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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MELINDA FERGUSON and MARIE
WEST, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

AGE OF LEARNING, INC., a Delaware
corporation, also d/b/a ABCmouse and
ABCMouse.com

Defendant.

Case No.:

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiffs Melinda Ferguson and Marie West, on behalf of themselves and all
2 others similarly situated (“Plaintiffs”), by and through their undersigned counsel,
3 hereby sue Age of Learning, Inc. d/b/a ABCmouse and/or ABCmouse.com
4 (“Defendant” or “ABCMouse”) and, upon information and belief and investigation
5 of counsel, alleges as follows:

6 **I. INTRODUCTION**

7 1. ABCmouse operates a membership-based online learning tool called
8 ABCmouse Early Learning Academy for children ages 2 to 8 years old. Consumers
9 can access ABCmouse at Defendant’s website, abcmouse.com, and through
10 Defendant’s mobile application (“app”). Defendant provides consumers access to
11 ABCmouse through memberships which typically cost \$9.95 for a monthly
12 membership or \$59.95 to \$79.95 for a twelve-month membership.

13 2. Plaintiffs and class members are consumers in California who
14 subscribed to Defendant’s subscription-based services and were illegally charged
15 fees for that service.

16 3. Specifically, from as early as 2012 to at least September of 2020,
17 Defendant failed to adequately disclose key terms of the subscription services and
18 instead enrolled consumers in yearly plans that renewed indefinitely without the
19 consumers knowledge or consent. Defendant’s advertising for its service failed to
20 disclose that memberships automatically renew, Defendant would charge members
21 each year unless the consumer canceled, and misled consumers into automatic
22 renewals by claiming a thirty-day free trial. Defendant also made it exceptionally
23 difficult and confusing for consumers to cancel their memberships despite claiming
24 an “Easy Cancellation” policy. These practices and policies violate California’s
25 Automatic Renewal Law, Cal. Bus. Prof. Code §§ 17600-17606, *et seq.*

26 4. Furthermore, Defendant’s conduct violates California’s Consumers
27 Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”), California’s Unfair
28 Competition Law (“UCL”), Business & Professional Code, § 17200, *et seq.*, Cal.

1 Civ. Code §§ 1709-1710, Cal. Bus. & Prof. Code §§ 17600 *et seq.* and 17535, and
2 Cal. Penal Code § 496.

3 5. As a direct result of Defendant’s conduct, Plaintiffs and members of the
4 proposed class suffered economic injury in the loss of monies paid for Defendant’s
5 subscriptions, as well as loss of their rescission rights.

6 6. Plaintiffs, on behalf of themselves and members of the class they seek
7 to represent, seek restitution, declaratory, injunctive, and other equitable relief,
8 statutory damages, actual and treble damages, reasonable attorneys’ fees and costs,
9 and interest, as set forth below.

10 II. JURISDICTION AND VENUE

11 7. This Court has subject matter jurisdiction over this action pursuant to
12 28 U.S.C. § 1332(d), because at least one member of the class, as defined below is
13 a citizen of a different state than Defendant, there are more than 100 members of the
14 class, and the aggregate amount in controversy exceeds \$5,000,000 exclusive of
15 interest and costs.

16 8. The Court has personal jurisdiction over Defendant because Defendant
17 is a Delaware corporation with its principal place of business at 101 North Brand
18 Boulevard, 8th Floor, Glendale, California and regularly conducts business in
19 California.

20 9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2)
21 because the injury in this case substantially occurred in this District and Defendant’s
22 principal place of business is in this District.

23 III. PARTIES

24 10. Plaintiff Melinda Ferguson (“Ferguson”) is a resident of Rialto,
25 California.

26 11. Plaintiff Marie West (“West”) is a resident of Antioch, California.

27 12. Defendant is a Delaware corporation with its principal place of business
28 at 101 North Brand Boulevard, 8th Floor, Glendale, California 91203.

1 13. At all times material to this Complaint, acting alone or in concert with
2 others, Defendant has advertised, marketed, distributed, or sold online educational
3 programs to consumers throughout the United States.

4 **IV. FACTUAL ALLEGATIONS**

5 14. From as early as 2012 to at least September of 2020, Defendant
6 provided misleading advertising for its subscription-based service, placing
7 consumers who believed they had only subscribed to a free trial or a one-year
8 membership, into costly auto-renew memberships which do not cancel unless the
9 consumer was able to successfully navigate through its purposefully confusing
10 cancellation path that repeatedly discourages consumers from canceling. Defendant
11 received at least tens of thousands of consumer complaints about these practices yet
12 failed to rectify the problem and instead gained profit off the misleading advertising.

13 15. Defendant's business practice aims to extract as much money as
14 possible, for as long as possible, from paying subscribers.

15 16. Defendant's webpage includes an animated image of a teacher
16 gesturing to her classroom and displays a bright green gift tag with a prominent link
17 offering consumers a special offer, which varied over the years (ex. "Special Offer
18 38% off").

19 17. Consumers who clicked on the "Special Offer" link were directed to an
20 enrollment page where a box was pre-checked for a 12-month membership.

21 18. Consumers who used this page to sign up for a twelve-month
22 ABCmouse membership were instead enrolled in an auto-renewal program where
23 Defendant charged them a yearly membership fee ranging from \$59.95 to \$79.95
24 immediately and each year thereafter until they affirmatively canceled. Defendant
25 did not disclose the auto-renewal on the sign-up page. Defendant also failed to
26 disclose how to cancel the auto-renewal that consumers were not even aware
27 Defendant had deceptively enrolled them in.

1 19. Similarly, when consumers enrolled in a 30-day free trial of an
2 ABCmouse monthly membership, Defendant often enrolled the customers into an
3 annual auto-renewal membership without the consumers' knowledge or consent.

4 20. Other times when consumers enrolled in a 30-day free trial, Defendant
5 often offered them alternative payment options following their free month, including
6 twelve months or six months for a lower amount than initially advertised. Defendant,
7 however, did not disclose that after charging consumers who selected these options
8 immediately for the stated membership term, Defendant would charge consumers
9 again at the end of that period for the full six or twelve months, and on a recurring
10 basis thereafter until they canceled.

11 21. Defendant describes the ongoing nature of these term memberships
12 only in separately hyperlinked terms and conditions. Yet, even if consumers were
13 to click on the hyperlinked terms and conditions, they would be unlikely to see that
14 Defendant's term memberships automatically renew each year. Defendant buried
15 this information in dense text, in small font and in single-spaced type. A far cry
16 from the clear and conspicuous disclosures as required by law.

17 22. In or around early 2018, Defendant received a Civil Investigative
18 Demand from the Federal Trade Commission ("FTC"). *See*
19 <https://www.ftc.gov/system/files/documents/cases/1723086abcmousecomplaint.pdf>
20 (last visited February 23, 2021). At that time, Defendant modified its term
21 membership enrollment pages to include information about the membership's
22 automatic renewal, but Defendant buried the information in the smallest font on the
23 page under a bright red heading labeled "Easy Cancellation." *Id.* This disclosure
24 was not close to or in similar size, brightness, or prominence to Defendant's
25 representation that consumers were paying "\$59.95 for 12 Months" of membership.
26 *Id.* Thus, despite this modification, consumers were unlikely to see any disclosure
27 of the automatic renewal of their twelve-month memberships.

1 23. Making matters worse, Defendant knowingly enters consumers into
2 auto-renew memberships aware that the consumers do not know the subscription
3 renews itself.

4 24. In fact, according to the filed FTC Complaint against Defendant in
5 September of 2020, after which a settlement was reached, Defendant conducted an
6 internal review in January of 2015 and determined that common customer support
7 issues include that the “Subscription page is misleading,” and “Customers are
8 confused about their billing plan on registration, customer do not like they [are] not
9 notified of their auto-renewal.” *See*

10 <https://www.ftc.gov/system/files/documents/cases/1723086abcmousecomplaint.pdf>
11 (last visited February 23, 2021). Additionally, the January 2015 internal review
12 found that the “Cancellation Path is too long,” that the “Cancellation process is
13 confusing,” and that an ABCmouse membership was “not easy to cancel like
14 advertised.” *Id.* That same year, Defendant’s Senior Director of Operations wrote:

15 To improve customer experience / satisfaction, . . . I’d take a look at the impact
16 of reducing the number of clicks in the online cancellation flow. I believe
17 there are 8-9 clicks required currently, in order for a customer to successfully
18 end their subscription.

19 *Id.*

20 25. The FTC Complaint also found that the Defendant failed to make it
21 easier to cancel after the 2015 internal review but instead made it more difficult.
22 Specifically, in April 2016, Defendant added two screens to the cancellation
23 mechanism, which, Defendant found, resulted in a “lower cancellation percentage.”
24 In May 2017, after Defendant’s Senior Design Director reported that, according to
25 the customer support department, “the cancellation path is too hard to get to and get
26 through,” Defendant changed its Parent Dashboard, including to make the
27 “Cancellation Policy” link less prominent. Defendant later concluded that because
28 of this change, cancellations “decreased by approximately 10%-15%.” In June 2017,

1 shortly after this change was made, the same Senior Design Director reported that
2 “the decrease of cancellation % of those entering the Parents Section to completion
3 of the cancellation path.” *Id.*

4 26. It was only after the FTC issued a Civil Investigative Demand to Age
5 of Learning that Defendant modified its online cancellation mechanism. However,
6 despite its modifications, Defendant’s cancellation mechanism continued to be
7 located within a link to Defendant’s “Cancellation Policy;” continued to contain
8 multiple screens that consumers had to navigate in order to cancel; continued to
9 provide consumers with multiple links that if clicked, would take them out of the
10 cancellation path without warning; and required as many as seven clicks to complete.
11 Thus, consumers continued to complain that Defendant did not honor their
12 cancellation requests.

13 27. Consumers have been injured by Defendant’s practice of renewing
14 consumers’ subscriptions without their consent and knowledge and making it
15 difficult for consumers to cancel their subscriptions.

16 28. The website Better Business Bureau provides some examples that
17 chronicle their common grievances. Customer Reviews give Defendant 1.04 out of
18 5 stars with numerous billing complaints such as the following:

- 19 • 9/30/2020 - I have submitted requests to cancel Age of Learning, there
20 is no app nor is there a link to apple. Age of Learning refuses to
21 acknowledge the request. I have contacted Age of Learning multiple
22 times to cancel the subscription. They reply that it is through apple and
23 it is not. I have been charged ***** for numerous months and have not
24 had access to the account. Their subscription practices are fraudulent at
25 best.
- 26 • 9/11/2020 - Requested cx of account 02/20. Confirmed cancellation.
27 Still billed as of 08/20. I requested cancellation of account in February
28 2020. I received an email stating that I would no longer be billed. I have

1 been billed every month since, as of August 2020. I contacted the
2 company again in March, and again in April with the same result. I'm
3 told there is no active account with that email, yet I keep being charged.
4 I have attempted to cancel the account through the website and get a
5 notice that the subscription is not active, yet I see a ***** charge every
6 month. Company says they have no record of an account with my email
7 address, yet keep taking the money.

- 8 • 6/24/2020 - Age of Learning, Inc. has continued to charge me \$9.95
9 monthly for the last 3-4 years, even after I asked for the account to be
10 canceled in writing. I signed up my daughter for ABCmouse (Age of
11 Learning, Inc.), an online learning program when she was 5 years old.
12 My daughter is now 10 years old and has not used the program for the
13 last 3-4 years. Back in 2018 I emailed the company to cancel my
14 account. I could not cancel through the App because I didn't find the
15 cancel option. The company emailed me and informed me I would have
16 to cancel through the App itself. I again explained to them that I did not
17 know how to do that and I again requested that my subscription be
18 canceled. I called a number I found in the email and never was able to
19 get a live operator. I left a message and months later I got a call back,
20 they left a message and I called them back and again did not get a live
21 operator. I continued to call and email numerous times requesting my
22 subscription be canceled. This was in 2018 and 2019 now we are in
23 2020 and this company is still charging my bank \$9.95 monthly for a
24 service that no one has used in years and I requested in writing be
25 canceled. They can log into my subscription and see that no one has
26 logged in or used the service in the last 3-4 years. I give permission for
27 BBB to receive a print out of the usage from this program, which will
28 show that no one has logged in in years. I feel like this company is

1 stealing from me, because they refuse to cancel. I now have a four year
2 old son and would love to have him use the program to prepare for
3 Kindergarten, but I will not work with a company with these horrible
4 practices. I also, feel like they purposefully make it difficult for
5 customers to cancel their subscriptions. They must be doing this to
6 other parents who were just trying to prepare their children for school.

- 7 • 4/30/3030 - I only had a trial version of ABCMouse, and I discovered
8 I didn't want to continue the trial. I went to cancel, and I was tricked
9 into a subscription. On April 19, I signed up for a trial version of
10 ABCMouse as part of a promotional offer. I never used it once, nor did
11 I download the app to check it out. On April 28, I went onto the mobile
12 site to cancel my subscription, which was scheduled to to change me
13 on May 19. However, when I went to unsubscribe on the android app,
14 the buttons refused to work, pages kept popping up incidentally, and it
15 all seemed very ungainly. When I made it to the cancellation page,
16 ABCMouse tried twice to make me subscribe, putting the keep
17 subscription button above the cancellation one. Then, when I clicked
18 "yes I want to cancel subscription" they page went onto another screen
19 which I assumed was where I would enter my password and
20 unsubscribe. The keyboard automatically pops up to have me enter my
21 password for confirmation, conveniently covering up the fact that THE
22 EMAIL ENTRY IS FOR A SUBSCRIPTION! Not only did they ask
23 me to confirm my subscription (which they would asked for when in
24 cancellation) but they overdrew my bank account linked to my paypal,
25 which they were not authorized to do! I want a refund, and they ought
26 to offer a better way of contacting them about this that through the
27 BBB!

1 • 4/21/2020 - I have been trying, since the day I purchased, to get human
2 correspondence from ABCMouse.com to receive a refund for what I
3 was unexpectedly charged. ABCMouse.com advertised a one month
4 free trial. On 4/7/20, I signed up. They required me to input credit card
5 information, which seems like it'd be used to charge me AFTER the 30
6 day trial; should I choose to continue using the program. What was not
7 made clear at all, was that I'd be charged \$59.40 for the full year of
8 subscription, immediately. The advertising was very misleading. Its
9 should more accurately state that if you sign up for a year, you'll receive
10 an additional month free. There is no number to call listed on the
11 website so I contacted the only email address available, stating that I'd
12 like a refund. I did this the same day I signed up for the trial, 4/7/20.
13 Furthermore, my child did not like the program at all, unfortunately. So,
14 there's even more of a reason to seek a refund. I received a generic email
15 from ***** that listed information on how to cancel my
16 subscription/membership. NOTHING addressed my desire for a refund
17 or how to seek further info on how to do this. I emailed for a second
18 time and again received the exact SAME generic email about
19 cancellation, this time from *****. It has now been a week and I have
20 reached out 4 times. This is absolutely ridiculous. I feel taken advantage
21 of. I simply want a refund. My request is not complicated. Upon visiting
22 the BBB, I see several complaints that are similar.

23 • 4/14/2020 - I was billed for a yearly subscription of ABC mouse
24 automatically the same day when I chose a 30 day "free trial" I
25 registered for a "30 day free trial" of ABCmouse for my child. The
26 terms and conditions stated that my subscription would be renewed
27 monthly if I did NOT cancel. It did NOT say that I would be charged
28 an annual fee the same day! The SAME DAY I registered for the 30

1 day "free" trial, i was charged an annual subscription fee of *****
2 USD. I emailed customer service and received no response to my claim.
3 I since have gone online and read many poor reviews of similar people
4 in this "scam-like" situation. I feel like it is a total scam taking
5 advantage of parents who are trying to educate their children during this
6 pandemic. On top of that, I couldn't even get the app to work as it was
7 so overloaded (likely with the "free trial" being promoted).

- 8 • 3/31/2020 - In spring of 2019 I signed up for one year subscription for
9 my grandkids. They auto-renewed without my knowledge and hit my
10 PayPal for ***** In spring of 2019 I signed up for one year
11 subscription for my two grandkids to use. They barely used and the last
12 was April 2019. This past Wednesday I noticed that they hit my PayPal
13 account for ***** for another year without my knowledge beforehand.
14 I didn't get an e-mail saying "unless you cancel by ... your account will
15 be charged" like all REPUTABLE companies. I've called and of course
16 no one there. I sent an e-mail they their system on Wed and got no
17 response. I cancelled at that point. I contacted PayPal and got no help
18 there either. This is FRAUD!
- 19 • 3/25/2020 - I HAD NO IDEA they were going to charge me annually.
20 I thought you paid for what you wanted and what I wanted was one year.
21 Not till I die!!! I just happen to be looking through my account due to
22 the virus and I noticed the charge from October 6th. I was SHOCKED!
23 I never authorized this charge. I NEVER gave them permission to
24 charge me besides the initial payment. To prove that, you can see that
25 we didn't even use the subsection because I assumed it ended! I am not
26 paying for something I didn't authorize and I will fraud the charge as
27 soon as this virus nightmare is over. I will also not stop until I make
28 sure as many people as I know that this company is a thief!!!!

- 1 • 6/7/2019 - I did not realize this was an automatic renewal subscription.
2 I received a charge of \$59.99 to my PayPal account on 6/5 and I want
3 it back. I did not realize this service automatically renews itself. I
4 received a charge to my PayPal account on 6/5 in the amount of \$59.99.
5 My children no longer use ABC mouse and I have no use for a yearly
6 membership at this time. Once I received the charge, I immediately
7 contacted customer service to cancelation/refund to which I received a
8 generic e-mail with directions on how to cancel with no mention of a
9 refund. I did so, but it says my membership will not be canceled until
10 6/5/2020. I want it canceled now with a full refund since I will not be
11 using it at all in the next year. I constantly received e-mails from ABC
12 mouse about promotions if you renewed now. If the service renews
13 automatically, then why would I have received e-mails requesting I
14 renew? That is very misleading. Please refund my money and cancel
15 the service.
- 16 • 2/25/2019 - I signed up for a free trail for ABCMOUSE.com back in
17 2018. Even though I cancelled the account exactly as they stated and
18 have not used the account I continue to be charged \$9.95 a month since
19 then. I have cancelled my card and had new cards issued. I just today
20 learned from my bank that they can just push the payments through in
21 order to get their money. I can not even log into the account to cancel
22 the account or to make sure that the account is closed for good with out
23 having to input my credit card information. I have sent numerous email
24 and called several times to no avail. This company continues to take
25 money out of my account without my permission and it needs to stop.
26 The company has taken \$99.50 since June of 2018 and also charged me
27 twice in the month of June when I was not even suppose to be charged
28 once. the email I used for the account is *****@yahoo.com

1 Like I stated the card I used to open the account has since been
2 terminated. Any help would be greatly appreciated.

3 *See* [https://www.bbb.org/us/ca/glendale/profile/online-education/age-of-learning-](https://www.bbb.org/us/ca/glendale/profile/online-education/age-of-learning-inc-1216-100117983)
4 [inc-1216-100117983](https://www.bbb.org/us/ca/glendale/profile/online-education/age-of-learning-inc-1216-100117983) (last visited February 23, 2021).

5 29. FTC Commissioner Rohit Chopra made the following statement
6 regarding Defendant’s practices following the FTC settlement:

7 At a time when many parents are looking for more opportunities for
8 educational enrichment online, it is disappointing that services like
9 ABCmouse have scammed millions of dollars from families through dark
10 patterns, as alleged in the Commission’s complaint. By making it extremely
11 difficult to cancel recurring subscription fees, ABCmouse engaged in conduct
12 that was not only unethical, but also illegal.

13 *See*
14 [https://www.ftc.gov/system/files/documents/public_statements/1579927/172_3086](https://www.ftc.gov/system/files/documents/public_statements/1579927/172_3086_abcmouse_-_rchopra_statement.pdf)
15 [abcmouse - rchopra statement.pdf](https://www.ftc.gov/system/files/documents/public_statements/1579927/172_3086_abcmouse_-_rchopra_statement.pdf) (last visited February 23, 2021).

16 30. California’s Automatic Renewal Law, Cal. Bus. Prof. Code, §§ 17600-
17 17606, was enacted in December 2010. The stated intent of the Legislature was “to
18 end the practice of ongoing charging of consumer credit or debit cards or third-party
19 payment accounts without the consumers’ explicit consent for ongoing shipments of
20 a product or ongoing deliveries of service.” *See* Cal. Bus. Prof. Code § 17600.

21 31. Cal. Bus. Prof. Code § 17601(a) defines the term “automatic renewal”
22 to mean “a plan or arrangement in which a paid subscription or purchasing
23 agreement is automatically renewed at the end of a definite term for a subsequent
24 term.” Defendant, through its website and the app, offered and continues to offer
25 consumers in California, (including Plaintiffs and class members) education services
26 using a plan or arrangement in which a paid subscription is automatically renewed
27 at the end of a definite term. Defendant’s subscriptions were, and are, “automatic
28 renewal” plans under Cal. Bus. Prof. Code § 17601(a).

1 32. Cal. Bus. Prof. Code § 17602(a)(1) makes it unlawful for any business
2 that makes an automatic renewal or continuous service offer to a consumer in
3 California to:

4 Fail to present the automatic renewal offer terms or continuous service offer
5 terms in a clear and conspicuous manner before the subscription or purchasing
6 agreement is fulfilled and in visual proximity, or in the case of an offer
7 conveyed by voice, in temporal proximity, to the request for consent to the
8 offer...

9 33. Cal. Bus. Prof. Code § 17601(b) defines the term “automatic renewal
10 offer terms” as the following clear and conspicuous disclosures:

11 (1) That the subscription or purchasing agreement will continue until the
12 consumer cancels.

13 (2) The description of the cancellation policy that applies to the offer.

14 (3) The recurring charges that will be charged to the consumer's credit or debit
15 card or payment account with a third party as part of the automatic renewal
16 plan or arrangement, and that the amount of the charge may change, if that is
17 the case, and the amount to which the charge will change, if known.

18 (4) The length of the automatic renewal term or that the service is continuous,
19 unless the length of the term is chosen by the consumer.

20 (5) The minimum purchase obligation, if any.

21 34. At all relevant times, Defendant failed to disclose the “automatic
22 renewal offer terms” required by Cal. Bus. Prof. Code § 17601(b) before California
23 consumers purchased their subscriptions. At no time during Defendant’s
24 subscription flow, or the process by which California consumers are presented with
25 and then accept an offer for an automatically renewing premium subscription, did
26 Defendant clearly and conspicuously disclose (i) that the subscription will continue
27 until cancelled (ii) the cancellation policy that applied to the offer; (iii) the recurring
28 charges that would be charged to the consumer’s credit or debit cards or third party

1 payment accounts; (iv) the length of the automatic renewal term or that the service
2 was continuous. This conduct violates Cal. Bus. Prof. Code § 17602 (a)(1).

3 35. Cal. Bus. Prof. Code § 17602(a)(2) makes it unlawful for any business
4 that makes an automatic renewal or continuous service offer to a consumer in
5 California to:

6 Charge the consumer's credit or debit card, or the consumer's account with a
7 third party, for an automatic renewal or continuous service without first
8 obtaining the consumer's affirmative consent to the agreement containing the
9 automatic renewal offer terms or continuous service offer terms....

10 36. At all relevant times, Defendant charged, and continues to charge,
11 Plaintiffs and class members for subscriptions. Prior to September of 2020,
12 Defendant did so without first obtaining California consumers' affirmative consent
13 to the agreement containing the automatic renewal offer terms or continuous service
14 offer terms. Indeed, there was no mechanism (during the subscription process or at
15 any point in time) that required California consumers to affirmatively consent to
16 such terms. This conduct violates Cal. Bus. Prof. Code § 17602(a)(2).

17 37. Cal. Bus. Prof. Code § 17602(a)(3) makes it unlawful for any business
18 that makes an automatic renewal or continuous service offer to a consumer in
19 California to:

20 Fail to provide an acknowledgement that includes the automatic renewal or
21 continuous service offer terms, cancellation policy, and information regarding
22 how to cancel in a manner that is capable of being retained by the consumer...

23 38. Cal. Bus. Prof. Code § 17602(b) further provides:

24 A business that makes automatic renewal offer or continuous service offer
25 shall provide a toll-free telephone number, electronic mail address, a postal
26 address if the seller directly bills the consumer, or it shall provide another
27 cost-effective, timely, and easy-to-use mechanism for cancellation that shall
28 be described in the acknowledgment specified in paragraph (3) of subdivision

1 (a).

2 39. Defendant fails to provide California consumers with an
3 acknowledgement that satisfies any of the requirements of Cal. Bus. Prof. Code §§
4 17602(a)(3) and 17602(b).

5 40. Cal. Bus. Prof. Code § 17603 provides:

6 In any case in which a business sends any goods, wares, merchandise, or
7 products to a consumer, under a continuous service agreement or automatic
8 renewal of a purchase, without first obtaining the consumer's affirmative
9 consent as described in Section 17602, the goods, wares, merchandise, or
10 products shall for all purposes be deemed an unconditional gift to the
11 consumer, who may use or dispose of the same in any manner he or she sees
12 fit without any obligation whatsoever on the consumer's part to the business,
13 including, but not limited to, bearing the cost of, or responsibility for, shipping
14 any goods, wares, merchandise, or products to the
15 business.

16 41. Defendant's subscriptions for the educational service for kids is a
17 product provided to Plaintiffs and class members. As a result, the services provided
18 to Plaintiffs and class members under the subscription plans shall for all purposes be
19 deemed an "unconditional gift" to them, and Plaintiffs and class members who may
20 use such services in any manner they see fit without obligation to Defendant. Cal.
21 Bus. & Prof. Code § 17603.

22 42. As a result of Defendant's violation of the Automatic Renewal Law,
23 Plaintiff Ferguson and West and class members defined below suffered economic
24 injury and are entitled to reimbursement of their payments.

25 **V. PLAINTIFF FERGUSON'S INDIVIDUAL ALLEGATIONS**

26 43. On or around October of 2019, Plaintiff Ferguson purchased a 12-
27 month subscription to Defendant's educational app for her granddaughter who was
28 3 years old at the time believing it was a one-time subscription.

1 44. Plaintiff Ferguson provided her credit card information directly to
2 Defendant.

3 45. Plaintiff Ferguson was charged \$39.95 plus \$59.95 on October 1, 2016
4 by Defendant.

5 46. The next year, Plaintiff Ferguson was charged \$39.95 again as well as
6 \$59.95 by Defendant.

7 47. At the time she subscribed, Plaintiff Ferguson believed the subscription
8 would not extend beyond one year and she did not expect to be charged again.

9 48. Before she subscribed to Defendant's service, Defendant did not
10 disclose the automatic renewal offer terms or continuous service offer terms to
11 Plaintiff Ferguson, which was a direct violation of Cal. Bus. & Prof. Code §
12 17602(a)(1). The screens and buttons presented to Plaintiff Ferguson before her
13 purchase did not state that the 12-month subscription would continue year to year
14 until she cancelled, did not describe the cancelation policy that applied to her
15 purchase, did not state the recurring charges that would be charged to her credit card,
16 and did not state that the term was continuous.

17 49. At no point did Defendant obtain Plaintiff Ferguson's affirmative
18 consent to an agreement containing the automatic renewal offer terms or continuous
19 service offer terms, which was a violation of Cal. Bus. & Prof. Code § 17602(a)(2).

20 50. At no point did Defendant email Plaintiff Ferguson an
21 acknowledgement that her ABCmouse subscription had been activated or the terms
22 of membership.

23 51. At no point did Defendant advise Plaintiff Ferguson via email or
24 otherwise with the automatic renewal or continuous service offer terms, cancellation
25 policy, nor did it provide information regarding how to cancel, which was a violation
26 of Cal. Bus. & Prof. Code § 17602(a)(3). Defendant further failed to provide a toll-
27 free telephone number, electronic mail address, or postal address, or another cost-
28 effective, timely, and easy-to-use mechanism for cancellation of her membership,

1 which is a violation of Cal. Bus. & Prof. Code § 17602(b). Plaintiff Ferguson did
2 not receive any other acknowledgements that contain the required information.

3 52. Upon the expiration of the 12-month subscription, Plaintiff Ferguson's
4 granddaughter to whom the subscription was purchased no longer used, nor did she
5 want, Defendant's service. However, Defendant automatically renewed her 12-
6 month subscription and charged Plaintiff Ferguson's credit card without per consent
7 or permission.

8 **V. PLAINTIFF WEST'S INDIVIDUAL ALLEGATIONS**

9 53. On or around October of 2012, Plaintiff West purchased a 12-month
10 subscription to Defendant's educational app for her child believing it was a one-time
11 subscription.

12 54. Plaintiff West provided her credit card information directly to
13 Defendant.

14 55. Plaintiff West was charged \$59.95 by Defendant.

15 56. The next year, Plaintiff West was charged \$59.95 again by Defendant
16 and was charged ever year there thereafter until the present.

17 57. At the time she subscribed, Plaintiff West believed the subscription
18 would not extend beyond one year and she did not expect to be charged again.

19 58. Before she subscribed to Defendant's service, Defendant did not
20 disclose the automatic renewal offer terms or continuous service offer terms to
21 Plaintiff West, which was a direct violation of Cal. Bus. & Prof. Code § 17602(a)(1).
22 The screens and buttons presented to Plaintiff West before her purchase did not state
23 that the 12-month subscription would continue year to year until she cancelled, did
24 not describe the cancelation policy that applied to her purchase, did not state the
25 recurring charges that would be charged to her credit card, and did not state that the
26 term was continuous.

27 59. At no point did Defendant obtain Plaintiff West's affirmative consent
28 to an agreement containing the automatic renewal offer terms or continuous service

1 offer terms, which was a violation of Cal. Bus. & Prof. Code § 17602(a)(2).

2 60. At no point did Defendant email Plaintiff West an acknowledgement
3 that her ABCmouse subscription had been activated or the terms of membership.

4 61. At no point did Defendant advise Plaintiff West via email or otherwise
5 with the automatic renewal or continuous service offer terms, cancellation policy,
6 nor did it provide information regarding how to cancel, which was a violation of Cal.
7 Bus. & Prof. Code § 17602(a)(3). Defendant further failed to provide a toll-free
8 telephone number, electronic mail address, or postal address, or another cost-
9 effective, timely, and easy-to-use mechanism for cancellation of her membership,
10 which is a violation of Cal. Bus. & Prof. Code § 17602(b). Plaintiff West did not
11 receive any other acknowledgements that contained the required information.

12 62. Although Plaintiff West requested a refund on various occasions as the
13 membership was not used or desired, Defendant denied the refund and failed to
14 cancel Plaintiff West's subscription.

15 VI. DELAYED DISCOVERY

16 63. Plaintiffs and the class are reasonably diligent consumers who
17 exercised reasonable diligence in their purchase of Defendant's subscription-based
18 service. Nevertheless, they would not have been able to discover Defendant's
19 deceptive practices given Defendant actively conceals its auto renewal practices
20 from consumers. Defendant's practices and non-conspicuous disclosures impeded
21 Plaintiffs and the class members' abilities to discover the deceptive and unlawful
22 auto renewal policies throughout the class period. Defendant's use of automatic
23 renewals and charges to consumers credit card, debit cards, and/or third-party
24 payment accounts on an annual basis, allowed Defendant to hide its unlawful
25 practices as consumers do not always perform line-item reviews of their credit and
26 banking statements. Because Defendant actively concealed its illegal conduct,
27 preventing Plaintiffs and the class from discovery its violations of state law,
28 Plaintiffs and the class are entitled to delayed discovery and an extended class period

1 tolling of the applicable statute of limitations. Plaintiffs were unaware of the charge
2 until finding the auto renew on their bank statements no earlier than at least year
3 after the original purchase, when the subscription renewed.

4 **VII. CLASS ALLEGATIONS**

5 64. Plaintiffs bring this class action lawsuit individually and on behalf of
6 the proposed class under Rule 23 of the Federal Rules of Civil Procedure.

7 All persons within California who purchased one of
8 Defendant's subscription memberships and had their
9 credit card, debit card, and/or a third-party payment
10 account charged as part as Defendant's automatic renewal
11 program or a continuous service program.
12

13 65. Excluded from the class are the following individuals: officers and
14 directors of Defendant and its parents, subsidiaries, affiliates, and any entity in which
15 Defendant has a controlling interest; and all judges assigned to hear any aspect of
16 this litigation, as well as their immediate family members.

17 66. Plaintiffs reserve the right to modify or amend the definitions of the
18 proposed class before the Court determines whether certification is appropriate.

19 67. Numerosity. The members of the class are so numerous that a joinder
20 of all members is impracticable. While the exact number of class members is
21 unknown to Plaintiffs at this time, Plaintiffs believe the class numbers in the tens of
22 thousands, if not more.

23 68. Typicality. Plaintiffs' claims are typical of the claims of the class
24 members because, among other things, Plaintiffs sustained similar injuries to that of
25 class members as a result of Defendant's uniform wrongful conduct, and their legal
26 claims all arise from the same events and wrongful conduct by Defendant.

27 69. Adequacy. Plaintiffs will fairly and adequately protect the interests of
28 the class members. Plaintiffs' interests do not conflict with the interests of the class

1 members and Plaintiffs have retained counsel experienced in complex class action
2 cases to prosecute this case on behalf of the class.

3 70. Commonality. Common questions of law and fact exist as to all class
4 members and predominate over any questions solely affecting individual members
5 of the class, including the following:

- 6 i. Whether Defendant failed to present the automatic renewal offer terms,
7 or continuous service offer terms, in a clear and conspicuous manner
8 before the subscription was purchased and in visual proximity to the
9 request for consent to the offer in violation of Cal. Bus. & Prof. Code §
10 17602(a)(1);
- 11 ii. Whether Defendant enrolled Plaintiffs and class members in an
12 automatic renewal or continuous service program without first
13 obtaining their affirmative consent to the automatic renewal offer terms
14 or continuous service offer terms in violation of Cal. Bus. & Prof. Code
15 § 17602(a)(2);
- 16 iii. Whether Defendant failed to provide an acknowledgment that included
17 that automatic renewal or continuous service offer terms, cancellation
18 policy, and information on how to cancel in a manner that is capable of
19 being retained by Plaintiffs and class members, in violation of Cal. Bus.
20 & Prof. Code § 17602(a)(3);
- 21 iv. Whether Plaintiffs and the class members are entitled to restitution or
22 disgorgement of money paid in accordance with the unconditional gift
23 provision in Cal. Bus. & Prof. Code § 17603;
- 24 v. Whether Defendant's auto-renewal conduct violates the CLRA;
- 25 vi. Whether Plaintiffs and the class members are entitled to restitution
26 pursuant to the UCL;
- 27 vii. Whether, as a result of Defendant's conduct, Plaintiffs and the class
28 members suffered injury; and

1 viii. The nature of the relief, including equitable relief, to which Plaintiffs
2 sand class Members are entitled.

3 71. Ascertainability. Class members can easily be identified by an
4 examination and analysis of the business records maintained by Defendant, among
5 other records within Defendant's possession, custody, or control.

6 72. Predominance. The common issues of law and fact identified above
7 predominate over any other questions affecting only individual members of the class.
8 The class issues fully predominate over any individual issue because no inquiry into
9 individual conduct is necessary; all that is required is a narrow focus on Defendant's
10 conduct.

11 73. Superiority. A class action is superior to all other available methods for
12 the fair and efficient adjudication of this controversy since a joinder of all members
13 is impracticable. Furthermore, as damages suffered by class members may be
14 relatively small, the expense and burden of individual litigation make it impossible
15 for class members to individually redress the wrongs done to them. Individualized
16 litigation also presents a potential for inconsistent or contradictory judgments, and
17 increases the delay and expense presented by the complex legal and factual issues of
18 the case to all parties and the court system. By contrast, the class action device
19 presents far fewer management difficulties and provides the benefits of a single
20 adjudication, economy of scale, and comprehensive supervision by a single court.

21 74. Accordingly, this class action is properly brought and should be
22 maintained as a class action because questions of law or fact common to class
23 members predominate over any questions affecting only individual members, and
24 because a class action is superior to other available methods for fairly and efficiently
25 adjudicating this controversy.

26 75. This class action is also properly brought and should be maintained as
27 a class action because Plaintiffs seek injunctive relief and declaratory relief on behalf
28 of the class members on grounds generally applicable to the proposed class.

1 Certification is appropriate because Defendant has acted or refused to act in a manner
2 that applies generally to the proposed class, making final declaratory or injunctive
3 relief appropriate.

4 **FIRST CAUSE OF ACTION**

5 **Violation of the California’s Unfair Competition Law**

6 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***

7 ***(On Behalf of Plaintiffs and the Class)***

8 76. Plaintiffs re-allege and incorporate by reference each and every
9 allegation contained elsewhere in this Complaint as if fully set forth herein.

10 77. Defendant is subject to California’s Unfair Competition Law, Cal. Bus.
11 & Prof. Code §§ 17200, *et seq.* The UCL provides, in pertinent part: “Unfair
12 competition shall mean and include unlawful, unfair or fraudulent business
13 practices...”

14 *“Unfair” Prong*

15 78. The UCL prohibits “unfair competition,” which is broadly defined as
16 including “any unlawful, unfair or fraudulent business act or practice and unfair,
17 deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
18 (commencing with Section 17500) of Part 3 of Division 7 of the Business and
19 Professions Code.” Bus. & Prof. Code §17200.

20 79. Defendant’s business practices, described herein, violated the “unfair”
21 prong of the UCL in that their conduct is substantially injurious to consumers,
22 offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as
23 the gravity of the conduct outweighs any alleged benefits.

24 80. Defendant has made material misrepresentations and omissions, both
25 directly and indirectly, related to their billing practices.

26 81. As such, Defendant has engaged in unfair or deceptive acts in violation
27 of the UCL.
28

1 82. Defendant's unfair acts allege herein deceived and misled consumers.
2 Defendant has taken advantage of the lack of knowledge, ability, experience, or
3 capacity of consumers to the detriment of those consumers.

4 83. Defendant's conduct also injures competing educational service
5 providers that do not engage in the same unfair and unethical behavior.

6 84. Defendant's violations were, and are, willful, deceptive, unfair, and
7 unconscionable. Defendant is aware of the violations but have failed to adequately
8 and affirmatively take steps to cure the misconduct.

9 *"Fraudulent" Prong*

10 85. Under the "fraudulent" prong, a business practice is prohibited if it is
11 likely to mislead or deceive a reasonable consumer or, where the business practice
12 is aimed at a particularly susceptible audience, a reasonable member of that target
13 audience. *See Lavie v. Proctor & Gamble Co.*, 105 Cal.App.4th 496, 506-07 (2003).

14 86. Defendant's conduct with respect to the automatic renewal of
15 Defendant's subscriptions as described herein violates the "fraudulent prong" of the
16 UCL. Such practices are likely to deceive members of the public

17 87. The UCL authorizes a civil enforcement action against "[a]ny person
18 who engages, has engaged, or proposes to engage in unfair competition." Bus. &
19 Prof. Code §17203. "[P]erson" includes "natural persons, corporations, firms,
20 partnerships, joint stock companies, associations and other organizations of persons."
21 *Id.* §17201.

22 88. Defendant intentionally misleads and deceives consumers into
23 believing they are entering into a 30-day trial or one year subscription then places
24 the consumer into an auto renewal indefinitely.

25 89. Plaintiffs and class members acted reasonably when they subscribed to
26 Defendant's service, which they believed to truthfully advertised.

27 90. Plaintiffs and class members lost money or property as a result of
28 Defendant's UCL violations because they would not have subscribed to Defendant's

1 services absent Defendant’s representations and omission of a warning of the
2 automatic renewal and easy cancelation.

3 *“Unlawful” Prong*

4 91. Defendant’s business practices, described herein, violated the
5 “unlawful” prong of the UCL by violating the Automatic Renewal Law, Cal. Bus.
6 Prof. Code, §17602.

7 92. Such conduct is ongoing and continues to date.

8 93. Defendant’s conduct further violates other applicable California
9 regulations as alleged herein.

10 94. Plaintiffs and class members are likely to continue to be damaged by
11 Defendant’s deceptive practices thus injunctive relief enjoining Defendant’s
12 deceptive practices is proper.

13 95. There were reasonably available alternatives to further Defendant’s
14 legitimate business interests, other than the conduct described herein.

15 96. Defendant’s practices are therefore unfair, unlawful, and fraudulent
16 under Section 17200 *et. seq.* of the California Civil Code.

17 **SECOND CAUSE OF ACTION**

18 **Negligent Misrepresentation**

19 **Cal. Civ. Code §§ 1709-1710**

20 ***(On Behalf of Plaintiffs and the Class)***

21 97. Plaintiffs re-allege and incorporate by reference each and every
22 allegation contained elsewhere in this Complaint as if fully set forth herein.

23 98. Defendant’s practice of failing to advise consumers that they would
24 enter into automatic renewals, failure to provide the acknowledgement required by
25 the Automatic Renewal Law, and failure to provide an easy way to cancel as
26 advertised concern material facts that influenced Plaintiffs and the class members’
27 subscription to the service.
28

1 99. At the time Defendant made the misrepresentations, Defendant knew
2 or should have known that the misrepresentations were false, or Defendant made the
3 misrepresentations without knowledge of their truth or veracity.

4 100. Plaintiffs and the class members reasonably, justifiably, and
5 detrimentally relied on the misrepresentations and, as a proximate result thereof,
6 have and will continue to suffer damages.

7 **THRID CAUSE OF ACTION**

8 **Unjust Enrichment**

9 *(On Behalf of Plaintiffs and the Class)*

10 101. Plaintiffs re-allege and incorporate by reference each and every
11 allegation contained elsewhere in this Complaint as if fully set forth herein.

12 102. By failing to advise consumers that they would enter into automatic
13 renewals, failure to provide the acknowledgement required by the Automatic
14 Renewal Law, and failure to provide an easy way to cancel as advertised, Defendant
15 was unjustly enriched at the expense of Plaintiffs and class members. It would be
16 inequitable, unjust, and unconscionable for Defendant to retain the profit it received
17 by unauthorized subscription payments.

18 103. Plaintiffs seek disgorgement of all proceeds, profits, benefits, and other
19 compensation obtained by Defendant from their improper and unlawful subscription
20 charges, as well as all other appropriate relief permitted by law of unjust enrichment,
21 including reasonable attorneys' fees and costs of suit.

22 **FOURTH CAUSE OF ACTION**

23 **Violation of the California's Consumers Legal Remedies Act**

24 **Cal. Bus. & Prof. Code §§ 1750, et seq.**

25 *(On Behalf of Plaintiffs and the Class)*

26 104. Plaintiffs re-allege and incorporate by reference each and every
27 allegation contained elsewhere in this Complaint as if fully set forth herein.
28

1 105. Cal. Civ. Code § 1770(a)(14) specifically prohibits companies from
2 “[r]epresenting that a transaction confers or involves rights, remedies, or obligations
3 that it does not have or involve, or that are prohibited by law.”

4 106. Defendant violated, and continues to violate the CLRA by representing
5 that it has rights and remedies that it does not have, specifically that it has the right
6 to charge Plaintiffs and class members’ debit cards, credit cards, or third party
7 payment methods without first making the statutorily required disclosures under the
8 Automatic Renewal Law and obtaining their affirmative consent to the agreement
9 containing the automatic renewal terms and continuous offer terms, and through
10 other conduct described above, in violation of the Automatic Renewal Law.
11 Defendant does not have the legal right to charge for these subscriptions because at
12 all relevant times, it was not in compliance with the Automatic Renewal Law.

13 107. Plaintiffs Ferguson and West and members class reasonably relied upon
14 Defendant’s material misrepresentations and/or omissions to their detriment. Had
15 Defendant complied with its disclosure obligations under the Automatic Renewal
16 Law, Plaintiffs Ferguson and West and members of the class would not have
17 subscribed to Defendant’s service or would have cancelled their subscriptions prior
18 to the renewal of the subscriptions, so as not to incur additional fees. As a result of
19 Defendant’s conduct, Plaintiffs and members of the class were damaged.

20 108. On February 26, 2021, prior to filing this action, Plaintiffs Ferguson
21 and West sent a CLRA notice letter to Defendant which complies with California
22 Civil Code § 1782(a). Plaintiffs sent Defendant, individually and on behalf of the
23 proposed class, a letter via Certified Mail, advising Defendant that it is in violation
24 of the CLRA and demanding that it cease and desist from such violations, take
25 appropriate corrective action, and make full restitution by refunding monies received
26 therefrom.

27 109. Plaintiffs Ferguson and West, on behalf of themselves and class, is
28 therefore entitled to maintain an action for damages under Civil Code §§ 1780 and

1 1781 and requests injunctive relief and other relief that the Court deems proper, and
2 reasonable attorneys' fees and costs, as permitted by Civil Code §§ 1780 and 1782.
3 Such injunctive relief includes requiring Defendant to (i) cease representing to
4 consumers that Defendant is entitled to automatically renew their subscriptions; (ii)
5 cease representing to consumers that they are not entitled to refunds of moneys paid
6 to Defendant for the subscription; (iii) cease denying consumers requests for refunds
7 that are allowable under the law; and (iv) fully comply with the automatic
8 subscription law.

9 110. Wherefore, Plaintiffs seek injunctive relief for Defendant's violations
10 of the CLRA. If Defendant fails to take the corrective action detailed in Plaintiffs'
11 CLRA letter within thirty days of the date of the letter, then Plaintiffs will seek leave
12 to amend their complaint to add a claim for damages under the CLRA.

13 **FIFTH CAUSE OF ACTION**

14 **False Advertising**

15 **Cal. Bus. & Prof. Code §§ 17600 *et seq.* and 17535**

16 ***(On Behalf of Plaintiffs and the Class)***

17 111. Plaintiffs re-allege and incorporates by reference each and every
18 allegation contained elsewhere in this Complaint as if fully set forth herein.

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

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

6 113. Plaintiffs and class members have suffered injury in fact and lost money
7 or property as a result of Defendant’s violation of Automatic Renewal Law.

8 114. Pursuant to § 17603, all goods received by Plaintiffs and class members
9 are deemed to be an unconditional gift.

10 115. Pursuant to § 17535, Plaintiffs and class members are entitled to
11 restitution of all amounts that Defendant charged to Plaintiffs’ and class members’
12 credit cards, debit card, or thirty-party payment accounts.

13 116. Unless enjoined and restrained by this Court, Defendant will continue
14 the unlawful conduct alleged herein. Pursuant to § 17535, Plaintiffs seek a public
15 injunction for the benefit of the general public of the State of California.

16 **SIXTH CAUSE OF ACTION**

17 **Theft**

18 **Cal. Penal Code § 496**

19 ***(On Behalf of Plaintiffs and the Class)***

20 117. Plaintiffs re-allege and incorporates by reference each and every
21 allegation contained elsewhere in this Complaint as if fully set forth herein.

22 118. Penal Code § 496 states in pertinent part:

23 “(a) Every person who . . . receives any property ... that has been obtained in
24 any manner constituting theft . . . knowing the property to be so . . . obtained,
25 or who withholds, or aids in, withholding any property from the owner,
26 knowing the property to be so ... obtained, shall be punished [description of
27 criminal punishments].

28 ...

1 (c) Any person who has been injured by a violation of subdivision ... may
2 bring an action for three times the amount of actual damages ... costs of suit,
3 and reasonable attorney’s fees.”

4 119. Theft, as described in Cal. Penal Code § 484, subdivision (a) includes
5 the following:

6 “Every person ... who shall knowingly and designedly, by any false of
7 fraudulent representation or pretense, defraud any other person of money . . .
8 is guilty of theft.”

9 120. Plaintiffs allege that their property and the property of members of the
10 class was obtained by Defendant in a manner constituting theft or was withheld from
11 Plaintiffs and the class by Defendant with the knowledge that the property had been
12 obtained in a manner constituting theft.

13 121. Defendant created, implemented and/or participating in a systematic
14 and uniform scheme to obtain money by unlawful means through a series of
15 unlawful acts based upon false representations or pretenses as follows:

16 (a) Defendant unlawfully enrolled consumers in their automatic renewal
17 program without requesting their consent or obtaining their affirmative
18 consent in violation of § 17602 of the Automatic Renewal Law;

19 (b) In furtherance of its violation of § 17602 of the Automatic Renewal Law,
20 Defendant created and implemented the false pretense to consumers that
21 consumers were obligated to pay for each month prior to cancellation
22 contrary to § 17603 of the Automatic Renewal Law which provides that
23 all merchandise sold pursuant to an unlawful automatic renewal “shall for
24 all purposes be deemed an unconditional gift to the consumer.”;

25 (c) In furtherance of its violation of § 17602 of the Automatic Renewal Law
26 and in furtherance of and as part of their scheme to unlawfully enroll
27 consumers in their automatic renewal program and to obtain money from
28 consumers, Defendant debited or charged consumer accounts on the false

1 pretense that consumers were validly enrolled in the Defendant's
2 automatic renewal program and the consumer's enrollment in the
3 automatic renewal program legally allowed Defendant to debit or charge
4 their accounts;

5 (d) In furtherance of its violation of § 17602 and 17603 of the Automatic
6 Renewal Law, Defendant refused to return money to consumers for its
7 subscription service paid or available to the consumer prior to cancellation
8 based on the false pretense that consumers were legally obligated to pay
9 for Defendant's subscription service prior to the cancellation.

10 (e) Defendant's collection of money from consumers for its subscription
11 service prior to the consumer's request for cancellation was a systematic
12 practice applied uniformly to all consumers and was based upon the
13 Defendant's uniform and false pretense to all consumers that Defendant
14 was entitled to keep the money debited for its service prior to cancellation,
15 even though Defendant knew that upon cancellation, all consumers were
16 entitled to a complete refund of all monies pursuant to ARL.

17 122. As a result of Defendant's unlawful conduct, Plaintiffs and the class
18 members were charged a monthly or annual fee and were damaged by their loss of
19 money obtained or withheld by Defendant in furtherance of a scheme and artifice to
20 obtain and withhold money based upon false representations and pretenses.

21 **SEVENTHS CAUSE OF ACTION**

22 **Conversion**

23 ***(On Behalf of Plaintiffs and the Class)***

24 123. Plaintiffs re-allege and incorporate by reference each and every
25 allegation contained elsewhere in this Complaint as if fully set forth herein.

26 124. Defendant has enrolled consumers, including Plaintiffs and class
27 members, in automatic renewal programs and/or continuous service programs and
28 have (a) failed to present the automatic renewal or continuous service offer in a clear

1 and conspicuous manner before the subscription or purchasing agreement is fulfilled
2 and in visual proximity, or in the case of an offer conveyed by voice, in temporal
3 proximity, to the request for consent to the offer, in violation of § 17602(a)(1); (b)
4 charging the consumer's credit or debit card or the consumer's third-party payment
5 account for an automatic renewal or continuous service without first obtaining the
6 consumer's affirmative consent to an agreement containing clear and conspicuous
7 disclosures of the automatic renewal offer terms or continue service offer terms, in
8 violation of § 17602(a)(2); and (c) failed to provide an acknowledgment that
9 includes the required clear and conspicuous disclosure of automatic renewal or
10 continuous service offer terms, cancellation policy, information regarding how to
11 cancel, and a toll-free telephone number, electronic mail address, postal address or
12 other mechanism for cancellation, in violation of § 17602(a)(3) and § 17602(b).

13 125. Plaintiffs and class members have suffered injury in fact and lost money
14 or property as a result of Defendant's violation of Automatic Renewal Law.

15 126. Pursuant to § 17603, all goods received by Plaintiffs and class members
16 are deemed to be an unconditional gift.

17 127. Pursuant to § 17535, Defendant's collection and retention of money
18 resulted in the wrongful exercise of dominion over property belonging to Plaintiffs
19 and the class and Plaintiffs and class members are entitled to restitution of all
20 amounts that Defendant charged to Plaintiffs and class members' credit cards, debit
21 card, or third-party payment accounts.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs, individually and on behalf of all class members
24 proposed in this Complaint, respectfully request that the Court enter a judgment in
25 their favor and against Defendant, as follows:

26 A. Determining that this action may be maintained as a class action under Rule
27 23 of the Federal Rules of Civil Procedure and appointing them and their Counsel to
28 represent the class;

1 B. Requiring Defendant beat the cost of Class notice;

2 C. Finding Defendant's conduct was unlawful as alleged herein;

3 C. Enjoining Defendant from engaging in the wrongful conduct complained
4 of herein, and as to violations of the CLRA. As to Plaintiffs' CLRA claim, if
5 Defendant fails to take the corrective action detailed in Plaintiffs' CLRA letter
6 within thirty days of the date of the letter, then Plaintiffs will seek leave to amend
7 their complaint to add a claim for damages under the CLRA;

8 D. Requiring restitution and disgorgement of the revenues wrongfully
9 retained as a result of Defendant's wrongful conduct;

10 E. Awarding Plaintiffs and class members actual damages, compensatory
11 damages, punitive damages, statutory damages, and statutory penalties, in an amount
12 to be determined;

13 F. Awarding Plaintiffs and class members costs of suit and attorneys' fees, as
14 allowable by law; and,

15 G. Granting such other and further relief as this court may deem just and
16 proper.

17 **DEMAND FOR JURY TRIAL**

18 Plaintiffs hereby demand a trial by jury of all issues so triable.

19
20 DATED: February 26, 2021 Respectfully submitted,

21 /s/ Ronald A. Marron

22 Ronald A. Marron

23 **LAW OFFICES OF RONALD A. MARRON**

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