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17 **UNITED STATES DISTRICT COURT**  
18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 JAMIE ZELLER,  
20 Individually and on Behalf of All  
21 Others Similarly Situated,

22 *Plaintiff,*

23 v.

24 OPTAVIA, LLC and  
25 MEDIFAST, INC.

26 *Defendants.*  
27  
28

Case No. '22CV434 BTM MSB

**Class Action Complaint**

**Demand for Jury Trial**

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1 **I. Introduction.**

2 1. Defendants run a multi-level marketing business that sells “Optavia” weight  
3 loss products and services (like packaged meals) to consumers. Parent company  
4 Medifast has built Optavia into a \$1 billion brand. This growth, however, is fueled by an  
5 illegal automatic renewal scheme.

6 2. When consumers purchase any Optavia product, Defendants use dark  
7 patterns to enroll consumers in an automatic renewal plan called “Optavia Premier.”  
8 Once enrolled, consumers are automatically shipped products and charged hundreds of  
9 dollars each month. When enrolling customers, Defendants fail to provide the  
10 disclosures required by law and fail to obtain sufficient consent. As a result, Defendants  
11 sign consumers up for automatically renewing charges without their knowledge. Then,  
12 when consumers try to cancel or return products, Defendants give them the runaround  
13 and continue to charge their payment methods.

14 3. This illegal automatic renewal scheme works. According to Defendants, the  
15 average Optavia client spends thirty times more money on diet products compared to  
16 industry benchmarks. More than 75% of Optavia’s customers get auto-enrolled for at  
17 least one renewal fee and nearly 50% of customers get charged four or more times.

18 4. This class action seeks to put an end to Defendants’ illegal auto-renewal  
19 practices and hold Medifast and Optavia accountable for the damages they have caused  
20 and continue to cause.

21 **II. Parties.**

22 5. Plaintiff Jamie Zeller is a citizen of California. She is domiciled in  
23 Escondido, California. She was a customer of Optavia in August 2021, was enrolled in  
24 Optavia Premier without her consent, and was automatically charged for recurring  
25 shipments.

26 6. Defendant Optavia, LLC is a Delaware Limited Liability Company  
27 headquartered at 100 International Drive, 18th Floor, Baltimore, Maryland 21202. Upon  
28 information and belief, Optavia is a subsidiary of Medifast, Inc.

1           7. Defendant, Medifast, Inc. is a Delaware corporation headquartered in  
2 Baltimore, Maryland and located at 100 International Drive, 18th Floor, Baltimore,  
3 Maryland 21202. Medifast is a weight loss company that was founded in 1980.  
4 Medifast’s weight loss programs have undergone numerous re-brandings over the years.  
5 Upon information and belief, in or about 2016 or 2017, Medifast re-branded its weight  
6 loss program from “Take Shape for Life” to “Optavia.”

7 **III. Jurisdiction and Venue.**

8           8. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2).  
9 The amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest  
10 and costs, and the matter is a class action in which one or more members of the proposed  
11 class are citizens of a state different from the Defendants.

12           9. The Court has personal jurisdiction over Defendants because Defendants  
13 purposefully marketed and sold Optavia products to consumers in California, including  
14 Plaintiffs.

15           10. Venue is proper because a substantial portion of the acts, events, and/or  
16 failures to act giving rise to the claims occurred in this District.

17 **IV. Facts**

18 **A. California Automatic Renewal Law.**

19           11. The California Automatic Renewal Law (ARL) is part of California’s False  
20 Advertising Law. The purpose of the ARL is to “end the practice of ongoing”  
21 subscription charges “without the consumers’ explicit consent for ongoing shipments of a  
22 product.” Cal. Bus. & Prof. Code §17600. To this end, the law makes it illegal for  
23 companies to charge consumers for automatically - renewing shipments of goods, unless  
24 the company meets strict disclosure requirements. This includes both pre-purchase and  
25 post-purchase disclosures.

26 **Pre-Purchase Requirements**

27           12. A company must “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.” Cal.  
3 Bus. & Prof. Code §17602. The “automatic renewal offer terms” that must be presented  
4 include:

- 5
- 6 1) “That the subscription or purchasing agreement will continue until the consumer  
7 cancels.
- 8 2) The description of the cancellation policy that applies to the offer.
- 9 3) The recurring charges that will be charged to the consumer’s credit or debit card  
10 or payment account with a third party as part of the automatic renewal plan or  
11 arrangement, and that the amount of the charge may change, if that is the case, and the  
12 amount to which the charge will change, if known.
- 13 4) The length of the automatic renewal term or that the service is continuous, unless  
14 the length of the term is chosen by the consumer.
- 15 5) The minimum purchase obligation, if any.”

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

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

21 14. After presenting all of this information, the company must then obtain the  
22 “consumer’s affirmative consent to the agreement containing the automatic renewal offer  
23 terms or continuous service offer terms.” Id.

### 24 **Post-Purchase Requirements**

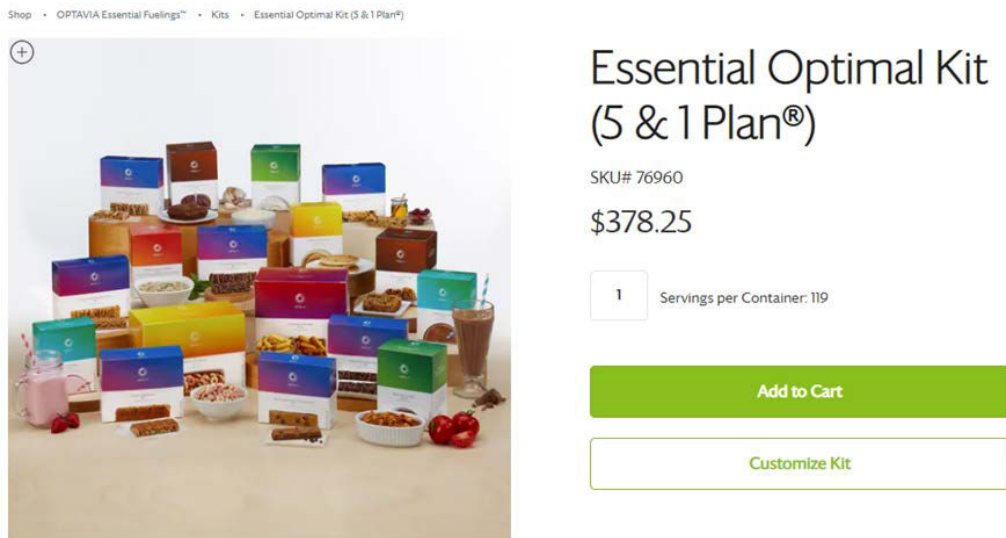
25 15. After the purchase, the company must provide “acknowledgment that  
26 includes the automatic renewal offer terms or continuous service offer terms, cancellation  
27 policy, and information regarding how to cancel in a manner that is capable of being  
28 retained by the consumer.” Cal. Bus. & Prof. Code §17602. In addition, the

1 acknowledgment must provide a “cost-effective, timely, and easy-to-use mechanism for  
2 cancellation.” Id.

3 **B. Defendants charge consumers for automatically renewing weight loss**  
4 **products, in violation of the Automatic Renewal Law and other**  
5 **consumer protection laws.**

6 **1. Defendants use multi-level marketing to sell subscription weight**  
7 **loss products.**

8 16. At all relevant times, Defendants offered, via the Optavia website, various  
9 food products, plans, and services related to weight loss. Defendants offered meal plans  
10 such as the Optimal Weight 5&1 Plan, Optimal Weight 4&2&1 Plan, and the Optimal  
11 Health 3&3 Plan, as well as individual food products referred to as Fuelings, such as  
12 Essential Smoky BBQ Crunchers or Jalapeno Cheddar Poppers. The 5 & 1 Plan is  
13 pictured below:



22  
23 17. Optavia is a multi-level marketing company. It recruits ordinary consumers  
24 to be Optavia “coaches,” to market and sell Optavia products to their friends and family.  
25 Optavia’s business is driven by automatically-renewing product subscriptions.  
26 According to Defendants’ January 2021 investor presentation, subscription-based  
27 purchases account for 92% of their total revenue. In this presentation, Defendants  
28 highlight that the average Optavia client spends thirty times more money on diet products






1 compared to industry benchmarks. According to Defendants, more than 75% of Optavia’s  
2 customers are charged for at least one renewal fee and nearly 50% of customers get  
3 charged four or more times. The reason for these extreme results is Defendants’ illegal  
4 automatic renewal scheme.

5 18. Defendants’ automatic renewal scheme is called Optavia Premier.  
6 Defendants market Optavia Premier as an exclusive program in which members can  
7 “enjoy exclusive perks like extra savings, rewards, free or reduced shipping and more!”  
8 Defendants refer to Optavia Premier as an “autoship program” and state that “Premier  
9 member orders ship automatically each month, so your progress will never be interrupted  
10 or delayed.” While Defendants refer to Optavia Premier as an “autoship program” it is in  
11 every respect an automatically renewing subscription and constitutes an automatic  
12 renewal and/or continuous service plan or arrangement under Cal. Bus. & Prof. Code  
13 §17601. The cost of an Optavia Premier membership can and does reach costs totaling  
14 \$500 per month.

15 **2. Defendants’ Optavia Premier enrollment process violates the**  
16 **Automatic Renewal Law and misleads reasonable consumers.**

17 19. Consumers purchase Optavia products in two ways. First, the consumer can  
18 buy the products themselves, from the Optavia website. Second, a coach can take a  
19 consumer’s payment information and place an order for the consumer. Through both  
20 purchase methods, Optavia systematically enrolls consumers in its Optavia Premier  
21 program, in violation of the Automatic Renewal Law and other consumer protection  
22 laws.

23 20. On the Optavia website, Defendants’ automatic renewal program works as  
24 follows. Any consumer who selects a product for purchase is directed to a checkout page  
25 on the Optavia website, illustrated below:  
26  
27  
28

PRODUCT	UNIT PRICE	QTY	SUBTOTAL
your free item(s)			
 OPTAVIA Guide SKU# 37883	FREE	1	FREE
 Journey Kickoff Card Insert SKU# 50038	FREE	1	FREE
 OPTAVIA Guide Top Tips Insert SKU# 50039	FREE	1	FREE
 Get 1 Week FREE with your OPTAVIA Premier order (up to \$121.25 Value!) SKU# 79938	FREE	1	FREE
<a href="#">Edit Free Meal</a>	Free Meal includes: • 1 Essential Sour Cream & Chive Mashed Potatoes (Box) • 1 Select Buttermilk Cheddar Herb Biscuit Mix (Box) • 1 Select Honey Chili Cranberry Nut Bar with Flaxseeds, Pumpkin Seeds, and Almonds (Box) • 1 Select Chocolate Cherry Ganache Bar with Dried Cherries and Pomegranate (Box) • 1 Select Dark Chocolate Coconut Curry Bar with Almonds and Sea Salt (Box)		
 OPTAVIA BlenderBottle® Classic SKU# 50015	FREE	1	FREE

Congratulations! You are now enrolled in **OPTAVIA Premier**.

These seasonal bundles are available for a limited time only. Add them to your order today!

Yes, I would like to join **OPTAVIA Premier**

I have reviewed and agree to the OPTAVIA Premier Terms and Conditions. I understand that OPTAVIA Premier is an auto-ship program and that by enrolling in OPTAVIA Premier I will automatically be charged for and receive an OPTAVIA Premier order each month unless I modify my order, change my ship date or cancel my membership. I also understand that I can modify my order or cancel my membership at any time by calling 1-888-OPTAVIA or by logging into my online OPTAVIA account.

**ORDER SUMMARY**

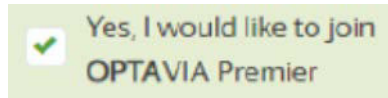
Subtotal	\$428.20
Delivery Charge:	FREE
Estimated tax:	\$0.00
<b>Order Total:</b>	<b>\$428.20</b>

[Checkout](#)

21. The purported disclosures fail to comply with the Automatic Renewal Law, in several ways. The enrollment process also misleads reasonable consumers into thinking that they are not being signed up for auto-renewing shipments and charges.

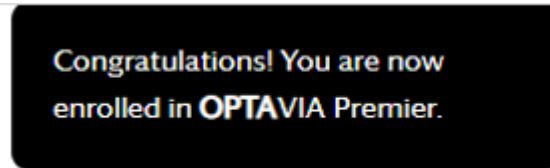
22. To begin, the option to enroll in Optavia Premier box is pre-checked. This is the opposite of how an affirmative consent box is supposed to work. It is designed to, and does, cause reasonable consumers to miss the fact that they are being auto-enrolled. In order to unenroll from Optavia Premier, the consumer must affirmatively uncheck the box. In other words, instead of affirmative consent (which is legally required), the process requires affirmative opt-out (which is illegal).





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5       23. In addition, as illustrated above, the information about the Optavia Premier  
6 program is in the smallest font on the page, set off to the side, and with the least contrast  
7 against the background compared to all the other text. The page is designed so that a  
8 reasonable consumer will click the prominent “Checkout” button without noticing that  
9 they are being signed up for automatically renewing shipments and charges.

10       24. Next, regardless of the Optavia item that the consumer selects to purchase,  
11 the relevant portion of the checkout page presents the consumer with a banner stating  
12 “Congratulations! You are now enrolled in OPTAVIA Premier.”



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16       25. This box confusingly suggests to the consumer that they have already been  
17 enrolled in Optavia Premier, before Defendants have obtained any kind of consent  
18 whatsoever. Again, this is the opposite of clear and conspicuous, affirmative consent.

19       26. Beyond this, the page does not disclose the amount of the charge that will be  
20 recurring on a month-to-month basis, the length of time that the auto-renewal  
21 subscription will remain in place, or the minimum purchase.

22       27. Once the consumer clicks the “Checkout” button, the consumer is redirected  
23 to a webpage to complete their purchase where, among other things, the consumer creates  
24 a username and password, enters a delivery address, and inputs their payment method.  
25 Notably, once the consumer clicks the “Checkout” button, no subsequent webpage for  
26 completion of the purchase discloses or mentions the consumer’s enrollment in Optavia  
27 Premier or its terms and conditions. Once the consumer inputs the requested information  
28 to complete the purchase, the consumer is enrolled in Optavia Premier and, every month

1 from that date forward, Defendants will automatically charge the consumer’s payment  
2 method and ship products.

3 28. When customers are enrolled through coaches, the disclosures are even more  
4 deficient. Coaches systematically fail to even disclose to consumers that they are being  
5 auto-enrolled, much less comply with the detailed requirements of the Automatic  
6 Renewal Law. This is because Optavia’s coach training materials systematically (and  
7 intentionally) fail to train coaches to comply with the Automatic Renewal Law.

8 29. In sum, either way a consumer buys Optavia products, Defendants fail to  
9 comply with the Automatic Renewal Law and mislead reasonable consumers about  
10 whether they are being signed up for automatic, monthly charges.

11 **3. Defendants’ post-order acknowledgement violates Automatic**  
12 **Renewal Law and misleads reasonable consumers.**

13 30. After consumers are enrolled in Optavia Premier, Defendants send  
14 consumers an email confirming their purchase (the “Acknowledgement Email”). The  
15 subject line of the Acknowledgement Email states: “Optavia Order confirmation:” with  
16 an order number listed. A screen shot example of the Acknowledgement Email appears as  
17 follows:

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Hi Jamie,

Thanks for your OPTAVIA® order US113512101. It's great to see you're making another healthy decision on the way to a healthier you, living your best life.

OPTAVIA's accelerated growth and increased product demands, as well as challenges in supply chains worldwide, have led to extremely high order volumes, longer processing times at distribution centers, and delivery delays. Your independent OPTAVIA Coach and OPTAVIA Support Teams cannot expedite order processing or delivery when calling.

Once we've shipped your order we'll send an email with tracking details. Transit times may vary depending on your location.

For additional information on order tracking, and more, please refer to this [HELP ARTICLE](#).

We are working around the clock to fill your order. We apologize for the delay and appreciate your patience and understanding.

Don't forget, if you're an OPTAVIA Premier member, your order qualifies for Rewards and even free shipping on qualifying orders. See below details.

Your OPTAVIA Team

For information about returns, please [click here](#).

<p><b>Don't miss out - thousands of people like you are already benefiting from OPTAVIA Premier membership.</b></p> <p>OPTAVIA Premier offers free shipping on all orders over \$250 and Rewards of \$5 shipping on all order between \$150 - \$249.99.</p> <p>Interested? Talk to Susan, your OPTAVIA Coach, for more information.</p> <p><i>To receive all the benefits of OPTAVIA Premier place an order every 60 days. If you haven't placed an order in the past 60 days, your next OPTAVIA Premier order of \$150 or more will earn Rewards, but won't qualify for the free or flat rate of shipping discount. For more information please visit: <a href="#">OPTAVIA Premier Terms and Conditions</a></i></p>
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31. The Acknowledgement Email does not contain any information to inform the consumer about Defendants’ auto-renewal policy or cancellation policy. Most notably, the Acknowledgement Email does not inform the consumer that she has enrolled in Optavia Premier and that it is a membership program that will charge her payment method on a recurring and monthly basis. To the contrary, the Acknowledgement Email appears to indicate that the consumer is not an Optavia Premier member as the body of the email states: “Don’t miss out - thousands of people like you are already benefiting from OPTAVIA Premier membership.” The Acknowledgement Email further states, “Don't forget, if you're an OPTAVIA Premier member, your order qualifies for Rewards and even free shipping on qualifying orders.” Given these confusing and misleading statements, a reasonable consumer would conclude that they are not an Optavia Premier member. Additionally, the Acknowledgement Email does disclose the following information:

- 1
- 2 1) “That the subscription or purchasing agreement will continue until the consumer cancels.
- 3 2) The description of the cancellation policy that applies to the offer.
- 4 3) The recurring charges that will be charged to the consumer’s credit or debit card
- 5 or payment account with a third party as part of the automatic renewal plan or
- 6 arrangement, and that the amount of the charge may change, if that is the case, and the
- 7 amount to which the charge will change, if known.
- 8 4) The length of the automatic renewal term or that the service is continuous, unless
- 9 the length of the term is chosen by the consumer.
- 10 5) The minimum purchase obligation, if any.”
- 11 Cal. Bus. & Prof. Code §17601(b)(1)-(5).

12 32. As such, the Acknowledgement Email fails to “include[] the automatic  
13 renewal offer terms ... , cancellation policy, and information regarding how to cancel in a  
14 manner that is capable of being retained by the consumer” in violation of Section  
15 17602(a)(3).

16 **4. Defendants fail to provide a “cost-effective, timely, and easy-to-**  
17 **use mechanism for cancellation.” Instead, Defendants**  
18 **systematically continue to charge consumers who try to delay,**  
19 **cancel, or return shipments.**

20 33. As described above, the ARL requires that Defendants conspicuously  
21 present their full cancellation policy at the time of purchase and provide a post-sale  
22 acknowledgment identifying an easy and efficient mechanism for consumers to cancel  
23 their subscriptions. Defendants’ website and Acknowledgement Email fail to satisfy  
24 either of these requirements. Instead, Defendants systematically make it confusing and  
25 difficult to cancel Optavia Premier subscriptions and continue to charge consumers who  
26 have attempted to cancel.

27 34. With respect to cancellation, the relevant portion of the checkout page states:  
28 “I can modify my order or cancel my membership at any time by calling 1-888-  
OPTAVIA or by logging into my online Optavia account.” This vague description on

1 cancellation procedure is not a sufficient disclosure. Moreover, BBB complaints show  
2 that canceling Optavia’s automatic renewals can be difficult, frustrating, and time  
3 consuming. Worse, Optavia fails to honor requests to delay, refund, or cancel orders, and  
4 continues to fraudulently charge consumers.

5 35. The following screenshots of customer complaints from the BBB website  
6 are illustrative:

12/01/2021

This company puts you automatically on an autoship policy. The order has not even shipped and was in process just today. I called and wanted them to refund my money and they were not helpful. I explained I do not want my account on autoship and if the order has not shipped they should be able to cancel the order. I was given the run around about opening a case and having to do a return to distributor on their end and even so it wasn't 100% guaranteed to get my money back. If they are doing an "in house" return then I should get my money!!! They shouldn't tie peoples money up with all of this back and forth!!! It's ridiculous!! I just want the money taken from my account put back in as the order has not even SHIPPED to me at all!!!

**Desired Outcome**  
Refund

09/28/2021

On June 30th 2021 Optavia shipped a box of products to my home which was received on July 12th. the cost of the box was \$299.67. I intern cancelled my services with Optavia and returned the box to them. My bank card was not charged the \$299.67 at the time. The box was returned via USPS with a tracking #XXXX XXXX XXXX XXXX XXXX XX and received by them on July 26, 2021 at 11:30. On September 27, 2021 I received an e-mail that Optavia stating that they were going to charge me for the 299.67. I called them and gave them the tracking # but they still have made attempts to charge my card. I have called 3 times only to be told they have forwarded the case to the operations department without the case being resolved. I want my card information removed from Optavias system and for them to stop attempting to put this charge on my card. My bank has been made aware. At 9:30am 9/28 Optavia made another attempt to charge my card.

**Desired Outcome**  
No further contact by the business

07/20/2021

I was sent an email on on July 4th that my box was to ship. I called customer service and asked that they cancel cancel this shipment. I went in and canceled my account out. I was assured that The shipment would be stopped and the money would not come from my account. On July 17th I received an email that my Box was shipping. I called customer service was told they would try to stop the shipment. July 18th, the money was taken out of my account, but the tracking number showed that it had not yet shipped. I called customer service. Spoke w a supervisor, she samtated they would escalate the issue w their operations support team. 7/20, called again. Box still showing as label being created. Being told they still need to try to intercept box, but can't put money back into my acct. Even though, bills i paid are bouncing because they took the money w out my authorization or w out me receiving product. They give me the same scripted answer when i call. I need help!

**Desired Outcome**

Refund

07/16/2021

Date of transaction: 7/16/21 I ordered a nutrition program from Optavia 5/13/21 for \$364. On 7/1/21 I canceled my future orders. I noticed that \$419 was removed from my bank account from Optavia. I have been on the phone with their customer support all morning and the order HAS NOT even shipped yet and they refuse to issue a refund. Please help

**Desired Outcome**

Refund

07/14/2021

In lake June 2021 I received notice that my order was going to ship in seven days. I logged into my account and canceled the order, only to get notification on July 1, 2021, that my order is shipping. I called that morning and talked to client support, which told me they are canceling my order and future repeat orders. At that time I had not been charged. Today, July 14, 2021, I was charged \$633.61 for the order I canceled. When I called Client Support again today I was told they need to get the package, which has not been mailed, back before they can refund the money. 1) The order was canceled two weeks ago, and 2) the order still has not been shipped or filled as only a tracking label has been created. They cannot give me a time or estimate of when this will be fixed, even after it should not have happened.

**Desired Outcome**

Refund

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07/02/2021

On June 30, 2021 at 10:00am a health coach from Optavia sold me on their food and health plan, she told me that my credit card would not be charged for 3 weeks when the food was mailed to me. She also said that I could cancel my order at anytime. On the same day, June 30, 2021 at 2:58pm I let the health coach know that I did not want the food and I wanted to cancel my order. The next morning, July 1, 2021 at 9:21am the health coach told me that my order could not be canceled. I then checked with my credit card company and my card was already charged but a customer representative from Optavia told me that my order was not shipped. Now I have to wait 3 weeks, receive the order, and then at my expense (because Optavia does not send prepaid return labels) return it and wait for a refund. I want my order canceled now and my credit card refunded- as it should not have been charged in the first place because nothing was shipped to me. This company is a scam to take my money.

**Desired Outcome**  
Refund

\* \* \*

36. In sum, for every subscription product purchased from the Optavia website, Defendants fail to make the legally required disclosures, fail to obtain affirmative consent for automatic recurring charges, misrepresent and conceal material facts regarding Optavia Premier, and mislead reasonable consumers into thinking that they are simply making a one-time purchase. Defendants then make it difficult to cancel and fraudulently continue to charge consumers who seek refunds or cancellation. And as described next, Defendants do all of this knowingly.

**5. Defendants know that their automatic renewal scheme is misleading consumers.**

37. Defendants are well aware that their auto-enrollment scheme is deceiving consumers. Through the BBB, Optavia has received hundreds of complaints from customers.

38. The complaints listed on the BBB website echo Plaintiff’s experience, as consumers complain that they were unaware that they would be auto-enrolled in a monthly subscription plan. The following complaints are illustrative:

Chayah M  
★☆☆☆☆  
12/02/2021

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This company's dark pattern practices online results in holding your personal information and credit info hostage leading to unwanted monthly orders. I've repeatedly requested my information be deleted from their database only to be given a link to go to, on their policy page, where you have to sift through paragraphs of irrelevant information to find the place to then fill out another form that creates a "case #" to request your credit card and contact info be removed from their database. Despite cancelling an order within 24 hours of my initial introduction to this company, I had another order placed on my credit card 30 days later that I then had to request be cancelled again and tried to get my information removed from their system only to be emailed the same policy page link to ask for my information to be removed again. I have stated unequivocally to this company that I will never do business with them yet they continue to email me. This is a terrible company and there should be federal legislation against this type of consumer abuse and privacy violations.

05/25/2021

My coach placed my order via debit card on May 15th for a \$416 dollar kit. My kit still says it's "in processing" but my BF ordered after me (a week later) and his has been shipped. I called customer service and was told " we are experiencing demands we can't meet and deliveries are taking longer than usual. Most of our orders are being shipped out without tracking" So, I paid \$416 and have no idea if it shipped or not and who knows where it is? I went through my bank statements and it doesn't even show charged even though I was told it was? Best thing? I found out that I was signed up for automatic shipping/bill and I wasn't even informed of this? My next scheduled shipment is June 11th and I haven't even received my first box but they have me already scheduled? I have no food and no way to track where it is but my bf who orders after me has tracking and his box??? Help?

**Desired Outcome**  
Contact by the business

05/03/2021

I did not sign up for "autoship" and feel this business practice is deceptive. I have requested for order #\*\*\*\*\* to be canceled and NOT SHIPPED while it is still showing as in process and has, in fact, not already shipped. The "customer service rep" denied saying there is simply no way to do that. That she would send me a return label simply so that I have to pay for shipping to Optivia and again to ship it back. I am requesting for the \$341.59 to be immediately refunded to my credit card and if they continue to refuse to cancel the order, that they send me a prepaid shipping return label for this false shipment to be returned. Additionally, I am requesting for my credit card information to be removed from the Optivia database to ensure no further unauthorized charges can be made to my account.

**Desired Outcome**  
I am requesting for the \$341.59 to be immediately refunded to my credit card and if they continue to



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Saadya H

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07/08/2020

Optavia products cause severe GI issues which aren't resolved by discontinuing their snack bars or fuel bars. The ingredients in their products have caused severe GI issues starting from day 2 and day 4th on their products was full blown symptoms that impaired functioning for that day. Contacting the agency has long wait time which was already mentioned by their rep. One wonders why the long wait time is predicted! Their selling involves zero disclosure as to what the company name is, how much would be charged as a whole to one's cc and enrolling in automatic renewal of products without client's consent. To cancel a cc on file isn't an option on their website either. I was made aware by my cc company when I lost my wallet and found out that my cc info was put on default on company's website and that I had no way of cancelling my cc info. I do not appreciate being signed up for something based on trusting a rep and given zero information/disclosure on company name, and cost of products in order to form my own informed decision in the end.

06/12/2020

Billed for an order i did not want. They did auto re order and charged me \$447 that i did not authorize or want. They refused to cancel the order. So i had my bank dispute the charge. The charge was dropped from my pending. That was Monday 6/8. I woke up today with a new charge for the same order.

**Desired Outcome**

I want my money back and for them to not do this to other people.

04/12/2019

Company sells products, with a return guarantee. Still waiting for a return filed months ago... This is easy, their "coach" sets up their "auto order" system. It is auto populated to continue sending you random products... it "auto ordered" us over \$500 worth of food, that we did not want... Nobody will answer the phone, and nobody will give us our money back. This is fraud, pure and simple...

**Desired Outcome**

A full refund.

03/05/2019

Automatically charged for a order I did not make or want On February 4th a order was placed by my Optavia coach ( can provide name if needed) for my starter kit costing \$356.15. I was told he had to place my first order for me. Never was I told my card would automatically be charged every month after. On March 4th I received a email at 3am that I was charged for my second order #\*\*\*\*\* costing 425.28 which I did not place or approve. I went online and got into my profile which my coach had set up and cancelled the order at 4:56 am cancellation #\*\*\*\*\*. That same morning I called the 888-\*\*\*\*\* which gave a busy signal. I called my Optavia coach and informed him and he said he was sorry and would also call to have my order cancelled. I called the same number multiple times till I got through after holding for 1 hour and 47 minutes. I spoke to Marquis who could not give a last name. He said he saw the order was placed at 3am that morning and was going to put in a form to have the order canceled but wasn't sure if it would be in time. He said I was going to receive a email that this cancellation was made. After not receiving the email today I called back and again got a busy signal. After holding for 1 hour and 25 minutes I spoke to Marquis again and he then told me they don't send out emails when a RT form is sent. I asked to speak to a supervisor and spoke with Amika who said I would only receive a email if the cancellation was successful or to let me know if it was not. I asked to have a second email added to my information because I seemed to not be receiving any emails besides when being charged. I also asked Amika for a direct email to Optavia and she said she did not have one. They have you send emails through their website which leaves you no proof of ever trying to contact them. This company is clearly a pyramid and scam company . The coaches make money off everyone they get to join Optavia and that is why they place your order and don't tell you of future charges. How can a order that has only been placed hours before being cancelled not be cancelled on the company's end. Why are there not emails provided or working phone numbers. They make it as hard as possible to get your refund. After reading multiple complaints which I had wish I had seen prior. I see that their next move is to still send the order and then when you return it say they never got it. This company needs to be shut down so people don't continue to be scammed.

**Desired Outcome**

All I want is my order to be cancelled. I don't want it sent and then have to play their return game. I want my full refund of \$425.28 asap.

39. There are hundreds more similar complaints on the BBB website, and many of these complaints contain various responses from Optavia, which demonstrates Optavia's knowledge of the problems.

40. Thus, after receiving hundreds of complaints from customers who were misled about Optavia's auto-recurring charges, Defendants knew or should have known that they were misleading consumers.

**6. Defendants misled and harmed Plaintiff Zeller.**

41. The experience of Plaintiff Jamie Zeller is typical of other Optavia customers harmed by Defendants' auto-enrollment scheme.

42. Plaintiff Zeller purchased the Optavia Essential Optimal Kit (5&1 Plan) from the Optavia Website on about July 3, 2021, through her coach. She was auto-enrolled in Optavia Premier without her knowledge or consent (much less the required

1 affirmative consent). At the time of purchase and enrollment, Plaintiff Zeller provided  
2 her credit card information to Defendants, via her coach.

3 43. After Plaintiff Zeller completed her initial purchase, Defendants sent  
4 Plaintiff Zeller an Acknowledgement Email confirming that Defendants had processed a  
5 charge of \$409.60 to Plaintiff Zeller's credit card. Plaintiff Zeller's Acknowledgement  
6 Email is misleading and defective in several respects. As illustrated above, it does not  
7 disclose the renewal policy, or the renewal terms, or the amount of the monthly charge, or  
8 the length of time that auto renewal will continue. Plaintiff Zeller's Acknowledgement  
9 Email also failed to provide notice of the cancellation policy for Optavia Premier.

10 44. As a result of Defendants' misrepresentations and deficient disclosures,  
11 when Plaintiff Zeller was enrolled, she was unaware that Defendants had enrolled her in  
12 an "automatic renewal" program under which she would be charged for product each  
13 month. Plaintiff believed she was just signing up for a one-time purchase.

14 45. After Plaintiff Zeller's initial purchase in July 2021, Defendants began  
15 automatically charging her for renewals. Around September 27, 2021, Defendant  
16 charged her \$202.27 for additional food.

17 46. If Plaintiff Zeller had known that Defendants were automatically enrolling  
18 her in a subscription program with monthly recurring charges to her Payment Method,  
19 she would not have purchased any products from Optavia (much less recurring  
20 purchases).

21 47. In or around November 2021, Plaintiff sought to cancel her Optavia Premier  
22 membership in order to cease the automatically renewing and recurring charges.  
23 Optavia's online cancellation procedure was a multi-step process that was needlessly  
24 time-consuming. On or around December 2, 2021, Plaintiff received confirmation of  
25 cancellation.

26 **V. Class action allegations.**

27 48. Plaintiff brings this action on behalf of a class of similarly situated  
28 individuals. The Class is defined as follows:

1 All Optavia/Medifast customers in the state of California who were automatically  
2 enrolled in Optavia Premier and were charged at least one renewal fee by Defendants,  
within the governing statute of limitations period.

3 49. Excluded from the Class are officers and directors of Defendants, members  
4 of the immediate families of the officers and directors of Defendants, and their legal  
5 representatives, heirs, successors or assigns and any entity in which they have or have  
6 had a controlling interest. Also excluded are all federal, state and local government  
7 entities; and any judge, justice or judicial officer presiding over this action and the  
8 members of their immediate families and judicial staff.

9 *Numerosity*

10 50. Plaintiff does not know the exact size of the Class, since this information is  
11 in the exclusive control of Defendants. Plaintiff believes, however, that based on  
12 Defendants' assertions, the Class encompasses hundreds of thousands of individuals  
13 whose identities can be readily ascertained from Defendants' records. Accordingly, the  
14 members of the Class are so numerous that joinder of all such persons is impractical.

15 *Ascertainability*

16 51. The Class is ascertainable because its members can be readily identified  
17 using data and information kept by Defendants in the usual course of business. Plaintiff  
18 anticipates providing appropriate notice to each Class member, in compliance with all  
19 applicable federal rules.

20 *Typicality*

21 52. Plaintiff Zeller is a typical and adequate class representative. Her claims are  
22 typical of the claims of the Class and do not conflict with the interests of any other  
23 members of the Class. Plaintiff and the other members of the Class were subject to the  
24 same or similar deceptive marketing and billing practices. Further, Plaintiff and members  
25 of the Class sustained substantially the same injuries and damages arising out of  
26 Defendants' conduct, including unjust renewal fees. Plaintiff will fairly and adequately  
27 protect the interests of all Class members. Plaintiff has retained competent and  
28 experienced class action attorneys to represent her interests and those of the Class.

1           ***Commonality and Predominance***

2           53. Questions of law and fact are common to the Class and predominate over  
3 any questions affecting only individual Class members, and a class action will generate  
4 common answers to questions that drive the resolution of this case. For example, the  
5 following questions:

- 6           • Whether Defendants’ conduct constitutes unfair, unlawful and/or fraudulent  
7 practices prohibited by the laws of California;
- 8           • Whether Defendants were unjustly enriched as a result of their conduct;
- 9           • The extent of class-wide injury and the measure of damages for those  
10 injuries.
- 11           • Whether, and to what extent, equitable relief should be imposed on  
12 Defendants to prevent them from continuing their unlawful practices.

13           ***Superiority***

14           54. A class action is superior to all other available methods for resolving this  
15 controversy because: i) the prosecution of separate actions by Class members will create  
16 a risk of adjudications with respect to individual Class members that will, as a practical  
17 matter, be dispositive of the interests of the other Class members not parties to this  
18 action, or substantially impair or impede their ability to protect their interests; ii) the  
19 prosecution of separate actions by Class members will create a risk of inconsistent or  
20 varying adjudications with respect to individual Class members, which will establish  
21 incompatible standards for Defendants’ conduct; iii) Defendants have acted or refused to  
22 act on grounds generally applicable to all Class members; and iv) questions of law and  
23 fact common to the Class predominate over any questions affecting only individual Class  
24 members.

25           55. Further, the following issues are appropriately resolved on a classwide basis  
26 under Fed. R. Civ. P. 23(c)(4):

- 27           • Whether Defendants’ conduct constitutes unfair, unlawful and/or fraudulent  
28 practices prohibited by the laws of California;

- 1 • Whether Defendants were unjustly enriched as a result of their conduct;
- 2 • Whether Class members have been injured by Defendants' conduct;
- 3 • Whether any or all applicable limitations periods are tolled by Defendants'
- 4 acts;
- 5 • Whether, and to what extent, equitable relief should be imposed on
- 6 Defendants to prevent them from continuing their unlawful practices; and
- 7 • The extent of class-wide injury and the measure of damages for those
- 8 injuries.

9 56. Accordingly, this action likely presents no difficulties in management that  
10 would preclude maintenance as a class action and satisfies the requirements set forth  
11 under Fed. R. Civ. P. 23(a), 23(b), and 23(c)(4).

## 12 **VI. Claims**

### 13 **Count 1: False Advertising - California Automatic Renewal Law**

14 57. Plaintiff re-alleges and incorporates by reference each and every allegation  
15 contained in the preceding paragraphs as if fully set forth herein.

16 58. Plaintiff brings this claim on her own behalf and on behalf of each member  
17 of the Class.

18 59. As alleged in detail above, Defendants violated California Automatic  
19 Renewal Law in numerous, independent ways:

- 20 • Defendants failed to present the terms of their automatic renewal or
- 21 continuous service offer in a clear and conspicuous manner before fulfilling
- 22 the subscription and in visual proximity to the request for consent to the
- 23 offer, as required by Cal. Bus. & Prof. Code §§ 17602(a)(1);
- 24 • Defendants charged Plaintiff's and the Class's credit or debit cards, or the
- 25 consumer's account with a third party, for an automatic renewal or
- 26 continuous service without first obtaining the consumer's affirmative
- 27 consent to the agreement containing the automatic renewal offer terms or
- 28

1 continuous offer terms, as required by Cal. Bus. & Prof. Code §§  
2 17602(a)(2);

- 3 • Defendants failed to provide an acknowledgment that includes the automatic  
4 renewal offer terms or continuous offer terms, cancellation policy, and  
5 information regarding how to cancel, and to allow Plaintiff and the Class to  
6 cancel, the automatic renewal or continuous service before they paid for it,  
7 as required by Cal. Bus. & Prof. Code §§ 17602(a)(3);
- 8 • Defendants failed to provide a cost-effective, timely, and easy-to-use  
9 mechanism for cancellation described in Cal. Bus. & Prof. Code §§  
10 17602(a)(3), as required by Cal. Bus. & Prof. Code §§ 17602(b);

11 60. As a result of Defendants’ misconduct, pursuant to Cal. Bus. & Prof. Code  
12 §17603, all recurring Optavia Premier shipments are treated as unconditional gifts, and  
13 Plaintiff and the Class are entitled to restitution of all amounts that Defendants charged or  
14 caused to be charged to Plaintiff’s and Class members’ during the applicable statute of  
15 limitations and continuing until Defendants’ statutory violations cease.

16 61. As a result of Defendants’ misconduct, pursuant to Cal. Bus. & Prof. Code  
17 §17535, Plaintiff and the Class are entitled to an injunction (a) enjoining Defendants from  
18 making automatic renewal offers that do not comply with California law, (b) from  
19 making charges to customers’ payment methods without prior affirmative consent to an  
20 agreement containing “clear and conspicuous” disclosures of automatic renewal or  
21 continuous service offer terms, (c) enjoining Defendants from making automatic renewal  
22 offers that fail to provide an acknowledgment that includes “clear and conspicuous”  
23 disclosure of automatic renewal or continuous service offer terms, cancellation policy,  
24 and information regarding how to cancel in a manner that is capable of being retained by  
25 the consumer, and (d) enjoining Defendants from making automatic renewal offers that  
26 fail to provide an online, easy-to-use mechanism for cancellation.

27 62. Pursuant to Cal. Bus. & Prof. Code §17535, this Court has the power to  
28 award such equitable relief, including but not limited to, an order declaring Defendants’

1 auto-renewal practices to be unlawful, an order enjoining Defendants from engaging in  
2 any such further unlawful conduct, and an order directing Defendants to refund to the  
3 Plaintiff and the Class all monthly fees wrongfully assessed and/or collected on its auto-  
4 renew subscription plan.

5  
6 **Count 2: Unfair Competition Law (UCL)**

7 63. Plaintiff re-alleges and incorporates by reference each and every allegation  
8 contained in the preceding paragraphs as if fully set forth herein.

9 64. Plaintiff brings this claim on her own behalf and on behalf of each member  
10 of the Class.

11 65. Cal. Bus. & Prof. Code §17200, et seq. (the “UCL”) prohibits acts of “unfair  
12 competition,” including any unlawful, deceptive and unfair business acts or practices.

13 ***Unlawful***

14 66. Under the “unlawful” prong of the UCL, a violation of another law is treated  
15 as unfair competition and is independently actionable. Defendants committed unlawful  
16 practices because, as alleged above and incorporated here, they violated California  
17 Automatic Renewal Law. In addition, as alleged below and incorporated here,  
18 Defendants violated the CLRA.

19 ***Unfair***

20 67. As alleged in detail above, Defendants committed “unfair” acts by deceiving  
21 consumers into signing up for auto-recurring shipments, making it difficult to cancel, and  
22 continuing to charge consumers who sought refunds or cancellations.

23 68. The harm to Plaintiff and the Class greatly outweighs the public utility of  
24 Defendants’ conduct. There is no public utility to deceptive automatic renewal practices.  
25 This injury was not outweighed by any countervailing benefits to consumers or  
26 competition. Misleading auto-renewal practices only injure healthy competition and  
27 harm consumers.



1           69. Plaintiff and the Class could not have reasonably avoided this injury. As  
2 alleged above, Defendants’ representations were deceiving to reasonable consumers like  
3 Plaintiff. There were reasonably available alternatives to further Defendants’ legitimate  
4 business interests, such as complying with the Automatic Renewal Law and providing  
5 appropriate disclosures and an effective cancellation policy.

6           ***Deceptive***

7           70. Defendants’ acts, omissions, nondisclosures, and misleading statements as  
8 alleged in detail above, were false, misleading, and/or deceptive to reasonable consumers.

9           71. Plaintiff saw and relied upon Defendants’ misleading representations and  
10 omissions, as detailed above. Classwide reliance can be inferred because Defendants’  
11 misrepresentations and omissions were material, i.e., a reasonable consumer would  
12 consider them important in deciding whether to buy Optavia products.

13           72. Defendants’ unlawful, unfair, and deceptive conduct was a substantial factor  
14 and proximate cause in causing damages and losses to Plaintiff and Class members.

15           73. As a result of Defendants’ unlawful, deceptive, and unfair business  
16 practices, Plaintiff and the Class have suffered an injury and have lost money in an  
17 amount to be determined at the trial of this action.

18           74. Pursuant to Cal. Bus. & Prof. Code §17203 Plaintiff and the other members  
19 of the Class are entitled to an order: (1) requiring Defendants to make restitution to  
20 Plaintiff and the Class; (2) enjoining Defendants from charging Plaintiff’s and Class  
21 members’ payment methods until such time as Defendants obtain the consumer’s  
22 affirmative consent to an agreement that contains clear and conspicuous disclosures of all  
23 automatic renewal or continuous service offer terms; and (3) enjoining Defendants from  
24 making automatic renewal or continuous service offers in the State of California that do  
25 not comply with California’s Automatic Renewal Law.

**Count 3: Consumers Legal Remedies Act (CLRA)**

1  
2 75. Plaintiff re-alleges and incorporates by reference each and every allegation  
3 contained in the preceding paragraphs as if fully set forth herein.

4 76. Plaintiff brings this claim on her own behalf and on behalf of each member  
5 of the Class.

6 77. The California Consumers Legal Remedies Act, Cal. Civ. Code § 1750, et  
7 seq. (the “CLRA”), prohibits “unfair or deceptive acts or practices undertaken by any  
8 person in a transaction intended to result or which results in the sale or lease of goods or  
9 services to any consumer.”

10 78. Plaintiff and the Class members are “consumers” within the meaning of Cal.  
11 Civ. Code §1761(d) in that Plaintiff and the Class members sought or acquired  
12 Defendants’ services for personal, family, or household purposes.

13 79. Optavia food products are “goods” within the meaning of Cal. Civ. Code  
14 §1761(a).

15 80. Defendants’ weight-loss coaching program constitute “services” within the  
16 meaning of Cal. Civ. Code §1761(b).

17 81. The purchases by Plaintiff and Class Members are “transactions” within the  
18 meaning of Cal. Civ. Code §1761(e).

19 82. As alleged in detail above, Defendant violated Cal. Civ. Code §1770,  
20 subdivisions (a)(5), (a)(9), (a)(14) and (a)(16) by, inter alia, representing that Defendants’  
21 goods and services have certain characteristics that they do not have; advertising goods  
22 and services with the intent not to sell them as advertised; representing that a transaction  
23 confers or involves rights, remedies, or obligations that it does not have or involve, or  
24 that are prohibited by law; and representing that the subject of a transaction has been  
25 supplied in accordance with a previous representation when it has not.

26 83. As a direct and proximate result of Defendants’ violations of the CLRA,  
27 Plaintiff and the Class were wrongfully charged illegal renewal fees.

28

1 84. Defendants’ conduct alleged herein was undertaken by Defendants  
2 knowingly, willfully, and with oppression, fraud, and/or malice, within the meaning of  
3 Cal. Civ. Code §3294(c).

4 85. Plaintiff and members of the Class seek an injunction requiring Defendants  
5 to cease their unlawful practices.

6 86. On about February 21, 2022, Plaintiff provided written notice pursuant to §  
7 1782 of the CLRA. Defendants failed to rectify or agree to rectify the unlawful acts  
8 detailed above within 30 days, thus Plaintiff and the Class are entitled to actual, punitive,  
9 and statutory damages, as appropriate, as well as any other remedies the Court may deem  
10 appropriate under Cal. Civ. Code §1750 et seq.

11  
12 **Count 4: California Weight Loss Contract Law**

13 87. Plaintiff re-alleges and incorporates by reference each and every allegation  
14 contained in the preceding paragraphs as if fully set forth herein.

15 88. Plaintiff brings this claim on her own behalf and on behalf of each member  
16 of the Class.

17 89. Plaintiff’s subscription with Optavia is a “weight loss contract” as used in  
18 Cal. Civ. Code §1694.5 because it is a membership to a weight loss program, formed for  
19 the purposes of providing instruction, counseling, supervision, or assistance in weight  
20 reduction, body shaping, diet, and/or eating habits.

21 90. Defendants violated Cal. Civ. Code §1694.7(b) because the subscriptions  
22 entered into by Plaintiff and the Class did not contain, on their face and in close  
23 proximity to the space reserved for the signature of the buyer (i.e., in close proximity to  
24 the “Checkout” button on the Checkout Page), a conspicuous statement in a size equal to  
25 at least 10-point boldface type, as follows: “You, the buyer, may cancel this agreement,  
26 without any penalty or obligation, at any time prior to midnight of the original contract  
27 seller’s third business day following the date of this contract, excluding Sundays and  
28 holidays. To cancel this agreement, mail or deliver a signed and dated notice, or send a

1 telegram which states that you, the buyer, are canceling this agreement,” or words of  
2 similar effect.

3 91. Plaintiff was also not made aware, at the point of purchase or any time  
4 during the pendency of her Optavia subscription thereafter, of her right to cancel her  
5 Optavia subscription “without any penalty or obligation, at any time prior to midnight of  
6 the original contract seller’s third business day following the date of [ ] contract  
7 [formation]” or of how to go about invoking that right.

8 92. Defendants also violated Cal. Civ. Code §1694.7(c) because the subscription  
9 entered into by Plaintiff and the Class did not contain, “on the first page, in a type size no  
10 smaller than that generally used in the body of the document, the name and address of the  
11 weight loss program operator to which the notice of cancellation is to be mailed; and the  
12 date the buyer signed the contract.”

13 93. Defendants also violated Cal. Civ. Code §1694.7(d) because by enrolling  
14 Plaintiff into perpetually auto-renewing subscriptions they violated the requirement that  
15 “[t]he services to be rendered to the buyer under the contract shall not extend for more  
16 than three years after the date the contract is entered into.”

17 94. As a direct result of Defendants’ unlawful conduct described above, Plaintiff  
18 suffered economic injury. Had Optavia’s checkout page complied with California’s  
19 Weight Loss Contracts Law, Plaintiff would have been able to avoid financial injury. If  
20 Defendants had provided the required disclosures, including disclosing the auto-renewal,  
21 Plaintiff would have cancelled her subscription within the grace period. However,  
22 Defendants did not comply with California’s Weight Loss Contract Law, thereby  
23 harming Plaintiff and the Class.

24 95. Defendants’ violation of Cal. Civ. Code §§ 1694.7(b)–(d) renders the  
25 subscriptions entered into by Plaintiff and the Class void and unenforceable such that  
26 they may be cancelled at any time. Cal. Civ. Code §1694.7(e); Cal. Civ. Code  
27 §1694.9(a); Cal. Civ. Code §1694.9(d).

28

1 96. Further, Defendants’ unlawful conduct was willful and/or fraudulent in that  
 2 they knew or should have known that their enrollment process features misleading  
 3 statements and outright omissions of material information mandated by both Cal. Civ.  
 4 Code §1694.7(b) and California’s Automatic Purchase Renewal Statute, Cal. Bus. &  
 5 Prof. Code §§17601, et seq., that such misrepresentations and/or omissions would and in  
 6 fact did induce subscribers, including Plaintiff and the Class, to enter into weight loss  
 7 subscriptions with Optavia. As such, Defendants’ willful and/or fraudulent conduct  
 8 provides an independent basis for finding that Defendants’ subscriptions with Plaintiff  
 9 and the Class are void and unenforceable such that they may be cancelled at any time.  
 10 Cal. Civ. Code §1694.9(b).

11 97. As a result, Plaintiff and the Class seek recovery of actual damages  
 12 including all membership or installment fees paid by Plaintiff and the Class under their  
 13 void and unenforceable subscriptions with Optavia, the trebling thereof, and reasonable  
 14 attorneys’ fees. Cal. Civ. Code §1694.9(c).

15  
 16 **Count 5: Fraud**

17 98. Plaintiff re-alleges and incorporates by reference each and every allegation  
 18 contained in the preceding paragraphs as if fully set forth herein.

19 99. Plaintiff brings this claim on her own behalf and on behalf of each member  
 20 of the Class.

21 100. As alleged in detail above, Defendants made a number of materially  
 22 misleading statements and/or omissions in the marketing and billing of its monthly  
 23 subscriptions.

24 101. In deciding to purchase consumable products from Defendants, Plaintiff and  
 25 the Class reasonably relied on these misrepresentations and omissions to form the  
 26 mistaken belief that they were making a one-time purchase, and that they could easily  
 27 cancel.  
 28

1 102. As alleged above, Defendants' fraudulent conduct was knowing and  
2 intentional. The omissions and misrepresentations made by Defendants were intended to  
3 induce and actually induced Plaintiff and Class Members to become Optavia Premier  
4 customers. Classwide reliance can be inferred because Defendant's misrepresentations  
5 and omissions were material, i.e., a reasonable consumer would consider them important  
6 to their purchase decision.

7 103. Defendants' fraud caused damage to Plaintiff and the Class, who are entitled  
8 to damages and other legal and equitable relief as a result.

9 104. Defendants' acts were done maliciously, oppressively, deliberately, with  
10 intent to defraud, and in reckless disregard of Plaintiff's rights and well-being to enrich  
11 Defendants. Defendants' conduct warrants an assessment of punitive damages in an  
12 amount sufficient to deter such conduct in the future, which amount is to be determined  
13 according to proof.

14  
15 **Count 6: Unjust Enrichment**

16 105. Plaintiff re-alleges and incorporates by reference each and every allegation  
17 contained in the preceding paragraphs as if fully set forth herein.

18 106. Plaintiff brings this claim on her own behalf and on behalf of each member  
19 of the Class.

20 107. As alleged in detail above, by reason of Defendants' wrongful conduct,  
21 Defendants received a direct and unjust benefit, at Plaintiff's expense. Defendants have  
22 benefited from receipt of improper subscription funds, and under principles of equity and  
23 good conscience, Defendants should not be permitted to keep this money.

24 108. It would be unjust and inequitable for Defendants to retain the benefits of  
25 their conduct without restitution to Plaintiff and the Class. Accordingly, Plaintiff and the  
26 Class are entitled to restitution.

27 **VII. Prayer for Relief.**

28 109. Plaintiff seeks the following relief on behalf of herself and the Class:

- 1 • An order certifying the asserted claims, or issues raised, as a class action;
- 2 • An order appointing Plaintiff as Class representative, and designating
- 3 Golomb Spirt Grunfeld and Dovel & Luner as Class Counsel;
- 4 • A judgment in favor of Plaintiff and the Class on the claims and issues
- 5 raised;
- 6 • Restitution, disgorgement, and other just equitable relief;
- 7 • An order granting all appropriate injunctive relief;
- 8 • Compensatory damages, the exact amount of which is to be determined at
- 9 trial;
- 10 • An award of punitive damages and enhanced damages as allowed by statute;
- 11 • Pre and post judgment interest, costs, reasonable attorneys’ fees, costs, and
- 12 expenses; and
- 13 • All such other relief as the Court deems appropriate.
- 14

15 Dated: April 1, 2022

15 Respectfully submitted,

16 By: /s/ Jonas B. Jacobson

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