants intentionally  
14 or negligently engaged in unlawful, unfair, or fraudulent business practices—but only that such  
15 practices occurred.

16 51. A business act or practice is “unfair” under the UCL if it offends an established public  
17 policy or is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers,  
18 and that unfairness is determined by weighing the reasons, justifications, and motives of the practice  
19 against the gravity of the harm to the alleged victims.

20 52. A business act or practice is “fraudulent” under the UCL if it is likely to deceive  
21 members of the public.

22 53. A business act or practice is “unlawful” under the UCL if it violates any other law or  
23 regulation.

24 54. Defendants committed unfair and fraudulent business acts and practices in violation  
25 of Cal. Bus. & Prof. Code § 17200, *et seq.*, by affirmatively and knowingly misrepresenting that  
26 subscribers that cancel their subscription will not be subsequently charged, as described herein.

27 55. Defendants also committed unlawful business acts and practices as defined by the  
28 UCL by violating multiple portions of California’s Automatic Renewal Law (“ARL”), specifically

1 Cal. Bus. & Prof. Code §§ 17601(b) which required Defendants to describe the cancellation policy  
2 that applies to Total Security’s offer, and failing to abide by that cancellation policy. Total Security  
3 also violated section 17602(d)(1) of the ARL which provides “a business that allows a consumer to  
4 accept an automatic renewal or continuous service offer online shall allow a consumer to terminate  
5 the automatic renewal or continuous service exclusively online, at will, and without engaging any  
6 further steps that obstruct or delay the consumer's ability to terminate the automatic renewal or  
7 continuous service immediately.”

8 56. Defendants’ acts and practices offend an established public policy of truthful  
9 advertising in the marketplace, and constitute immoral, unethical, oppressive, and unscrupulous  
10 activities that are substantially injurious to consumers.

11 57. The harm to Plaintiff and the Class outweighs the utility of Defendants’ practices.  
12 There were reasonably available alternatives to further Defendant’s legitimate business interests,  
13 other than the misleading and deceptive conduct described herein.

14 58. Defendants’ conduct also constitutes an “unlawful” act under the UCL because, as  
15 detailed in Plaintiff’s Second Claim for Relief below, it also constitutes a violation of sections  
16 1770(a)(5) and (a)(9) of the California Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code  
17 §1750, *et seq.*, as set forth more fully below.

18 59. Defendants’ business practices have misled Plaintiff and the proposed Class and,  
19 unless enjoined, will continue to mislead them in the future.

20 60. Plaintiff relied on Defendants’ misrepresentations in choosing to purchase a Total AV  
21 subscription.

22 61. By falsely marketing its cancellation practices, Defendants deceived Plaintiff and  
23 Class members into making purchases they otherwise would not make.

24 62. As a direct and proximate result of Defendants’ unfair, fraudulent, and unlawful  
25 practices, Plaintiff and Class members suffered and will continue to suffer actual damages.  
26 Defendants’ fraudulent conduct is ongoing and presents a continuing threat to Plaintiff and Class  
27 members that they will be deceived. Plaintiff desires to conduct further business with Total Security  
28 but cannot rely on Total Security’s representations unless an injunction is issued.

1 63. As a result of its unfair, fraudulent, and unlawful conduct, Defendants’ been unjustly  
2 enriched and should be required to disgorge its unjust profits and make restitution to Plaintiff and  
3 Class members pursuant to Cal. Bus. & Prof. Code § 17203 and 17204.

4 64. Pursuant to Business & Professions Code §§ 17203 and 17500, Plaintiff and the  
5 members of the Class, on behalf of the general public, seek an order of this Court enjoining  
6 Defendants from continuing to engage, use, or employ their unfair, unlawful, and fraudulent practices.

7 65. Plaintiff has no adequate remedy at law in part because Defendants’ conduct is  
8 continuing. Plaintiff therefore seeks an injunction on behalf of the general public to prevent  
9 Defendants from continuing to engage in the deceptive and misleading practices described herein.

10  
11 **SECOND CLAIM FOR RELIEF**  
12 **Violation of California’s Consumer Legal Remedies Act (“CLRA”)**  
13 **(Cal. Civ. Code § 1750, *et seq.*)**  
14 **(On behalf of Plaintiff and the Class)**

15 66. Plaintiff hereby incorporates by reference the preceding paragraphs as if fully restated  
16 here.

17 67. California law applies to the class because California has a significant interest in  
18 regulating the conduct of businesses operating within its borders. Moreover, the principal place of  
19 business of Defendants is in California, which constitutes the “nerve center” of its business  
20 activities—the place where its high-level officers direct, control, and coordinate the corporation’s  
21 activities, including decisions related to cancellation policies.

22 68. This cause of action is brought pursuant to the Consumer Legal Remedies Act  
23 (“CLRA”), California Civil Code section 1750, *et seq.* Plaintiff and each member of the proposed  
24 Class are “consumers” as defined by California Civil Code section 1761(d).

25 69. Defendants’ sale of antivirus security software to consumers were “transactions”  
26 within the meaning of California Civil Code section 1761(e).

27 70. The Total AV subscriptions purchased by Plaintiff and the Class are “goods” within  
28 the meaning of California Civil Code section 1761(a).

71. Defendant violated and continues to violate the CLRA by engaging in the following  
practices proscribed by California Civil Code section 1770(a) in transactions with Plaintiff and the

1 Class which were intended to result in and did result in the sale of Total Security subscriptions: (i)  
2 “[r]epresenting that goods or services have . . . characteristics . . . that they do not have,” Cal. Civ.  
3 Code § 1770(a)(5); “[a]dvertising goods or services with intent not to sell them as advertised,” Cal.  
4 Civ. Code § 1770(a)(9).

5 72. Specifically, as alleged herein, Defendants have misrepresented and continue to  
6 misrepresent that consumers who follow its instructions for cancelling their subscriptions will indeed  
7 have their subscriptions cancelled.

8 73. Defendants have directed and does direct these misrepresentations at consumers before  
9 purchase through marketing communications.

10 74. Defendants have directed and does direct these misrepresentations at consumers after  
11 purchase of Total AV subscriptions when consumers desire to cancel Total AV subscriptions.

12 75. At no time do Defendants disclose its true cancellation practices, it repeatedly conceals  
13 and misrepresents this material information.

14 76. Defendants continues to violate the CLRA and continues to injure the public by  
15 misleading consumers about its cancellation policies. Accordingly, Plaintiff seeks injunctive relief on  
16 behalf of the general public to prevent Defendants from continuing to engage in these deceptive and  
17 illegal practices. Otherwise, Plaintiff, the Class members, and members of the general public may be  
18 irreparably harmed or denied an effective and complete remedy if such an order is not granted.

19 77. In accordance with California Civil Code section 1780(a), Plaintiff and the Class  
20 members seek injunctive and equitable relief on behalf of the general public for violations of the  
21 CLRA, including restitution and disgorgement.

22 78. Pursuant to section 1782(a) of the CLRA, Plaintiff’s counsel notified Defendants in  
23 writing by certified mail of the particular violations of section 1770 of the CLRA and demanded that  
24 it both rectify the problems associated with the actions detailed above and give notice to all affected  
25 consumers of Defendants’ intent to act. If Defendants fail to respond to Plaintiff’s letter or fails to  
26 agree to rectify the problems associated with the actions detailed above and give notice to all affected  
27 consumers within thirty days of the date of written notice, as proscribed by section 1782, Plaintiff  
28 will move to amend his Complaint to pursue claims for actual, punitive, and statutory damages, as

1 appropriate, against Defendants. However, as to this cause of action, at this time, Plaintiff seeks only  
2 injunctive relief.

3  
4 **THIRD CLAIM FOR RELIEF**  
5 **False and Misleading Advertising**  
6 **(Bus. & Prof. Code §§ 17500, *et seq.*)**  
7 **(On Behalf of Plaintiff and the Class)**

8 79. Plaintiff hereby incorporates by reference the preceding paragraphs if fully restated  
9 here.

10 80. California law applies to the class because California has a significant interest in  
11 regulating the conduct of businesses operating within its borders. Moreover, the principal place of  
12 business of Defendants is in California, which constitutes the “nerve center” of its business  
13 activities—the place where its high-level officers direct, control, and coordinate the corporation’s  
14 activities, including decisions related to cancellation policies.

15 81. California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code section 17500,  
16 states that “[i]t is unlawful for any . . . corporation . . . with intent . . . to dispose of . . . personal  
17 property . . . to induce the public to enter into any obligation relating thereto, to make or disseminate  
18 or cause to be made or disseminated . . . from this state before the public in any state, in any newspaper  
19 or other publication, or any advertising device, or by public outcry or proclamation, or in any other  
20 manner or means whatever, including over the Internet, any statement . . . which is untrue or  
21 misleading and which is known, or which by the exercise of reasonable care should be known, to be  
22 untrue or misleading . . . .”

23 82. Defendants’ material misrepresentations and omissions alleged herein violate Business  
24 and Professions Code section 17500.

25 83. Defendants knew or should have known that its misrepresentations and omissions  
26 were false, deceptive, and misleading.

27 84. Pursuant to Business and Professions Code sections 17203 and 17500, Plaintiff and  
28 the members of the Class, on behalf of the general public, seek an order of this Court enjoining  
29 Defendant from continuing to engage, use, or employ their deceptive practices.

30 85. Further, Plaintiff requests an order awarding Plaintiff and class members restitution of

1 the money wrongfully acquired by Defendants by means of said misrepresentations.

2 86. Additionally, Plaintiff and the Class members seek an order requiring Defendants to  
3 pay attorneys' fees pursuant to California Civil Code section 1021.5.

4  
5 **FOURTH CLAIM FOR RELIEF**  
6 **Unjust Enrichment**  
7 **(On Behalf of Plaintiff and the Classes)**

8 87. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully set forth  
9 herein.

10 88. Plaintiff, individually and on behalf of the Class, asserts a common law claim for  
11 unjust enrichment. This claim is brought solely in the alternative to Plaintiff's statutory claims. In  
12 such circumstances, unjust enrichment will dictate that Defendants disgorge all improperly assessed  
13 fees. Also, if claims are deemed not to be covered by the contract—for example, if Defendants have  
14 violated state and federal law, but in such a way that it does not violate the contract, then unjust  
15 enrichment will require disgorgement of all improperly assessed subscription fees.

16 89. By means of Defendants' wrongful conduct alleged herein, Defendants knowingly  
17 assessed subscription fees upon Plaintiff and the members of the Class that cancelled their  
18 subscriptions that are unfair, unconscionable, and oppressive.

19 90. Defendants have unjustly retained a benefit in the form of improper membership fees  
20 to the detriment of Plaintiff and the members of the Class.

21 91. Defendants have retained this benefit through its fee maximization scheme, and such  
22 retention violates fundamental principles of justice, equity, and good conscience.

23 92. Defendants should not be allowed to profit or enrich itself inequitably and unjustly at  
24 the expense of Plaintiff and the members of the Class and should be required to make restitution to  
25 Plaintiff and the members of the Class.

26 **PRAYER FOR RELIEF**

27 For the foregoing reasons, Plaintiff, individually and on behalf of the Class, prays for the  
28 following relief:

1. Certification for this matter to proceed as a class action on behalf of the Class pursuant

1 to Rule 23;

2 2. Appointment of the Plaintiff as representative of the Class;

3 3. Appointment of counsel for Plaintiff as Lead Counsel for the Class;

4 4. A finding that Defendants' practices are in violation of state consumer protection  
5 statutes;

6 5. Restitution of all amounts improperly paid to Defendants by Plaintiff and the members  
7 of the Class as a result of the wrongs alleged herein in an amount to be determined at trial;

8 6. Actual damages in an amount according to proof;

9 7. Statutory damages as allowed by law;

10 8. An award of pre-judgment and post-judgment interest at the maximum rate permitted  
11 by applicable law;

12 9. An award of costs and attorneys' fees under the common fund doctrine and all other  
13 applicable law; and

14 10. Declaratory and injunctive relief on behalf of the general public.

15 11. Plaintiff also request such other relief as this Court deems just and proper.

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff and all others similarly situated hereby demand trial by jury on all issues in this Class  
18 Action Complaint that are so triable.

19 Dated: November 28, 2023

**KALIELGOLD PLLC**

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21 By: 

Sophia Goren Gold  
Jeffrey D. Kalief

*Attorneys for Plaintiff and the Proposed Class*

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