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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FENELLA ARNOLD, KELLY
NAKAI, and MICHELE RUPPERT,
individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

HEARST MAGAZINE MEDIA, INC.,
a Delaware corporation;
CDS GLOBAL, INC., an Iowa
corporation; and DOES 1-50, inclusive,

Defendants.

CASE NO. 3:19-cv-01969-WQH-MDD

CLASS ACTION

SECOND AMENDED COMPLAINT
FOR:

(1) FALSE ADVERTISING
[Bus. & Prof. Code § 17600 et seq. and
§ 17535]

(2) VIOLATION OF THE
CONSUMERS LEGAL REMEDIES
ACT
[Civ. Code § 1750 et seq.]

(3) VIOLATION OF THE UNFAIR
COMPETITION LAW
[Bus. & Prof. Code § 17200 et seq.]

(4) UNJUST ENRICHMENT

DEMAND FOR JURY TRIAL

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INTRODUCTION

1. This class action complaint alleges that defendants Hearst Magazine Media, Inc. (“Hearst”) and CDS Global, Inc. (“CDS”) violate California law in connection with magazine marketing and subscription programs. Among other things, Hearst and CDS work together to enroll consumers in automatic renewal subscriptions without providing the “clear and conspicuous” disclosures mandated by California law; post charges to consumers’ credit or debit cards for purported automatic renewal subscriptions without first obtaining the consumers’ affirmative consent to an agreement containing the requisite clear and conspicuous disclosures; and solicit payment of money for goods that consumers did not order by sending “invoices” for amounts that are not actually owed. Defendants’ conduct constitutes false advertising, based on violation of the California Automatic Renewal Law (Bus. & Prof. Code § 17600 et seq.) (“ARL”); violates the Consumers Legal Remedies Act (Civ. Code § 1750 et seq.) (“CLRA”); and violates the Unfair Competition Law (Bus. & Prof. Code § 17200 et seq.) (“UCL”).¹ Unless otherwise indicated, all statutory citations herein are to the California Business and Professions Code.

THE PARTIES

2. Plaintiff Fenella Arnold (“Arnold”) is an individual residing in San Diego County, California.

3. Plaintiff Kelly Nakai (“Nakai”) is an individual residing in San Diego County, California.

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

¹ On June 25, 2020, the Court entered an Order (ECF No. 20) granting Defendants’ motion to dismiss Plaintiffs’ First Amended Complaint (“FAC”). Among other things, the Order dismissed plaintiff Kelly Nakai’s claim for relief alleging that Defendants violated California Civil Code § 1716. While omitting that claim for relief from this Second Amended Complaint, Nakai expressly reserves the right to appeal the order dismissing that claim for relief.

1 may include assisting with subscriptions, billing, collection, and/or other account
2 services. Based in Des Moines, Iowa, CDS is a wholly-owned subsidiary of Hearst,
3 and provides fulfillment services for Hearst as well as for other magazine publishers.

4 13. Traditionally, magazine publishers sold subscriptions on the basis of a
5 schedule that reflects a fixed price for a definite term (such as one, two, or three years).
6 Under that arrangement, the consumer selects the desired price/term combination and
7 submits payment. Later, when the end of the term is approaching, the consumer is
8 notified that the subscription will soon come to an end and is provided with a renewal
9 offer. If the consumer wishes to renew, he or she selects the desired price/term
10 combination for the renewal period and submits the corresponding payment.
11 Alternatively, if the consumer does not renew, the subscription comes to an end.

12 14. During the 1990s, some marketers came to view the traditional model as
13 constraint on sales and profits, and advocated instead adoption of a “negative option”
14 model. In a “negative option,” the seller “interpret[s] a customer’s failure to take an
15 affirmative action, either to reject an offer or cancel an agreement, as assent to be
16 charged for goods or services.” See “*Negative Options*,” Federal Trade Commission,
17 January 2009, available at
18 [https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-](https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf)
19 [trade-commission-workshop-analyzing-negative-option-marketing-report-](https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf)
20 [staff/p064202negativeoptionreport.pdf](https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf) (last accessed July 24, 2020). Defendants
21 have implemented a negative option model that does not comply with California law.

22 15. One aspect of Defendants’ negative option model is to solicit orders for
23 magazine subscriptions that purport to be for a fixed period of time (e.g., one year, or
24 two years), whereas upon receipt of an order, Defendants enroll the consumer in a
25 program under which the magazine subscription will be “automatically renewed” for
26 subsequent periods, with corresponding charges posted to the consumer’s credit card,
27 debit card, or other payment account. Defendants enroll consumers in such
28 “automatic renewal” subscriptions without making the clear and conspicuous

1 disclosures required by California law.

2 **SUMMARY OF APPLICABLE LAW**

3 **The California Automatic Renewal Law**

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

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

12 *See* Exhibit 1.

13 17. The Assembly Committee on Judiciary provided the following
14 background for the legislation:

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

20 *See* Exhibit 2.

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

27 (1) Fail to present the automatic renewal offer terms or continuous
28 service offer terms in a clear and conspicuous manner before the subscription or

1 purchasing agreement is fulfilled and in visual proximity, or in the case of an offer
2 conveyed by voice, in temporal proximity, to the request for consent to the offer.
3 (§ 17602(a)(1).) For these purposes, “clear and conspicuous” means “in larger type
4 than the surrounding text, or in contrasting type, font, or color to the surrounding text
5 of the same size, or set off from the surrounding text of the same size by symbols or
6 other marks, in a manner that clearly calls attention to the language.” (§ 17601(c).)
7 The statute defines “automatic renewal offer terms” to mean the “clear and
8 conspicuous” disclosure of the following: (a) that the subscription or purchasing
9 agreement will continue until the consumer cancels; (b) the description of the
10 cancellation policy that applies to the offer; (c) the recurring charges that will be
11 charged to the consumer’s credit or debit card or payment account with a third party
12 as part of the automatic renewal plan or arrangement, and that the amount of the
13 charge may change, if that is the case, and the amount to which the charge will change,
14 if known; (d) the length of the automatic renewal term or that the service is
15 continuous, unless the length of the term is chosen by the consumer; and (e) the
16 minimum purchase obligation, if any. (§ 17601(b).)

17 (2) Charge the consumer’s credit or debit card, or the consumer’s
18 account with a third party, for an automatic renewal or continuous service without
19 first obtaining the consumer’s affirmative consent to the agreement containing the
20 automatic renewal offer terms or continuous service offer terms, including the terms
21 of an automatic renewal offer or continuous service offer that is made at a promotional
22 or discounted price for a limited period of time. (§ 17602(a)(2).)

23 (3) Fail to provide an acknowledgment that includes the automatic
24 renewal or continuous service offer terms, cancellation policy, and information
25 regarding how to cancel. (§ 17602(a)(3).)

26 19. Section 17602(b) requires that the acknowledgment specified in
27 § 17602(a)(3) include “a toll-free telephone number, electronic mail address, a postal
28 address if the seller directly bills the consumer, or it shall provide another cost-

1 effective, timely, and easy-to-use mechanism for cancellation that shall be described
2 in the acknowledgment.”

3 20. If a business sends any goods to a consumer under a purported automatic
4 renewal or continuous service arrangement without first obtaining the consumer’s
5 affirmative consent to an agreement containing the “clear and conspicuous”
6 disclosures as specified in the ARL, the goods are deemed to be an unconditional gift
7 to the consumer, who may use or dispose of them without any obligation whatsoever.
8 (§ 17603.) Violation of the ARL gives rise to restitution and injunctive relief under
9 the general remedies provision of the False Advertising Law, Bus. & Prof. Code
10 § 17535. (§ 17604(a).) As well, violation of the ARL gives rise to restitution and
11 injunctive relief under the UCL.

12 **FACTS GIVING RISE TO THIS ACTION**

13 **Kelly Nakai’s Transaction**

14 21. On September 5, 2018, Nakai received an email from Defendants with a
15 subject line of “Last Chance—You could win a trip to a Wine and Food Festival in
16 NYC.” The email contains promotional material relating to a sweepstakes sponsored
17 by Defendants, for which the prize winner will receive tickets for the New York City
18 Wine & Food Festival, round-trip airfare, and lodging. A true and correct copy of
19 that email is attached hereto as Exhibit 3 and is incorporated herein by reference.
20 Recipients of the email can initiate entry into the sweepstakes by clicking the
21 “ENTER NOW” button.

22 22. Upon clicking the “ENTER NOW” button, Nakai was presented with a
23 webpage containing additional promotional material for the sweepstakes. A true and
24 correct copy of a printout of that webpage is attached hereto as Exhibit 4 and is
25 incorporated herein by reference. The attached copy of Exhibit 4 was submitted to
26 the Court by Defendants on January 22, 2020, with an explanation that it is a “more
27 legible copy” than the version originally submitted by Nakai. *See* ECF No. 17 at
28 PageID.322. A portion of that webpage contains fields in which a consumer can enter

1 his or her name, address, and email information to enter the sweepstakes. Above
2 those fields is a narrative statement, set forth in bold text, that the consumer can “[f]ill
3 in the fields below to get 1 FREE issue of Food Network Magazine and be
4 automatically entered for your chance to win.” Farther down the page is a large
5 “SUBMIT” button by which the consumer can submit the sweepstakes entry and the
6 request for the “FREE” issue.

7 23. On Exhibit 4, just above the “SUBMIT” button, the following 9-line
8 paragraph of fine-print text appears in type that is smaller than the surrounding text:

9 *Continuous Service Program: I understand that unless I tell you otherwise, I will
10 receive uninterrupted service and access; my subscription(s) will be automatically
11 renewed at the end of each subscription term, at the rate(s) then in effect. I authorize
you to fulfill my subscription(s) and charge the credit/debit card if provided, or send
me a bill if not. I won't be bothered with any renewal notices, instead, I will receive
a clearly marked reminder notice with the then current rate(s) about 30 days prior to
charging my credit/debit card or receiving a bill. I may opt out of the automatic
renewal at any time by contacting customer service referenced below and receive a
refund for all undelivered issues.

12 24. On Exhibit 4, the 9-line paragraph of text that appears above the
13 SUBMIT button (which is set forth in paragraph 23, above) does not constitute a
14 “clear and conspicuous” disclosure, as defined by § 17601(c), because: (a) the type is
15 smaller than the surrounding text; (b) the type is not in contrasting type, font, or color
16 to surrounding text of the same size; and (c) it is not set off from surrounding text of
17 the same size by symbols or other marks in a manner that clearly calls attention to the
18 language.

19 25. On Exhibit 4, the 9-line paragraph of text that appears above the
20 SUBMIT button (which is set forth in paragraph 23, above) does not constitute a
21 disclosure of “automatic renewal offer terms,” as defined by § 17601(b), for at least
22 the following reasons: (a) the disclosure is not set forth in a manner that is “clear and
23 conspicuous,” as explained in the preceding paragraph 24, above; (b) the text does not
24 state that a subscription or purchasing agreement will continue until the consumer
25 cancels, as required by § 17601(b)(1); (c) the text does not describe a cancellation
26 policy that applies to the offer, as required by § 17601(b)(2); (d) the text does not state
27 the amount of the recurring charges that will be charged to the consumer’s credit or
28 debit card or payment account with a third party as part of the automatic renewal plan

1 or arrangement, as required by § 17601(b)(3); and/or (e) the text does not state the
2 length of the automatic renewal term, as required by § 17601(b)(4).

3 26. Nakai submitted a sweepstakes entry, which included a request for the
4 “FREE” issue. Thereafter, Nakai received an issue of *Food Network Magazine*.

5 27. On September 8, 2018, Nakai received an email “INVOICE” from
6 Defendants for an 11-issue term subscription to *Food Network Magazine*, stating an
7 amount due of \$12.00. A true and correct copy of that email is attached hereto as
8 Exhibit 5 and is incorporated herein by reference. Exhibit 5 does not contain any
9 disclosure that a subscription is to be automatically renewed.

10 28. After clicking on the “PAY YOUR INVOICE” button, Nakai was
11 directed to an invoice payment form for her account on Defendant’s website, where
12 she submitted payment for the invoice with her credit card, in the amount of \$12.00.

13 29. On September 5, 2018, Nakai received an “Order Confirmation” email
14 from Defendants. A true and correct copy of that email is attached hereto as Exhibit
15 6 and is incorporated herein by reference. Near the bottom of Exhibit 6 the following
16 6-line paragraph of fine-print text appears in type that is smaller than the surrounding
17 text:

18 ***Continuous Service Program:** I understand that unless I tell you otherwise, I will receive uninterrupted service and
19 access; my subscription(s) will be automatically renewed at the end of each subscription term, at the rate then in effect. I
20 authorize you to fulfill my subscription(s) and charge the credit/debit card if provided. I won’t be bothered with any renewal
21 notices, instead, I will receive a clearly marked reminder notice with the then current rates about 30 days prior to charging
22 my credit/debit card. I may opt out of the automatic renewal at any time by contacting customer service referenced below
23 and receive a refund for all undelivered issues.

24 30. On Exhibit 6, the 6-line paragraph of text that appears near the bottom
25 does not constitute a “clear and conspicuous” disclosure, as defined by § 17601(c),
26 because: (a) the type is smaller than the surrounding text; (b) the type is not in
27 contrasting type, font, or color to surrounding text of the same size; and (c) it is not
28 set off from surrounding text of the same size by symbols or other marks in a manner
that clearly calls attention to the language.

31. On Exhibit 6, the 6-line paragraph of text that appears near the bottom
does not constitute a disclosure of “automatic renewal offer terms,” as defined by

1 § 17601(b), for at least the following reasons: (a) the disclosure is not set forth in a
2 manner that is “clear and conspicuous,” as explained in the preceding paragraph 30,
3 above; (b) the text does not state that a subscription or purchasing agreement will
4 continue until the consumer cancels, as required by § 17601(b)(1); (c) the text does
5 not describe a cancellation policy that applies to the offer, as required by
6 § 17601(b)(2); (d) the text does not state the amount of the recurring charges that will
7 be charged to the consumer’s credit or debit card or payment account with a third
8 party as part of the automatic renewal plan or arrangement, as required by
9 § 17601(b)(3); and/or (e) the text does not state the length of the automatic renewal
10 term, as required by § 17601(b)(4).

11 32. Exhibit 6 does not provide a toll-free telephone number, electronic mail
12 address, postal mail address, or other mechanism for cancellation, as required by
13 § 17602(b). The postal address for customer service for Hearst magazines, including
14 any request to cancel *Food Network Magazine*, is P.O. Box 6000, Harlan, IA 51593.
15 The address set forth at the end of Exhibit 6 (300 W. 57th Street, New York, NY
16 10019) is the street address of Hearst Tower and is not the postal address for
17 cancellation of magazines.

18 33. On September 20, 2018, Nakai received an email from Defendants
19 stating that her payment for *Food Network Magazine* had been received, that the
20 “subscription term” was 11 issues, and that the “expire issue” was November 2019.
21 A true and correct copy of that email is attached hereto as Exhibit 7 and is incorporated
22 herein by reference.

23 34. The following year, in December 2019, the invoice payment form for
24 Nakai’s account on Defendants’ website reflected that there was a “Payment Due” on
25 December 15, 2019 in the amount of \$19.97. A true and correct copy of the invoice
26 payment form for Nakai’s account on Defendants’ website as it appeared in December
27 2019 is attached hereto as Exhibit 8 and is incorporated herein by reference. Near the
28 bottom of Exhibit 8 is a red button with white lettering entitled “PAY NOW.” Just

1 above that “PAY NOW” button and below the space for entry of credit card
2 information, the following 8-line paragraph of fine-print text appears in blue type that
3 is smaller than the surrounding text:

4 **Continuous Service Program:** I understand that unless I tell you otherwise, I will
5 receive uninterrupted delivery service. My subscription will be automatically
6 renewed at the end of each subscription term, at the rate then in effect, and I
7 authorize you to charge the credit/debit card I provided. I won't be bothered with
8 any renewal notices. Instead, I'll receive a clearly marked reminder notice with the
9 then current rate about 30 days prior to charging my credit/debit card. I may opt out
10 of the automatic renewal at any time by contacting customer service and receive a
11 refund for all undelivered issues.

12 35. On Exhibit 8, the 8-line paragraph of text that appears above the PAY
13 NOW button does not constitute a “clear and conspicuous” disclosure, as defined by
14 § 17601(c), because, without limitation, the type is smaller than the surrounding text.

15 36. On Exhibit 8, the 8-line paragraph of text that appears above the PAY
16 NOW button does not constitute a disclosure of “automatic renewal offer terms,” as
17 defined by § 17601(b), for at least the following reasons: (a) the disclosure is not set
18 forth in a manner that is “clear and conspicuous,” as explained in the preceding
19 paragraph 35, above; (b) the text does not state that a subscription or purchasing
20 agreement will continue until the consumer cancels, as required by § 17601(b)(1);
21 (c) the text does not describe a cancellation policy that applies to the offer, as required
22 by § 17601(b)(2); (d) the text does not state the amount of the recurring charges that
23 will be charged to the consumer’s credit or debit card or payment account with a third
24 party as part of the automatic renewal plan or arrangement, as required by
25 § 17601(b)(3); and/or (e) the text does not state the length of the automatic renewal
26 term, as required by § 17601(b)(4).

27 37. Based on the fact that the invoice payment form for Nakai’s account on
28 Defendants’ website in December 2019 appeared as shown on Exhibit 8, Nakai is
informed and believes and thereon alleges that the invoice payment form for her
account as of September 2018, when she paid the \$12.00 invoice as alleged above in
paragraph 28, was in all material respects the same as the invoice payment form
shown on Exhibit 8. To the extent there were any differences in the invoice payment

1 form on Defendants’ website between September 2018 and December 2019,
2 documents that reflect any such differences are in Defendants’ exclusive possession.

3 38. Based on the 9-line paragraph of fine-print text that appears above the
4 SUBMIT button on Exhibit 4 (the sweepstakes entry form), as quoted above in
5 paragraph 23, and further based on the 8-line paragraph of fine-print text that appears
6 above the PAY NOW button on Exhibit 8 (the invoice payment page for Nakai’s
7 account), as quoted above in paragraph 34, and further based on the fact that, as of
8 December 2019, the invoice payment page for Nakai’s account (Exhibit 8) stated that
9 a payment of \$19.97 was “due” on December 15, 2019, Nakai alleges that the *Food*
10 *Network Magazine* subscription into which Defendants enrolled her in September
11 2018 was created by Defendants as an automatic renewal subscription.

12 39. Based on the foregoing, in September 2018, when Nakai submitted her
13 sweepstakes entry form with a request for a “FREE ISSUE” of *Food Network*
14 *Magazine*, Defendants failed to present the “automatic renewal offer terms” (as
15 defined by § 17601(b)) in a “clear and conspicuous” manner (as defined by
16 § 17601(c)), in violation of § 17602(a)(1).

17 40. Based on the foregoing, in September 2018, when Nakai paid the \$12.00
18 invoice through the invoice payment form for her account on Defendants’ website,
19 Defendants charged Nakai’s credit card without first obtaining her affirmative consent
20 to an agreement containing clear and conspicuous disclosure of automatic renewal
21 offer terms, in violation of § 17602(a)(2).

22 41. Based on the foregoing, Defendants failed to provide Nakai with an
23 acknowledgment that included clear and conspicuous notice of automatic renewal
24 offer terms, in violation of § 17602(a)(3), and failed to include in an acknowledgment
25 a toll-free telephone number, electronic mail address, postal address, or other
26 mechanism for cancellation, in violation of § 17602(b).

27 42. When Nakai submitted the sweepstakes entry form, she was not aware
28 that Defendants intended to treat that submission as a request for a one-year

1 subscription or as a request for a subscription that would automatically renew from
2 one period to another.

3 43. If Nakai had known that Defendants were going to treat her submission
4 of a sweepstakes entry with a request for a “FREE” issue of *Food Network Magazine*
5 as enrollment into an automatic renewal subscription, she would not have entered the
6 sweepstakes, would not have requested the “FREE” magazine issue, and would not
7 have paid any money to Defendants for *Food Network Magazine*.

8 44. When Nakai paid the \$12.00 invoice in September 2018 through the
9 invoice payment form on Defendant’s website, she was not aware that Defendants
10 intended to treat her payment as authorization to enroll her into an automatic renewal
11 subscription.

12 45. If Nakai had known that Defendants were going to treat her payment of
13 the invoice for *Food Network Magazine* as enrollment into an automatic renewal
14 subscription, she would not have paid any money to Defendants for *Food Network*
15 *Magazine*.

16 **Fenella Arnold’s Transactions**

17 *HGTV Magazine*

18 46. In or about June 2017, in response to one of Defendants’ paper
19 advertisements that included an order form to be filled out by the consumer, Arnold
20 completed the form for a two-year subscription to *HGTV Magazine* and returned it to
21 Defendants. Arnold did not make a copy of the order form before it was returned to
22 Defendants, and therefore Arnold does not have a copy of it. Because the order form
23 was returned to Defendants, Arnold is informed and believes and thereon alleges that
24 Defendants have the advertisement/order form in their possession, custody, or control.
25 Therefore, Arnold will seek production of that advertisement/order form from
26 Defendants through discovery.

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1 47. On June 30, 2017, Arnold received via email an invoice for the two-year
2 subscription to *HGTV Magazine* in the amount of \$22.00. A true and correct copy of
3 that invoice is attached hereto as Exhibit 9.

4 48. On July 3, 2017, Defendants charged \$22.00 to Arnold’s credit card for
5 that two-year subscription to *HGTV Magazine*.

6 49. Arnold believes she paid the invoice for *HGTV Magazine* on July 3, 2017
7 by entering her credit card information in an invoice payment form for her account
8 through Defendants’ website. Arnold did not make a screenshot or print the webpage
9 through which the credit card information was submitted to Defendants, and therefore
10 Arnold does not have a copy of that exact webpage. However, based on the fact that
11 Defendants maintain on their website invoice payment forms for customer accounts
12 in the format, content, and layout reflected in Exhibit 8, Arnold is informed and
13 believes and thereon alleges that she paid the invoice on an invoice payment form for
14 her account that was in all material respects the same as the invoice payment form
15 shown in Exhibit 8. To the extent there were any differences in the invoice payment
16 form on Defendants’ website between July 2017 and December 2019, documents that
17 reflect any such differences are in Defendants’ exclusive possession.

18 50. Accordingly, Arnold alleges that on the invoice payment form through
19 which she paid the invoice for *HGTV Magazine*, the paragraph of fine-print text
20 labeled “Continuous Service Program” (as quoted above in paragraph 34) did not constitute a
21 “clear and conspicuous” disclosure, as defined by § 17601(c), because, without
22 limitation, the type is smaller than the surrounding text.

23 51. Arnold further alleges that on the invoice payment form through which
24 she paid the invoice for *HGTV Magazine*, the paragraph of fine-print text labeled
25 “Continuous Service Program” (as quoted above in paragraph 34) did not constitute a disclosure
26 of “automatic renewal offer terms,” as defined by § 17601(b), for at least the
27 following reasons: (a) the disclosure was not set forth in a manner that is “clear and
28 conspicuous” as explained in the preceding paragraph 50, above; (b) the text did not

1 state that a subscription or purchasing agreement will continue until the consumer
2 cancels, as required by § 17601(b)(1); (c) the text did not describe a cancellation
3 policy that applies to the offer, as required by § 17601(b)(2); (d) the text did not state
4 the amount of the recurring charges that will be charged to the consumer's credit or
5 debit card or payment account with a third party as part of the automatic renewal plan
6 or arrangement, as required by § 17601(b)(3); and/or (e) the text did not state the
7 length of the automatic renewal term, as required by § 17601(b)(4).

8 52. When Arnold submitted the order form and when she made the \$22.00
9 credit card payment for the two-year subscription to *HGTV Magazine*, she was not
10 aware that Defendants were going to enroll her in a program under which the
11 subscription would automatically renew for subsequent periods, and she did not
12 consent to be enrolled in such program.

13 53. Based on the foregoing, in June 2017, when Arnold submitted her
14 request for a two-year subscription to *HGTV Magazine*, Defendants failed to present
15 the "automatic renewal offer terms" (as defined by § 17601(b)) in a "clear and
16 conspicuous" manner (as defined by § 17601(c)), in violation of § 17602(a)(1).

17 54. Based on the foregoing, in June 2017, when Arnold submitted payment
18 for a two-year subscription to *HGTV Magazine*, Defendants charged Arnold's credit
19 card without first obtaining her affirmative consent to an agreement containing clear
20 and conspicuous disclosure of automatic renewal offer terms, in violation of
21 § 17602(a)(2).

22 55. If Arnold had known that Defendants were going to enroll her in an
23 automatically renewing magazine subscription program, Arnold would not have
24 submitted the order for *HGTV Magazine* and would not have paid any money to
25 Defendants for that magazine.

26 56. On June 28, 2019, without Arnold's authorization or consent,
27 Defendants posted a charge of \$34.97 to Arnold's credit card, purportedly for renewal
28 of *HGTV Magazine*.

1 *Good Housekeeping and Woman's Day*

2 57. In or about November 2018, in response to one of Defendants' paper
3 advertisements that included an order form to be filled out by the consumer, Arnold
4 completed the form and submitted an order for a one-year subscription to both *Good*
5 *Housekeeping* and *Woman's Day*. This was a gift subscription for Arnold's mother,
6 Dorothy. Arnold did not make a copy of the order form before it was returned to
7 Defendants, and therefore Arnold does not have a copy of it. Because the order form
8 was returned to Defendants, Arnold is informed and believes and thereon alleges that
9 Defendants have the advertisement/order form in their possession, custody, or control.
10 Therefore, Arnold will seek production of that advertisement/order form from
11 Defendants through discovery.

12 58. Although Arnold did not retain a copy of the specific
13 advertisement/order form that she returned to Defendants with respect to *Good*
14 *Housekeeping* and *Woman's Day*, Arnold believes the form was in all material
15 respects the same as the advertisement/order form depicted in Exhibit 10, which is
16 incorporated herein by reference. Exhibit 10 offers a double subscription to *Good*
17 *Housekeeping* and *Woman's Day* for one year for a total of \$10.

18 59. At the bottom of the advertisement/order form shown in Exhibit 10, the
19 following 3-line paragraph of fine-print text appears in type that is smaller than the
20 surrounding text:

21 **Continuous Service Program:** Your subscription will continue unless you ask us to stop. Each year you'll receive a
22 reminder notice followed by an invoice for the low renewal rate then in effect. You can cancel at any time at
service.womansday.com and receive a refund on all unmailed issues.

23 60. On Exhibit 10, the 3-line paragraph of text that appears at the bottom of
24 the page does not constitute a "clear and conspicuous" disclosure, as defined by
25 § 17601(c), because: (a) the type is smaller than the surrounding text; (b) the type is
26 not in contrasting type, font, or color to surrounding text of the same size; and (c) it
27 is not set off from surrounding text of the same size by symbols or other marks in a
28 manner that clearly calls attention to the language.

1 61. On Exhibit 10, the 3-line paragraph of text that appears at the bottom of
2 the page does not constitute a disclosure of “automatic renewal offer terms,” as
3 defined by § 17601(b), for at least the following reasons: (a) the disclosure is not set
4 forth in a manner that is “clear and conspicuous,” as explained in the preceding
5 paragraph 60, above; and (b) the text does not state the amount of the recurring
6 charges that will be charged to the consumer’s credit or debit card or payment account
7 with a third party as part of the automatic renewal plan or arrangement, as required
8 by § 17601(b)(3).

9 62. On November 11, 2018, Arnold received “Order Confirmation” emails
10 from Defendants for the one-year subscriptions to *Good Housekeeping* and *Woman’s*
11 *Day*. True and correct copies of those emails are attached hereto as Exhibits 11 and
12 12. Near the bottom of Exhibits 11 and 12, the following 6-line paragraph of fine-
13 print text appears in type that is smaller than the surrounding text:

14 *Continuous Service Program: I understand that unless I tell you otherwise, I will receive uninterrupted service and
15 access; my subscription(s) will be automatically renewed at the end of each subscription term, at the rate(s) then in effect.
16 I authorize you to fulfill my subscription(s) and charge the credit/debit card if provided, or send me a bill if not. I won’t
be bothered with any renewal notices, instead, I will receive a clearly marked reminder notice with the then current rate(s)
about 30 days prior to charging my credit/debit card or receiving a bill. I may opt out of the automatic renewal at any time
by contacting customer service referenced below and receive a refund for all undelivered issues.

17 63. On Exhibits 11 and 12, the 6-line paragraph of text that appears near the
18 bottom does not constitute a “clear and conspicuous” disclosure, as defined by
19 § 17601(c), because: (a) the type is smaller than the surrounding text; (b) the type is
20 not in contrasting type, font, or color to surrounding text of the same size; and (c) it
21 is not set off from surrounding text of the same size by symbols or other marks in a
22 manner that clearly calls attention to the language.

23 64. On Exhibits 11 and 12, the 6-line paragraph of text that appears near the
24 bottom does not constitute a disclosure of “automatic renewal offer terms,” as defined
25 by § 17601(b), for at least the following reasons: (a) the disclosure is not set forth in
26 a manner that is “clear and conspicuous,” as explained in the preceding paragraph 63,
27 above; (b) the text does not state that a subscription or purchasing agreement will
28 continue until the consumer cancels, as required by § 17601(b)(1); (c) the text does

1 not describe a cancellation policy that applies to the offer, as required by
2 § 17601(b)(2); (d) the text does not state the amount of the recurring charges that will
3 be charged to the consumer's credit or debit card or payment account with a third
4 party as part of the automatic renewal plan or arrangement, as required by
5 § 17601(b)(3); and/or (e) the text does not state the length of the automatic renewal
6 term, as required by § 17601(b)(4).

7 65. Exhibits 11 and 12 do not provide a toll-free telephone number,
8 electronic mail address, postal mail address, or other mechanism for cancellation, as
9 required by § 17602(b). The postal address for customer service for Hearst
10 magazines, including any request to cancel *Good Housekeeping* and *Woman's Day*,
11 is P.O. Box 6000, Harlan, IA 51593. The address set forth at the end of Exhibits 11
12 and 12 (300 W. 57th Street, New York, NY 10019) is the street address of Hearst
13 Tower and is not the postal address for cancellation of magazines.

14 66. On November 12, 2018, Defendants posted two separate charges of
15 \$5.00 each to Arnold's credit card for the one-year subscriptions to *Good*
16 *Housekeeping* and *Woman's Day*.

17 67. Arnold believes she paid the invoice for *Good Housekeeping* and
18 *Woman's Day* on November 12, 2018 by entering her credit card information in an
19 invoice payment form for her account through Defendants' website. Arnold did not
20 make a screenshot or print the webpage through which the credit card information
21 was submitted to Defendants, and therefore Arnold does not have a copy of that exact
22 webpage. However, based on the fact that Defendants maintain on their website
23 invoice payment forms for customer accounts in the format, content, and layout
24 reflected in Exhibit 8, Arnold is informed and believes and thereon alleges that she
25 paid the invoice on an invoice payment form for her account that was in all material
26 respects the same as the invoice payment form shown in Exhibit 8. To the extent
27 there were any differences in the invoice payment form on Defendants' website
28

1 between November 2018 and December 2019, documents that reflect any such
2 differences are in Defendants' exclusive possession.

3 68. Accordingly, Arnold alleges that on the invoice payment form through
4 which she paid the invoice for *Good Housekeeping* and *Woman's Day*, the paragraph
5 of fine-print text labeled "Continuous Service Program" (as quoted above in paragraph 34) did not
6 constitute a "clear and conspicuous" disclosure, as defined by § 17601(c), because,
7 without limitation, the type is smaller than the surrounding text.

8 69. Arnold further alleges that on the invoice payment form through which
9 she paid the invoice for *Good Housekeeping* and *Woman's Day*, the paragraph of fine-
10 print text labeled "Continuous Service Program" (as quoted above in paragraph 34) did not
11 constitute a disclosure of "automatic renewal offer terms," as defined by § 17601(b),
12 for at least the following reasons: (a) the disclosure was not set forth in a manner that
13 is "clear and conspicuous," as explained in the preceding paragraph 68, above; (b) the
14 text did not state that a subscription or purchasing agreement will continue until the
15 consumer cancels, as required by § 17601(b)(1); (c) the text did not describe a
16 cancellation policy that applies to the offer, as required by § 17601(b)(2); (d) the text
17 did not state the amount of the recurring charges that will be charged to the
18 consumer's credit or debit card or payment account with a third party as part of the
19 automatic renewal plan or arrangement, as required by § 17601(b)(3); and/or (e) the
20 text did not state the length of the automatic renewal term, as required by
21 § 17601(b)(4).

22 70. Based on the foregoing, when Arnold submitted her request for one-year
23 subscriptions to *Good Housekeeping* and *Woman's Day* in November 2018,
24 Defendants failed to present the "automatic renewal offer terms" (as defined by
25 § 17601(b)) in a "clear and conspicuous" manner (as defined by § 17601(c)), in
26 violation of § 17602(a)(1).

27 71. Based on the foregoing, when Arnold submitted payment for one-year
28 subscriptions to *Good Housekeeping* and *Woman's Day* in November 2018,

1 Defendants charged Arnold's credit card without first obtaining her affirmative
2 consent to an agreement containing clear and conspicuous disclosure of automatic
3 renewal offer terms, in violation of § 17602(a)(2).

4 72. Based on the foregoing, with respect to Arnold's subscriptions to *Good*
5 *Housekeeping* and *Woman's Day*, Defendants failed to provide Arnold with an
6 acknowledgment that included clear and conspicuous notice of automatic renewal
7 offer terms, in violation of § 17602(a)(3), and failed to include in an acknowledgment
8 a toll-free telephone number, electronic mail address, postal address, or other
9 mechanism for cancellation, in violation of § 17602(b).

10 73. When Arnold submitted the order for the one-year subscriptions to *Good*
11 *Housekeeping* and *Woman's Day*, and when she submitted payment for those
12 subscriptions, she was not aware that Defendants were going to enroll her in a
13 program under which the subscriptions would automatically renew for subsequent
14 periods, and she did not consent to be enrolled in such program.

15 74. If Arnold had known that Defendants were going to enroll her in an
16 automatically renewing magazine subscription program, Arnold would not have
17 submitted the orders for *Good Housekeeping* and/or *Woman's Day*, and would not
18 have paid any money to Defendants for those magazines.

19 75. On September 20, 2019, without Arnold's authorization or consent,
20 Defendants posted charges of \$19.97 and \$14.97 to Arnold's credit card, purportedly
21 for renewal of *Good Housekeeping* and *Woman's Day*, respectively.

22 *Oprah Magazine*

23 76. In or about November 2018, in response to one of Defendants'
24 advertisements, Arnold completed an order form and submitted an order for a one-
25 year subscription to *Oprah Magazine*. Arnold did not retain a copy of the order form
26 before it was submitted to Defendants, and therefore Arnold does not have a copy of
27 it. Because the order form was submitted to Defendants, Arnold is informed and
28 believes and thereon alleges that Defendants have a copy of the advertisement/order

1 form in their possession, custody, or control. Therefore, Arnold will seek production
2 of that advertisement/order form from Defendants through discovery.

3 77. When Arnold submitted the order for that one-year subscription to
4 *Oprah Magazine*, she was not aware that Defendants were going to enroll her in a
5 program under which the subscription would automatically renew for subsequent
6 periods, and she did not consent to be enrolled in such program. On that basis, Arnold
7 is informed and believes and thereon alleges that the advertisement/order form to
8 which she responded did not contain clear and conspicuous disclosure of automatic
9 renewal offer terms as required by § 17601(b) and (c) and § 17602(a)(1). Arnold
10 believes this allegation will likely have documentary support after a reasonable
11 opportunity for discovery.

12 78. On November 11, 2018, Arnold received an “Order Confirmation” email
13 from Defendants for the one-year, \$5.00 subscription to *Oprah Magazine*. A true and
14 correct copy of that email is attached hereto as Exhibit 13 and is incorporated herein
15 by reference. Near the bottom of Exhibit 13, the following 6-line paragraph of fine-
16 print text appears in type that is smaller than the surrounding text:

17 ***Continuous Service Program:** I understand that unless I tell you otherwise, I will receive uninterrupted service and
18 access; my subscription(s) will be automatically renewed at the end of each subscription term, at the rate(s) then in effect.
19 I authorize you to fulfill my subscription(s) and charge the credit/debit card if provided, or send me a bill if not. I won't
be bothered with any renewal notices, instead, I will receive a clearly marked reminder notice with the then current rate(s)
about 30 days prior to charging my credit/debit card or receiving a bill. I may opt out of the automatic renewal at any time
by contacting customer service referenced below and receive a refund for all undelivered issues.

20 79. On Exhibit 13, the 6-line paragraph of text that appears near the bottom
21 does not constitute a “clear and conspicuous” disclosure, as defined by § 17601(c),
22 because: (a) the type is smaller than the surrounding text; (b) the type is not in
23 contrasting type, font, or color to surrounding text of the same size; and (c) it is not
24 set off from surrounding text of the same size by symbols or other marks in a manner
25 that clearly calls attention to the language.

26 80. On Exhibit 13, the 6-line paragraph of text near the bottom does not
27 constitute a disclosure of “automatic renewal offer terms,” as defined by § 17601(b),
28 for at least the following reasons: (a) the disclosure is not set forth in a manner that is

1 “clear and conspicuous,” as explained in the preceding paragraph 79, above; and
2 (b) the text does not state that a subscription or purchasing agreement will continue
3 until the consumer cancels, as required by § 17601(b)(1); (c) the text does not describe
4 a cancellation policy that applies to the offer, as required by § 17601(b)(2); (d) the
5 text does not state the amount of the recurring charges that will be charged to the
6 consumer’s credit or debit card or payment account with a third party as part of the
7 automatic renewal plan or arrangement, as required by § 17601(b)(3); and/or (e) the
8 text does not state the length of the automatic renewal term, as required by
9 § 17601(b)(4).

10 81. Exhibit 13 does not provide a toll-free telephone number, electronic mail
11 address, postal mail address, or other mechanism for cancellation, as required by
12 § 17602(b). The postal address for customer service for Hearst magazines, including
13 any request to cancel *Oprah Magazine*, is P.O. Box 6000, Harlan, IA 51593. The
14 address set forth at the end of Exhibit 13 (300 W. 57th Street, New York, NY 10019)
15 is the street address of Hearst Tower and is not the postal address for cancellation of
16 magazines.

17 82. On November 12, 2018, Defendants charged \$5.00 to Arnold’s credit
18 card for the one-year subscription to *Oprah Magazine*. Arnold believes she paid the
19 invoice for *Oprah Magazine* on November 12, 2018 by entering her credit card
20 information in an invoice payment form for her account through Defendants’ website.
21 Arnold did not make a screenshot or print the webpage through which the credit card
22 information was submitted to Defendants, and therefore Arnold does not have a copy
23 of that exact webpage. However, based on the fact that Defendants maintain on their
24 website invoice payment forms for customer accounts in the format, content, and
25 layout reflected in Exhibit 8, Arnold is informed and believes and thereon alleges that
26 she paid the invoice on an invoice payment form for her account that was in all
27 material respects identical to the invoice payment form shown in Exhibit 8. To the
28 extent there were any differences in the invoice payment form on Defendants’ website

1 between November 2018 and December 2019, documents that reflect any such
2 differences are in Defendants' exclusive possession.

3 83. Accordingly, Arnold alleges that on the invoice payment form through
4 which she paid the invoice for *Oprah Magazine*, the paragraph of fine-print text
5 labeled "Continuous Service Program" (as quoted above in paragraph 34) did not constitute a
6 "clear and conspicuous" disclosure, as defined by § 17601(c), because, without
7 limitation, the type is smaller than the surrounding text.

8 84. Arnold further alleges that on the invoice payment form through which
9 she paid the invoice for *Oprah Magazine*, the paragraph of fine-print text labeled
10 "Continuous Service Program" (as quoted above in paragraph 34) did not constitute a disclosure
11 of "automatic renewal offer terms," as defined by § 17601(b), for at least the
12 following reasons: (a) the disclosure was not set forth in a manner that is "clear and
13 conspicuous," as explained in the preceding paragraph 83, above; (b) the text did not
14 state that a subscription or purchasing agreement will continue until the consumer
15 cancels, as required by § 17601(b)(1); (c) the text did not describe a cancellation
16 policy that applies to the offer, as required by § 17601(b)(2); (d) the text did not state
17 the amount of the recurring charges that will be charged to the consumer's credit or
18 debit card or payment account with a third party as part of the automatic renewal plan
19 or arrangement, as required by § 17601(b)(3); and/or (e) the text did not state the
20 length of the automatic renewal term, as required by § 17601(b)(4).

21 85. Based on the foregoing, when Arnold submitted her request for a one-
22 year subscription to *Oprah Magazine* in November 2018, Defendants failed to present
23 the "automatic renewal offer terms" (as defined by § 17601(b)) in a "clear and
24 conspicuous" manner (as defined by § 17601(c)), in violation of § 17602(a)(1).

25 86. Based on the foregoing, when Arnold submitted payment for the one-
26 year subscription to *Oprah Magazine* in November 2018, Defendants charged
27 Arnold's credit card without first obtaining her affirmative consent to an agreement
28 containing clear and conspicuous disclosure of automatic renewal offer terms, in

1 violation of § 17602(a)(2).

2 87. Based on the foregoing, with respect to Arnold’s subscription to *Oprah*
3 *Magazine*, Defendants failed to provide Arnold with an acknowledgment that
4 included clear and conspicuous notice of automatic renewal offer terms, in violation
5 of § 17602(a)(3), and failed to include in an acknowledgment a toll-free telephone
6 number, electronic mail address, postal address, or other mechanism for cancellation,
7 in violation of § 17602(b).

8 88. When Arnold submitted the order for the one-year subscription to *Oprah*
9 *Magazine*, and when she submitted payment for that subscription, she was not aware
10 that Defendants were going to enroll her in a program under which the subscription
11 would automatically renew for subsequent periods, and she did not consent to be
12 enrolled in such program.

13 89. If Arnold had known that Defendants were going to enroll her in an
14 automatically renewing magazine subscription program, Arnold would not have
15 submitted the order for *Oprah Magazine* and would not have paid any money to
16 Defendants for that magazine.

17 90. On October 11, 2019, without Arnold’s authorization or consent,
18 Defendants posted a charge of \$34.97 to Arnold’s credit card, purportedly for renewal
19 of *Oprah Magazine*.

20 **Michele Ruppert’s Transaction**

21 91. In or about July 2018, Ruppert received in the mail a notice from
22 Defendants that Ruppert was entitled to a “credit adjustment” in the amount of \$39.91,
23 which qualified her to receive a one-year subscription to *Food Network Magazine* for
24 \$9.99 as well as the opportunity to add a one-year subscription to *HGTV Magazine*
25 for “just \$2!” The “credit adjustment” offer was provided to Ruppert as a single piece
26 of paper, double-sided. A true and correct copy of that offer is attached hereto as
27 Exhibit 14 (the second page of which is the reverse side of the paper offer).

28

1 92. On the front page of Exhibit 14, on the right side of the page and
2 approximately one-third of the way down, the following 3-line paragraph of fine-print
3 text appears in type that is smaller than the surrounding text:

4 **Continuous Service Program:** Your subscription will continue unless you ask us to stop. Each year you'll
5 receive a reminder notice followed by an invoice for the low renewal rate then in effect. You can cancel at any
6 time and receive a refund on all unmailed issues. See back for details.

6 93. On Exhibit 14, that 3-line paragraph of text that appears on the front side
7 does not constitute a “clear and conspicuous” disclosure, as defined by § 17601(c),
8 because: (a) the type is smaller than the surrounding text; (b) the type is not in
9 contrasting type, font, or color to surrounding text of the same size; and (c) it is not
10 set off from surrounding text of the same size by symbols or other marks in a manner
11 that clearly calls attention to the language.

12 94. On Exhibit 14, that 3-line paragraph of text that appears on the front side
13 does not constitute a disclosure of “automatic renewal offer terms,” as defined by
14 § 17601(b), for at least the following reasons: (a) the disclosure is not set forth in a
15 manner that is “clear and conspicuous,” as explained in the preceding paragraph 93,
16 above; and (b) the text does not state the amount of the recurring charges that will be
17 charged to the consumer’s credit or debit card or payment account with a third party
18 as part of the automatic renewal plan or arrangement, as required by § 17601(b)(3).

19 95. On Exhibit 14, there is mention of automatic renewal or continuous
20 service on the reverse side of the page (Exhibit 14 at p. 33). On that reverse side,
21 there are five numbered paragraphs, as follows:

22 **1. Guaranteed Savings.** You lock in guaranteed savings off the cover price this year and
23 every year – as long as you remain a subscriber.

24 **2. Guaranteed Hassle-Free Service.** You enjoy our guaranteed convenient service. There are no
25 more renewal notices because we do all the work for you by continuing your subscription
26 automatically each term.

27 **3. Guaranteed Uninterrupted Delivery.** You’re guaranteed the ease and convenience of
28 uninterrupted home delivery. Your subscription will renew automatically at the end of its term
unless you tell us to stop. At the end of your subscription term, we will send you a reminder,
followed by a bill for the renewal subscription term at the low renewal rate then in effect.

4. Guaranteed Right to Cancel Anytime. You’ll always be notified at least 30 days in advance
of your subscription expiration with a report of what your savings will be for the next term. If
you ever wish to cancel, simply contact us at P.O. Box 6000, Harlan, IA 51593-1500 and get a
full refund on all unmailed issues.

5. Money-Back Guarantee. We guarantee that you may call or write to cancel your
subscription upon request at any time and that you will receive any money you may have
paid for all copies still outstanding.

1 96. On Exhibit 14, page 33, the allusion to automatic renewal or continuous
2 service in the paragraphs numbered 2 and 3 (quoted above) does not constitute a “clear
3 and conspicuous” disclosure, as defined by § 17601(c), because: (a) the type is not
4 larger than surrounding text; (b) the type is not in contrasting type, font, or color to
5 surrounding text of the same size; and (c) it is not set off from surrounding text of the
6 same size by symbols or other marks in a manner that clearly calls attention to the
7 language.

8 97. Exhibit 14, page 33, does not does not constitute a disclosure of
9 “automatic renewal offer terms,” as defined by § 17601(b), for at least the following
10 reasons: (a) the disclosure is not set forth in a manner that is “clear and conspicuous,”
11 as explained in the preceding paragraph 96, above; (b) the text does not state the
12 amount of the recurring charges that will be charged to the consumer’s credit or debit
13 card or payment account with a third party as part of the automatic renewal plan or
14 arrangement, as required by § 17601(b)(3); and/or (c) the text does not state the length
15 of the automatic renewal term, as required by § 17601(b)(4).

16 98. On the front page of Exhibit 14, there is a notice that for “faster service,”
17 a consumer can “order online at: credit.foodnetworkmag.com.” Entering that URL
18 into a browser generates a webpage offering a one-year subscription to *Food Network*
19 *Magazine* for \$9.99 with an optional one-year subscription to *HGTV Magazine* for
20 “JUST \$2 MORE!” A true and correct copy of that offer page,
21 https://subscribe.hearstmags.com/subscribe/splits/foodnetmag/fnm_redir_credit,
22 (last accessed July 24, 2020) is attached hereto as Exhibit 15 and is incorporated
23 herein by reference. On July 25, 2018, Ruppert accessed the URL
24 credit.foodnetworkmag.com, entered her credit card information, and submitted a
25 subscription order for both magazines.

26 99. Ruppert is informed and believes and thereon alleges that the offer page
27 shown in Exhibit 15 is in all material respects the same as the offer page through
28 which she submitted the subscription order on July 25, 2018. To the extent there were

1 any differences between the offer page shown in Exhibit 15 and the offer page as it
2 existed on July 25, 2018 when Ruppert submitted her order, such differences are in
3 Defendants’ exclusive possession.

4 100. On Exhibit 15, above the “PLACE ORDER” button, the following 8-line
5 paragraph of fine-print text appears in faint bluish type that is smaller than the
6 surrounding text:

7 **Continuous Service Program:** I understand that unless I tell you otherwise, I will receive
8 uninterrupted service and access; my subscription(s) will be automatically renewed at the end of
9 each subscription term, at the rate(s) then in effect. I authorize you to fulfill my subscription(s) and
charge the credit/debit card if provided, or send me a bill if not. I won’t be bothered with any renewal
notices, instead, I will receive a clearly marked reminder notice with the then current rate(s) about
30 days prior to charging my credit/debit card or receiving a bill. I may opt out of the automatic
renewal at any time by contacting customer service referenced below and receive a refund for all
undelivered issues.

10 101. On Exhibit 15, the 8-line paragraph of text that appears above the
11 PLACE ORDER button does not constitute a “clear and conspicuous” disclosure, as
12 defined by § 17601(c), because: (a) the type is smaller than surrounding text; (b) the
13 type is not in contrasting type, font, or color to surrounding text of the same size; and
14 (c) it is not set off from surrounding text of the same size by symbols or other marks
15 in a manner that clearly calls attention to the language.

16 102. On Exhibit 15, the 8-line paragraph of text that appears above the
17 PLACE ORDER button does not constitute a disclosure of “automatic renewal offer
18 terms,” as defined by § 17601(b), for at least the following reasons: (a) the disclosure
19 is not set forth in a manner that is “clear and conspicuous,” as explained in the
20 preceding paragraph 101, above; (b) the text does not state that a subscription or
21 purchasing agreement will continue until the consumer cancels, as required by
22 § 17601(b)(1); (c) the text does not describe a cancellation policy that applies to the
23 offer, as required by § 17601(b)(2); (d) the text does not state the amount of the
24 recurring charges that will be charged to the consumer’s credit or debit card or
25 payment account with a third party as part of the automatic renewal plan or
26 arrangement, as required by § 17601(b)(3); and/or (e) the text does not state the length
27 of the automatic renewal term, as required by § 17601(b)(4).

28

1 103. On July 25, 2018, Ruppert received “Order Confirmation” emails from
2 Defendants for the one-year, \$9.99 subscription to *Food Network Magazine* and the
3 one-year, \$2.00 subscription to *HGTV Magazine*. True and correct copies of those
4 emails are attached hereto as Exhibits 16 and 17, respectively.

5 104. Near the bottom of Exhibits 16 and 17, the following 6-line paragraph of
6 fine-print text appears in type that is smaller than the surrounding text:

7 ***Continuous Service Program:** I understand that unless I tell you otherwise, I will receive uninterrupted service and
8 access; my subscription(s) will be automatically renewed at the end of each subscription term, at the rate then in effect. I
9 authorize you to fulfill my subscription(s) and charge the credit/debit card if provided. I won't be bothered with any renewal
10 notices, instead, I will receive a clearly marked reminder notice with the then current rates about 30 days prior to charging
11 my credit/debit card. I may opt out of the automatic renewal at any time by contacting customer service referenced below
12 and receive a refund for all undelivered issues.

13 105. On Exhibits 16 and 17, the 6-line paragraph of text that appears near the
14 bottom does not constitute a “clear and conspicuous” disclosure, as defined by
15 § 17601(c), because: (a) the type is smaller than surrounding text; (b) the type is not
16 in contrasting type, font, or color to surrounding text of the same size; and (c) it is not
17 set off from surrounding text of the same size by symbols or other marks in a manner
18 that clearly calls attention to the language.

19 106. On Exhibits 16 and 17, the 6-line paragraph of text near the bottom does
20 not constitute a disclosure of “automatic renewal offer terms,” as defined by
21 § 17601(b), for at least the following reasons: (a) the disclosure is not set forth in a
22 manner that is “clear and conspicuous,” as explained in the preceding paragraph 105,
23 above; and (b) the text does not state that a subscription or purchasing agreement will
24 continue until the consumer cancels, as required by § 17601(b)(1); (c) the text does
25 not describe a cancellation policy that applies to the offer, as required by
26 § 17601(b)(2); (d) the text does not state the amount of the recurring charges that will
27 be charged to the consumer’s credit or debit card or payment account with a third
28 party as part of the automatic renewal plan or arrangement, as required by
§ 17601(b)(3); and/or (e) the text does not state the length of the automatic renewal
term, as required by § 17601(b)(4).

1 107. Exhibits 16 and 17 do not provide a toll-free telephone number,
2 electronic mail address, postal mail address, or other mechanism for cancellation, as
3 required by § 17602(b). The postal address for customer service for Hearst
4 magazines, including any request to cancel *Food Network Magazine* and *HGTV*
5 *Magazine*, is P.O. Box 6000, Harlan, IA 51593. The address set forth at the end of
6 Exhibits 16 and 17 (300 W. 57th Street, New York, NY 10019) is the street address
7 of Hearst Tower and is not the postal address for cancellation of magazines.

8 108. Based on the foregoing, when Ruppert submitted her request for one-
9 year subscriptions to *Food Network Magazine* and *HGTV Magazine*, Defendants
10 failed to present the “automatic renewal offer terms” (as defined by § 17601(b)) in a
11 “clear and conspicuous” manner (as defined by § 17601(c)), in violation of
12 § 17602(a)(1).

13 109. Based on the foregoing, when Ruppert submitted her request for one-
14 year subscriptions to *Food Network Magazine* and *HGTV Magazine*, Defendants
15 charged Ruppert’s credit card without first obtaining her affirmative consent to an
16 agreement containing clear and conspicuous disclosure of automatic renewal offer
17 terms, in violation of § 17602(a)(2).

18 110. Based on the foregoing, with respect to Ruppert’s subscriptions to *Food*
19 *Network Magazine* and *HGTV Magazine*, Defendants failed to provide Ruppert with
20 an acknowledgment that included clear and conspicuous notice of automatic renewal
21 offer terms, in violation of § 17602(a)(3), and failed to include in an acknowledgment
22 a toll-free telephone number, electronic mail address, postal address, or other
23 mechanism for cancellation, in violation of § 17602(b).

24 111. When Ruppert submitted the order and credit card payment for the one-
25 year subscriptions to *Food Network Magazine* and *HGTV Magazine*, she was not
26 aware that Defendants were going to enroll her in a program under which the
27 subscriptions would automatically renew for subsequent periods, and she did not
28 consent to be enrolled in such program.

1 112. If Ruppert had known that Defendants were going to enroll her in an
2 automatically renewing magazine subscription program, Ruppert would not have
3 submitted the order for *Food Network Magazine* or *HGTV Magazine* and would not
4 have paid any money to Defendants for either magazine.

5 113. On April 5, 2019, without Ruppert’s authorization or consent,
6 Defendants posted a charge of \$34.97 to Ruppert’s credit card, purportedly for
7 renewal of *HGTV Magazine*.

8 114. On May 17, 2019, without Ruppert’s authorization or consent,
9 Defendants posted a charge of \$29.97 to Ruppert’s credit card, purportedly for
10 renewal of *Food Network Magazine*.

11 **Defendants’ Possession of Relevant Transaction Records**

12 115. This action was initially filed in the San Diego County Superior Court
13 on September 10, 2019, and Defendants removed the action to this Court on October
14 10, 2019. ECF No. 1. Plaintiffs filed a First Amended Complaint (“FAC”) on
15 December 9, 2019. ECF No. 14.

16 116. On December 18, 2019, Defendants represented to the Court that the
17 usual 14-day period for a response to the FAC “was not enough time *to retrieve and*
18 *analyze the transaction records*, investigate the new allegations, and develop a
19 response[.]” ECF No. 15 at PageID 302 (emphasis added); No. 15-1 at Page ID 305.
20 Defendants’ counsel further explained that the impending holidays and other work
21 commitments “will prevent him from devoting adequate time to investigating
22 Plaintiffs’ allegations within the next two to three weeks.” (*Ibid.*) Those statements
23 give rise to a reasonable inference that Defendants have in their possession, custody,
24 or control all records relating to Plaintiffs’ transactions. Such an inference is further
25 supported by the fact that, when it served their interests to do so, Defendants were
26 able to provide the Court with a “more legible copy” of the sweepstakes order form
27 submitted by Nakai. *See* ECF No. 17-1 at PageID.322. In short, Defendants provide
28 transaction records when it suits them, but otherwise they plead ignorance.

1 117. Based on the foregoing, with respect to Nakai's transaction, Defendants
2 have in their possession, custody, and control the invoice payment form as it existed
3 when Nakai paid the invoice in September 2018, and any order confirmation email
4 provided to Nakai with respect to *Food Network Magazine*. Based on similar
5 documents that are exhibits to this Complaint, such records likely consist of two
6 pages.

7 118. Based on the foregoing, with respect to Arnold's transactions,
8 Defendants have in their possession, custody, and control the advertisements to which
9 Arnold responded and the orders forms she submitted to Defendants for *HGTV*
10 *Magazine*, *Good Housekeeping*, *Woman's Day*, and *Oprah Magazine*; the invoice
11 payment forms as they existed when Arnold made her credit card payments in July
12 2017 and November 2018; and any order confirmation email provided in connection
13 with Arnold's subscription for *HGTV Magazine*. Based on similar documents that
14 are exhibits to this Complaint, such records likely consist of approximately seven
15 pages.

16 119. Based on the foregoing, with respect to Ruppert's transaction,
17 Defendants have in their possession, custody, and control the offer page/payment
18 form as it existed on the date Ruppert submitted her subscription order and payment
19 for *Food Network Magazine* and *HGTV Magazine*. Based on a similar document that
20 is an exhibit to this Complaint, such record likely consists of one page.

21 **BUSINESS PRACTICES APPLIED TO OTHER CONSUMERS**

22 120. Plaintiffs are not the only consumers to be victimized by Defendants'
23 business practices in connection with magazine subscriptions. There are numerous
24 consumer complaints about Defendants' practices posted on a variety of websites,
25 including but not limited to the Better Business Bureau ("BBB"), Yelp, Complaints
26 Board, and pissedconsumer.com.

27 121. Customer reviews of Hearst posted on the BBB website and other
28 consumer websites illustrate that Defendants' business practices have affected many

1 consumers, some of whom report receiving invoices from Defendants when no
2 payment is due and/or being automatically renewed for magazines without consent.

3 Illustrative reviews or complaints are quoted below:

4 **Deborah A (January 6, 2020).** I originally ordered a one-year
5 subscription about 12 months ago. On my most recent credit card
6 statement, I noticed that, without my consent or authorization, the
company automatically billed me for a two-year renewal of Food
Network Magazine.

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

8 **Elizabeth S (December 17, 2019).** I subscribed for a one year
9 subscription and made the mistake of providing them with my debit card
10 info. To date, MORE THAN A YEAR LATER, they have charged me
11 numerous times, always different amounts without ever giving me the
12 option to renew or opt out. On top of that, I tried to locate their phone #
13 with no success as it wasn't listed in the magazine so I couldn't cancel
the subscription. I had to call my bank and cut them at the source which
was very inconvenient as my debit card number had to be changed and
all my automatic accounts had to be updated. DO NOT
ORDER/SUBSCRIBE TO ANYTHING FROM THIS COMPANY!!!!

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

15 **Laura H (March 30, 2019).** I subscribed to 1 year of Town and Country
16 magazine. I did NOT renew it and keep receiving "invoices" stating my
17 "account" is overdue for another year subscription. They use bullying
18 tactics to make people believe they owe this "manufactured" invoice.
Warning to the elderly or uninformed. DO NOT PAY THESE
INVOICES OR BE INTIMIDATED BY THEIR QUESTIONABLE
TACTICS!

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

20 **Cathy H (January 18, 2019).** Scam!!! Entered their sweepstakes and
21 than [sic] received an E-mail with a subscription to *** Magazine and
22 no way to unsubscribe. Now they are sending a bill to me via mail!!! I
never ordered there [sic] magazine!!! sweepstakes is just a scam to get
subscriptions and money from innocent people!

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

24 **Advertising/Sales Issues (August 20, 2018).** Hearstmags and Good
25 Housekeeping and Oprah or O magazine, are all connected to the Hearst
26 Corporation. Unsuspecting people (like myself), enter a cloaked
27 sweepstakes and the next thing you know you start getting be e-mail and
28 postage mail invoices saying you owe them money for agreeing to buy
one of these magazine subscriptions to Good Housekeeping and the
Oprah O magazines. Fraudulent entrapment advertising and it may be
their way for you to un-enter their sweepstakes also. Clever but unethical
and fraudulent.

1 and billing records.

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

19 125. Numerosity. The Class is so numerous that joinder of all Class members
20 would be impracticable. Plaintiffs are informed and believe and thereon allege that
21 the Class consists of at least 100 members.

22 126. Typicality and Adequacy. Plaintiffs’ claims are typical of the claims of
23 the members of the Class. Plaintiffs allege on information and belief that Defendants
24 enrolled Class members in automatic renewal or continuous service offer programs
25 without presenting the applicable terms in the manner required by law, charged Class
26 members’ credit cards, debit cards, or third-party accounts without first obtaining the
27 Class members’ affirmative consent to an agreement containing clear and
28 conspicuous disclosure of all automatic renewal offer terms, and failed to provide the

1 requisite acknowledgment to Class members. Plaintiffs have no interests that are
2 adverse to those of the other Class members. Plaintiffs will fairly and adequately
3 protect the interests of the Class members.

4 127. Superiority. A class action is superior to other methods for resolving this
5 controversy. Because the amount of restitution or damages to which each Class
6 member may be entitled is low in comparison to the expense and burden of individual
7 litigation, it would be impracticable for class members to redress the wrongs done to
8 them without a class action forum. Furthermore, on information and belief, class
9 members do not know that their legal rights have been violated. Class certification
10 would also conserve judicial resources and avoid the possibility of inconsistent
11 judgments.

12 128. Defendants Have Acted on Grounds Generally Applicable to the Class.
13 Defendants have acted on grounds that are generally applicable to the members of
14 each class, thereby making appropriate final injunctive relief and/or declaratory relief
15 with respect to each class as a whole.

16 **FIRST CLAIM FOR RELIEF**

17 False Advertising

18 (Bus. & Prof. Code §§ 17600 et seq. and 17535)

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

20 130. During the applicable statute of limitations period, Defendants have
21 enrolled consumers, including Plaintiffs and Class members, in automatic renewal
22 programs and/or continuous service programs and have (a) failed to present the
23 automatic renewal or continuous service offer in a clear and conspicuous manner
24 before the subscription or purchasing agreement is fulfilled and in visual proximity,
25 or in the case of an offer conveyed by voice, in temporal proximity, to the request for
26 consent to the offer, in violation of § 17602(a)(1); (b) charged the consumer's credit
27 or debit card or the consumer's third-party payment account for an automatic renewal
28 or continuous service without first obtaining the consumer's affirmative consent to an

1 agreement containing clear and conspicuous disclosure of the automatic renewal offer
2 terms or continuous service offer terms, in violation of § 176029a)(2); and (c) failed
3 to provide an acknowledgment that includes the required clear and conspicuous
4 disclosure of automatic renewal or continuous service offer terms, cancellation policy,
5 information regarding how to cancel, and a toll-free telephone number, electronic mail
6 address, postal address, or other mechanism for cancellation, in violation of
7 § 17602(a)(3) and § 17602(b).

8 131. Plaintiffs have suffered injury in fact and lost money or property as a
9 result of Defendants’ violations of the ARL.

10 132. Pursuant to § 17603, all goods received by Plaintiffs and Class members
11 are deemed to be an unconditional gift.

12 133. Pursuant to § 17535, Plaintiffs and Class members are entitled to
13 restitution of all amounts that Defendants charged to Plaintiffs’ and Class members’
14 credit cards, debit cards, or third-party payment accounts during the four years
15 preceding the filing of the initial Complaint in this action and continuing until
16 Defendants’ statutory violations cease.

17 134. Unless enjoined and restrained by this Court, Defendants will continue
18 the unlawful conduct alleged herein. Pursuant to § 17535, Plaintiffs seek a public
19 injunction for the benefit of the general public of the State of California.

20 **SECOND CLAIM FOR RELIEF**

21 Violation of the Consumers Legal Remedies Act

22 (Civ. Code § 1750 et seq.)

23 135. Plaintiffs incorporate paragraphs 1-128 as though set forth herein.

24 136. Plaintiffs and Class members are “consumers” within the meaning of
25 Civil Code § 1761(d) in that the goods and/or services sought or acquired were for
26 personal, family, or household purposes.

27 137. Defendants’ magazine and/or subscription offers pertain to “goods”
28 and/or “services” within the meaning of Civil Code § 1761(a) and (b).

1 138. The requests, orders, and/or payments by Plaintiffs and Class members
2 for Defendants’ magazines are “transactions” within the meaning of Civil Code
3 § 1761(e).

4 139. By engaging in the conduct alleged herein, Defendants have represented
5 that Defendants’ goods and services have certain characteristics that they do not have,
6 in violation of Civil Code § 1770(a)(5). For example, and without limitation,
7 Defendants have represented that magazine subscriptions are for a set price and for a
8 limited term with a specific end date when, in fact, Defendants consider the
9 subscriptions to be subject to automatic renewal and additional charges for subsequent
10 periods.

11 140. By engaging in the conduct alleged herein, Defendants have advertised
12 goods and services with the intent not to sell them as advertised, in violation of Civil
13 Code § 1770(a)(9). For example, and without limitation, Defendants have advertised
14 magazine subscriptions for a set price and for a limited term when, in fact, Defendants
15 intend to enroll consumers who respond to such advertisements in subscriptions that
16 automatically renew and result in additional charges for subsequent periods.

17 141. By engaging in the conduct alleged herein, Defendants have made false
18 and misleading statements of fact concerning the reasons for, existence of and
19 amounts of price reductions, in violation of Civil Code § 1770(a)(13). For example
20 and without limitation, Defendants have offered discounted prices for magazine
21 subscriptions that purport to be for a set price and for a limited term without disclosing
22 that the discounted price is offered because Defendants intend to enroll consumers
23 who respond in subscriptions that automatically renew and result in additional charges
24 for subsequent periods.

25 142. By engaging in the conduct alleged herein, Defendants have represented
26 that a transaction confers or involves rights, remedies, or obligations that it does not
27 have or involve, or that are prohibited by law, in violation of Civil Code
28 § 1770(a)(14). For example, and without limitation, Defendants have represented that

1 magazine subscriptions involve an obligation on the part of the consumer to pay only
2 a set price for a limited term, whereas Defendants enroll the consumer in a
3 subscription that Defendants contend entails an obligation on the part of the consumer
4 to pay additional charges for subsequent periods unless and until the consumer
5 notifies Defendants that the consumer wants to cancel.

6 143. By engaging in the conduct alleged herein, Defendants have represented
7 that the consumer will receive a rebate, discount, or other economic benefit, if the
8 earning of the benefit is contingent on an event to occur subsequent to the
9 consummation of the transaction, in violation of Civil Code § 1770(a)(17). For
10 example, and without limitation, Defendants have represented that consumers will
11 receive a discounted prices for magazine subscriptions that purport to be for a set price
12 and for a limited term when, in fact, such discount is contingent on Defendants'
13 enrolling the consumers in subscriptions that automatically renew and result in
14 additional charges for subsequent periods.

15 144. Defendants' conduct alleged herein was undertaken knowingly,
16 willfully, and with oppression, fraud, and/or malice, within the meaning of Civil Code
17 § 3294(c).

18 145. On September 12, 2019, Plaintiffs' counsel sent to Hearst and to CDS
19 written notice of the alleged violations of Civil Code § 1770 and requested that Hearst
20 and CDS rectify the violations. The written notices were sent by certified mail, return
21 receipt requested, and were delivered to Hearst's agent for service of process (The
22 Corporation Trust Company) on September 17, 2019, and to CDS's agent for service
23 of process (CT Corporation) on September 16, 2019. Neither Hearst nor CDS
24 responded to the written notice. Accordingly, pursuant to Civil Code § 1782,
25 Plaintiffs have fulfilled the statutory prerequisite to seek monetary damages for
26 violations of the CLRA.

27 146. Pursuant to Civil Code § 1780(a)(1), (a)(3), and (a)(4), Plaintiffs are
28 entitled to recover actual damages, restitution, and punitive damages.

1 147. Pursuant to Civil Code § 1780(a)(2), Plaintiffs seek a public injunction
2 prohibiting Defendants from continuing their unlawful practices in violation of the
3 Consumers Legal Remedies Act, as described above.

4 **THIRD CLAIM FOR RELIEF**

5 Unfair Competition

6 (Bus. & Prof. Code § 17200 et seq.)

7 148. Plaintiffs incorporate the previous allegations as though set forth herein.

8 149. The California Unfair Competition Law (“UCL”), Bus. & Prof. Code
9 § 17200 *et seq.*, defines unfair competition as including “any unlawful, unfair or
10 fraudulent business act or practice,” “any “unfair, deceptive, untrue or misleading
11 advertising,” and any prohibited by Chapter 1 of the FAL.

12 150. In the course of conducting business within the applicable limitations
13 period, Defendants committed “unlawful” business practices that violate the ARL,
14 including without limitation: (a) failing to present the terms of automatic renewal or
15 continuous service offers in a clear and conspicuous manner before a subscription or
16 purchasing agreement is fulfilled and in visual proximity to a request for consent to
17 the offer, in violation of § 17602(a)(1); (b) charging the consumer’s credit or debit
18 card or the consumer’s third-party payment account for an automatic renewal or
19 continuous service without first obtaining the consumer’s affirmative consent to the
20 agreement containing the automatic renewal offer terms or continuous service offer
21 terms, in violation of § 17602(a)(2); (c) failing to provide an acknowledgment that
22 includes the required clear and conspicuous disclosure of automatic renewal or
23 continuous service offer terms, cancellation policy, and information regarding how to
24 cancel, in violation of Bus. & Prof. Code § 17602(a)(3); and/or (d) failing to provide
25 an acknowledgment that includes a toll-free telephone number, electronic mail
26 address, postal address, or other mechanism for cancellation, in violation of
27 § 17602(b).

28 151. In the course of conducting business within the applicable limitations

1 period, Defendants committed “unlawful” business practices that violate the CLRA,
2 including without limitation: (a) representing that Defendants’ goods and services
3 have certain characteristics that they do not have, in violation of Civil Code
4 § 1770(a)(5); (b) advertising goods and services with the intent not to sell them as
5 advertised, in violation of Civil Code § 1770(a)(9); (c) making false and misleading
6 statements of fact concerning the reasons for, existence of and amounts of price
7 reductions, in violation of Civil Code § 1770(a)(13); (d) representing that a
8 transaction confers or involves rights, remedies, or obligations that it does not have
9 or involve, or that are prohibited by law, in violation of Civil Code § 1770(a)(14);
10 and/or (e) representing that the consumer will receive a discount or other economic
11 benefit, if the earning of the benefit is contingent on an event to occur subsequent to
12 the consummation of the transaction, in violation of Civil Code § 1770(a)(17).
13 Plaintiffs reserve the right to allege other violations of law that constitute unlawful or
14 unfair business acts or practices.

15 152. Defendants’ business practices alleged herein also constitute conduct
16 that is “unfair” within the meaning of the UCL. Defendants’ acts and omissions as
17 alleged herein violate obligations imposed by statute, are substantially injurious to
18 consumers, offend public policy, and are immoral, unethical, oppressive, and
19 unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable
20 to such conduct.

21 153. There were reasonably available alternatives to further Defendants’
22 legitimate business interests, other than the conduct described herein.

23 154. Defendants’ business practices alleged herein also constitute conduct
24 that is misleading and likely to deceive reasonable consumers, and is therefore
25 “fraudulent” within the meaning of the UCL.

26 155. Plaintiffs have suffered injury in fact and lost money as a result of
27 Defendants’ acts of unfair competition.

28

1 156. Pursuant to § 17203, Plaintiffs and the Class members are entitled to an
2 order requiring Defendants to make restitution of all amounts received in connection
3 with the unlawful, unfair, and/or fraudulent business practices alleged above.

4 157. Pursuant to § 17203, for the benefit of the general public of the State of
5 California, Plaintiffs seek a public injunction enjoining Defendants from committing
6 acts of unfair competition as alleged herein.

7 **FOURTH CLAIM FOR RELIEF**

8 Unjust Enrichment

9 158. Plaintiffs incorporate the previous allegations as though set forth herein.

10 159. Defendants have received money from Plaintiffs and Class members in
11 connection with Defendants’ conduct in violation of California law. Defendants
12 would be unjustly enriched if they were permitted to retain those funds, and
13 Defendants should be ordered to restore said funds to Plaintiffs and the Class
14 members.

15 160. Plaintiffs allege this unjust enrichment claim in the alternative to relief
16 provided under any legal claim alleged herein.

17 **PRAYER**

18 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

19 On the First Claim for Relief:

- 20 1. For restitution;
- 21 2. For an order that all goods sent to Plaintiffs and Class members are
- 22 unconditional gifts;
- 23 3. For a public injunction for the benefit of the People of the State of
- 24 California;

25 On the Second Claim for Relief:

- 26 4. For an award of actual damages, pursuant to Civil Code § 1780(a)(1);
- 27 5. For a public injunction for the benefit of the People of the State of
- 28 California;

- 1 6. For restitution, pursuant to Civil Code § 1780(a)(3);
- 2 7. For punitive damages, pursuant to Civil Code § 1780(a)(4);
- 3 8. For an award of attorneys’ fees and costs pursuant to Civil Code
- 4 § 1780(e);

5 On the Third Claim for Relief:

- 6 9. For restitution;
- 7 10. For a public injunction for the benefit of the People of the State of
- 8 California;

9 On the Fourth Claim for Relief:

- 10 11. For restitution;

11 On All Claims for Relief:

- 12 12. For an award of attorneys’ fees pursuant to Code Civ. Proc. § 1021.5;
- 13 13. For costs of suit;
- 14 14. For pre-judgment interest; and
- 15 15. For such other relief that the Court deems just and proper.

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DATED: September 18, 2020

DOSTART HANNINK & COVENEY LLP

s/ Zach P. Dostart

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all claims and causes of action so triable.

DATED: September 18, 2020

DOSTART HANNINK & COVENEY LLP

s/ Zach P. Dostart

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