

EXHIBIT A

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

PERSONALIZED BEAUTY DISCOVERY, INC. d/b/a IPSY.COM,
and DOES 1-10, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

DAN DEFOREST and IZABELLA DEFOREST, individually, and on
behalf of all others similarly situated,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of Orange County
Civil Complex Center,
751 W Santa Ana Blvd Santa Ana, CA 92701

CASE NUMBER:
(Número del Caso):
30-2021-01186835-CU-NP-CXC

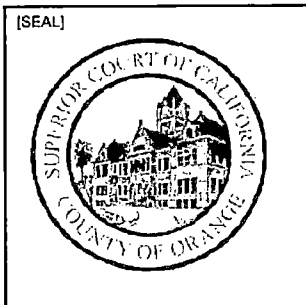
Judge Kirk Nakamura

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Todd M. Friedman, 21550 Oxnard Street, Suite 780, Woodland Hills CA 91367, 323-306-4234

DAVID H. YAMASAKI, Clerk of the Court

DATE: 03/03/2021 Clerk, by Deputy
(Fecha) (Secretario) *Abuse* (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)). Sarah Loose



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): Personalized Beauty Discovery, Inc. d/b/a IPSY.COM
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Todd M. Friedman, Esq. (SBN 216752) Law Offices of Todd M. Friedman 21550 Oxnard Street, Suite 780 Woodland Hills, CA 91367 TELEPHONE NO.: 323-306-4234 FAX NO.: 866-633-0228 ATTORNEY FOR (Name): Plaintiff, Daniel Deforest, et al		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 751 W. Santa Ana Blvd. MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, 92701 BRANCH NAME: Civil Complex Center		
CASE NAME: Daniel Deforest, et al v. Personalized Beauty Discovery, et al		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 30-2021-01186835-CU-NP-CXC JUDGE: Judge Kirk Nakamura DEPT: CX103

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input checked="" type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): **4**
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **March 3, 2021**
Todd M. Friedman

Todd M. Friedman

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

<p style="text-align: center;">NOTICE</p> <ul style="list-style-type: none"> • Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions. • File this cover sheet in addition to any cover sheet required by local court rule. • If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding. • Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.
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INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES**Auto Tort**

Auto (22)–Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice–
Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case–Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ–Administrative Mandamus
Writ–Mandamus on Limited Court Case Matter
Writ–Other Limited Court Case
Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal–Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

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Todd M. Friedman (SBN 216752)
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Woodland Hills, CA 91367
Phone: 323-306-4234
Fax: 866-633-0228
tfriedman@toddfllaw.com
Attorneys for Plaintiffs, and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
UNLIMITED JURISDICTION**

DAN DEFOREST and IZABELLA
DEFOREST, individually, and on behalf of
all others similarly situated,

Plaintiffs,

vs.

PERSONALIZED BEAUTY
DISCOVERY, INC. d/b/a IPSY.COM, and
DOES 1-10, inclusive,

Defendant.

Case No. **30-2021-01186835-CU-NP-CXC**
Assigned for all purposes to: Judge Kirk Nakamura
CLASS ACTION COMPLAINT Dept: CX103

- (1) Violation of the California False Advertising Act (Cal. Business & Professions Code §§ 17500 *et seq.*);
- (2) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*);
- (3) Violation of the California Automatic Purchase Renewals Statute (Cal. Business and Professions Code §§ 17600 *et seq.*); and
- (4) Violation of the Federal Electronic Funds Transfer Act (15 U.S.C. §§ 1693 *et seq.*).

Jury Trial Demanded

1 Plaintiffs DAN DEFOREST and IZABELLA DEFOREST (“Plaintiffs”), individually
2 and on behalf of all other members of the public similarly situated, allege as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this class action Complaint against Defendant PERSONALIZED
5 BEAUTY DISCOVERY, INC. d/b/a IPSY.COM (hereinafter “Defendant”) to stop Defendant’s
6 practice of falsely advertising its subscription cosmetic services and to obtain redress for a
7 California class of consumers (“Class Members”) who changed position, within the applicable
8 statute of limitations period, as a result of Defendant’s false and misleading advertisements.

9 2. Defendant is a corporation with principal place of business in California and state
10 of incorporation in Delaware and is engaged in the marketing and sale of cosmetic beauty
11 products.

12 3. Defendant represents that consumers who sign up for its monthly subscription
13 services may cancel their subscriptions at any time but fails to provide reasonable and available
14 methods for doing so. Defendant retains consumers’ billing information for automatic recurring
15 charges and allows consumers to “pause” their subscription, only to resume billing them
16 thereafter. Defendant misrepresented and falsely advertised to Plaintiff and other similarly
17 situated consumers these subscription services by failing to provide reasonable methods of
18 cancelling these subscriptions.

19 4. Plaintiff and others similarly situated purchased these subscription services.

20 5. Defendant’s misrepresentations to Plaintiff and others similarly situated caused
21 them to purchase these subscription services, which Plaintiff and others similarly situated would
22 not have purchased or attempted to purchase absent these misrepresentations by Defendant and
23 its employees. In so doing, Defendant has violated California consumer protection statutes,
24 including the Unfair Competition Law, False Advertising Law, and Automatic Purchase
25 Renewals Statute, and further violated the Federal Electronic Funds Transfer Act.

26 **NATURE OF THE CASE & COMMON ALLEGATIONS OF FACT**

27 6. Consumers purchase subscription services from Defendant, which Defendant
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1 represents as able to be cancelled at any time.

2 7. Consumers rely on the representations and advertisements of service providers
3 in order to know which cosmetic subscription services to purchase. Cancellation policies are
4 essential to consumers' choices when determining what retailers to patronize, as these
5 subscription services automatically bill them on a recurring basis.

6 8. Defendant is engaged in the manufacture, marketing, supplying, and distributing
7 of beauty product subscription services that are accompanied by deceptive billing practices that
8 are not disclosed at the time consumers sign up for services.

9 9. When consumers sign up for services with a cosmetic beauty product
10 subscription retailer, they reasonably believe that they will be billed in a transparent manner
11 and will not be billed after attempts to cancel said services.

12 10. Defendant profits from the sale of the beauty product subscriptions. With
13 deceptive billing practices, many of the consumers would not have purchased or subscribed to
14 said services or would have chosen to purchase services from a competitor.

15 11. In Plaintiff's case, the billing practices that Defendant engaged were anything
16 except for transparent, rather, they were quite deceptive.

17 12. Defendant fails to provide reasonable and available means of cancelling
18 subscription services and continues to bill consumers after they have requested cancellation.

19 13. Defendant makes written representations to consumers which contradict the
20 actual billing practices of the subscription services that will be used by Defendant after the
21 consumer signs up for service.

22 14. The aforementioned written representations are objectively false and constitute
23 false advertising under Cal. Bus. & Prof. Code §§ 17500 *et. seq.* an unlawful, unfair, or
24 deceptive business practices under Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, and further
25 constitute violations of Cal. Bus. & Prof. Code §§ 17600 *et seq.*, and 15 U.S.C. §§ 1693 *et seq.*

26 15. Defendant's violations of the law include, but are not limited to, the false
27 advertising, marketing, representations, and sale of the falsely advertised subscriptions to
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1 consumers in California.

2 16. On behalf of the class, Plaintiff seeks an injunction requiring Defendant to cease
3 advertising and selling the subscriptions in a manner that is deceptive, to disclose all automatic
4 billing practices in a conspicuous manner at or prior to the point of sale, and an award of
5 damages to the Class Members, together with costs and reasonable attorneys' fees.

6 **JURISDICTION AND VENUE**

7 17. This class action is brought pursuant to California Code of Civil Procedure § 382.
8 All claims in this matter arise exclusively under California law. This Court has personal
9 jurisdiction over Defendant because Defendant does business to such an extent within and
10 throughout California as to demonstrate its purposeful availment of the protection and
11 obligations of the laws of the State of California.

12 18. This matter is properly venued in the Superior Court of California for the County
13 of Orange in that Plaintiff purchased the subscription services from Orange County and
14 Defendant provided the services to Plaintiff in that location.

15 **THE PARTIES**

16 19. Plaintiff DAN DEFOREST is a citizen and resident of the State of California,
17 County of Orange.

18 20. Plaintiff IZABELLA DEFOREST is a citizen and resident of the State of
19 California, County of Orange.

20 21. Defendant PERSONALIZED BEAUTY DISCOVERY, INC. d/b/a IPSY.COM
21 (hereinafter, "Defendant") is a corporation with its principle place of business located and
22 headquartered in California. Defendant's State of Incorporation is Delaware.

23 22. Plaintiffs are informed and believe, and thereon allege, that each and all of the
24 acts and omissions alleged herein were performed by, or are attributable to, Defendant and/or
25 its employees, agents, and/or third parties acting on its behalf, each acting as the agent for the
26 other, with legal authority to act on the other's behalf. The acts of any and all of Defendant's
27 employees, agents, and/or third parties acting on its behalf, were in accordance with, and
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1 represent, the official policy of Defendant.

2 23. Plaintiffs are informed and believe, and thereon allege, that said Defendant is in
3 some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
4 occurrences, and transactions of each and all its employees, agents, and/or third parties acting
5 on its behalf, in proximately causing the damages herein alleged.

6 24. At all relevant times, Defendant ratified each and every act or omission
7 complained of herein. At all relevant times, Defendant, aided and abetted the acts and omissions
8 as alleged herein.

9 25. The above-named Defendant, and its subsidiaries and agents, are collectively
10 referred to as "Defendants." The true names and capacities of the Defendants sued herein as
11 DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiffs, who
12 therefore sue such Defendants by fictitious names. Each of the Defendants designated herein
13 as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiffs will seek leave
14 of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants
15 when such identities become known.

16 **PLAINTIFF'S FACTS**

17 26. In or about August 2019, Plaintiff IZABELLA DEFOREST signed up for a
18 "Glam Bag" subscription service from Defendant. Defendant represented to Plaintiff that she
19 could cancel this service at any time.

20 27. The subscription service was to be charged to Plaintiffs' Visa debit card ending
21 in -5877.

22 28. On or about November 2019, Plaintiff contacted Defendant to cancel the
23 subscription.

24 29. Despite Plaintiffs' clear revocation of authorization, Defendant continued to
25 deduct funds from Plaintiff's account multiple times on a reoccurring basis, without Plaintiffs'
26 consent or authorization.

27 30. Plaintiffs' debit card statements reflect charges by Defendant in the amount of
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1 \$12.93 for at least eight months after Plaintiffs' request for cancellation.

2 31. In addition to requesting cancellation, Plaintiffs attempted to cancel the
3 subscription through Defendant's website.

4 32. Defendant's website merely provided Plaintiffs the opportunity to pause the
5 subscription for months at a time, after which Defendant would continue to automatically bill
6 them.

7 33. Although Plaintiffs authorized Defendant to deduct sums on a reoccurring basis
8 in 2019, Plaintiffs revoked any authorization and consent to deduct sums from January 2020
9 onward.

10 34. Plaintiffs were never informed, in writing, orally, or in any conspicuous manner,
11 that they would continue to be charged after requesting cancellation.

12 35. Defendant continued to charge Plaintiffs' debit card and failed to correct the
13 problem.

14 36. Plaintiffs felt ripped off and cheated by Defendant, for being billed for a
15 subscription after requesting cancellation, and for Defendant duping Plaintiffs into continuing
16 to pay monthly charges by "pausing" the subscription rather than cancelling it. Plaintiffs believe
17 that Defendant will continue its action of duping customers in the same way unless Defendant's
18 practices are halted by way of an injunction.

19 37. As a result of Defendant's unlawful practices, described herein, Plaintiffs have
20 suffered emotional distress, wasted time, and anxiety.

21 38. Defendant's representation, through statements and omissions, that consumers
22 may cancel these subscription services at any time constitute fraudulent affirmative
23 misrepresentations of material fact that would be important to reasonable consumers when
24 deciding between different retailers of like products.

25 39. That is, had consumers, including Plaintiffs, known that Defendant misrepresents
26 its billing practices, then Plaintiffs would never have purchased Defendant's subscription
27 service.

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1 40. Plaintiffs allege on information and belief that Defendant's policy and practice
2 is to materially misrepresent the cancellation method for its subscription services, and through
3 said fraudulent omissions and misrepresentations, to induce consumers to reasonably rely on
4 the ability to cancel at any time, in order to induce their purchase of subscriptions from
5 Defendant over law abiding competitors.

6 41. Defendant has a duty to disclose the terms and conditions of its subscription
7 services, including reasonable and available cancellation options, to consumers prior to the time
8 that they agree to purchase services from Defendant. Defendant has a duty to disclose these
9 material terms because such terms would be highly important to a reasonable consumer, and
10 because a failure to disclose such terms would have the effect of causing unanticipated and
11 unauthorized charges to consumers.

12 42. Upon learning that Defendant was charging them after they had requested the
13 subscription be canceled, Plaintiffs felt ripped off and cheated by Defendant.

14 43. Such tactics rely on falsities and have a tendency to mislead and deceive a
15 reasonable consumer.

16 44. Defendant expressly represented to Plaintiffs, through written statements, that its
17 monthly subscription services could be canceled at any time.

18 45. Plaintiff alleges that such representations were part of a common scheme to
19 mislead consumers and incentivize them to purchase monthly recurring subscriptions.

20 46. In purchasing the subscription, Plaintiff relied upon Defendant's representations
21 that it could be canceled on Defendant's website at any time.

22 47. Such representations were clearly false because the subscriptions could only be
23 paused on Defendant's website, rather than canceled entirely.

24 48. Plaintiffs would not have purchased the subscription if they knew that the above-
25 referenced statements made by Defendant were false.

26 49. Had Defendant properly marketed, advertised, and represented the subscription
27 service, Plaintiffs would not have purchased it.
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1 predominate over questions affecting only individual members, including but not limited to:

- 2 (a) Whether Defendant engaged in unlawful, unfair, or deceptive business
- 3 practices in selling subscriptions to Plaintiffs and other Class Members;
- 4 (b) Whether Defendant made misrepresentations with respect to the
- 5 subscriptions sold to consumers;
- 6 (c) Whether Defendant profited from the sale of the wrongly advertised
- 7 subscription services;
- 8 (d) Whether Defendant violated California Bus. & Prof. Code § 17200, *et*
- 9 *seq.*, California Bus. & Prof. Code § 17500, *et seq.*, California Bus. &
- 10 Prof. Code § 17600, *et seq.*, and 15 U.S.C. § 1693 *et seq.*;
- 11 (e) Whether Plaintiffs and Class Members are entitled to equitable and/or
- 12 injunctive relief;
- 13 (f) Whether Defendant's unlawful, unfair, and/or deceptive practices harmed
- 14 Plaintiffs and Class Members; and
- 15 (g) The method of calculation and extent of damages for Plaintiffs and Class
- 16 Members.

17 61. Plaintiffs are members of the Class they seek to represent.

18 62. The claims of Plaintiffs are not only typical of all Class members, they are
19 identical.

20 63. All claims of Plaintiffs and the Class are based on the exact same legal theories.

21 64. Plaintiffs have no interest antagonistic to, or in conflict with, the Class.

22 65. Plaintiffs are qualified to, and will, fairly and adequately protect the interests of
23 each Class Member, because Plaintiffs signed up for a subscription from Defendant during the
24 Class Period. Defendant's unlawful, unfair and/or fraudulent actions concern the same business
25 practices described herein irrespective of where they occurred or were experienced. Plaintiffs'
26 claims are typical of all Class Members as demonstrated herein.

27 66. Plaintiffs will thoroughly and adequately protect the interests of the Class, having
28

1 retained qualified and competent legal counsel to represent themselves and the Class.

2 67. Common questions will predominate, and there will be no unusual manageability
3 issues.

4 **FIRST CAUSE OF ACTION**
5 **Violation of the California False Advertising Act**
6 **(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)**

7 68. Plaintiffs incorporate by reference each allegation set forth above.

8 69. Pursuant to California Business and Professions Code section 17500, *et seq.*, it
9 is unlawful to engage in advertising “which is untrue or misleading, and which is known, or
10 which by the exercise of reasonable care should be known, to be untrue or misleading . . . [or]
11 to so make or disseminate or cause to be so made or disseminated any such statement as part of
12 a plan or scheme with the intent not to sell that personal property or those services, professional
13 or otherwise, so advertised at the price stated therein, or as so advertised.”

14 70. California Business and Professions Code section 17500, *et seq.*’s prohibition
15 against false advertising extends to the use of false or misleading written statements.

16 71. Defendant misled consumers by making misrepresentations and untrue
17 statements about the subscription services, namely, Defendant represented to Plaintiffs and
18 Class Members that such services could be canceled at any time.

19 72. Defendant knew that its representations and omissions were untrue and
20 misleading, and deliberately made the aforementioned representations and omissions in order
21 to deceive reasonable consumers like Plaintiffs and other Class Members.

22 73. As a direct and proximate result of Defendant’s misleading and false advertising,
23 Plaintiffs and the other Class Members have suffered injury in fact and have lost money or
24 property, time, and attention. Plaintiffs reasonably relied upon Defendant’s representations
25 regarding the subscription. In reasonable reliance on Defendant’s false advertisements,
26 Plaintiffs and other Class Members purchased the subscriptions. In turn, Plaintiffs and other
27 Class Members ended up with services that they were automatically charged for on a recurring
28 basis, and which could not be canceled as Defendant claimed, and therefore Plaintiffs and other
Class Members have suffered injury in fact.

1 80. California Business & Professions Code § 17200 prohibits any “unfair . . .
2 business act or practice.” Defendant’s acts, omissions, misrepresentations, and practices as
3 alleged herein also constitute “unfair” business acts and practices within the meaning of the
4 UCL in that its conduct is substantially injurious to consumers, offends public policy, and is
5 immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any
6 alleged benefits attributable to such conduct. There were reasonably available alternatives to
7 further Defendant’s legitimate business interests, other than the conduct described herein.
8 Plaintiffs reserve the right to allege further conduct which constitutes other unfair business acts
9 or practices. Such conduct is ongoing and continues to this date.

10 81. In order to satisfy the “unfair” prong of the UCL, a consumer must show that the
11 injury: (1) is substantial; (2) is not outweighed by any countervailing benefits to consumers or
12 competition; and, (3) is not one that consumers themselves could reasonably have avoided.

13 82. Here, Defendant’s conduct has caused and continues to cause substantial injury
14 to Plaintiffs and members of the Class. Plaintiffs and members of the Class have suffered injury
15 in fact due to Defendant’s decision to sell them falsely described subscription services. Thus,
16 Defendant’s conduct has caused substantial injury to Plaintiffs and the members of the Class.

17 83. Moreover, Defendant’s conduct as alleged herein solely benefits Defendant
18 while providing no benefit of any kind to any consumer. Such deception utilized by Defendant
19 convinced Plaintiffs and members of the Class that the subscriptions were easy to cancel and
20 thus would not cause subsequent unauthorized charges. In fact, knowing that cancellation of the
21 subscription services was not reasonably achievable on its website, Defendant unfairly profited
22 from sale of the subscriptions. Thus, the injury suffered by Plaintiffs and the members of the
23 Class is not outweighed by any countervailing benefits to consumers.

24 84. Finally, the injury suffered by Plaintiffs and members of the Class is not an injury
25 that these consumers could reasonably have avoided. After Defendant falsely represented the
26 subscriptions, Plaintiffs and Class Members suffered injury in fact due to Defendant’s sale of
27 subscriptions to them. Defendant failed to take reasonable steps to inform Plaintiffs and Class
28

1 Members about its cancellation procedures. As such, Defendant took advantage of Defendant's
2 position of perceived power in order to deceive Plaintiffs and the Class Members to purchase
3 subscription services. Therefore, the injury suffered by Plaintiffs and members of the Class is
4 not an injury which these consumers could reasonably have avoided.

5 85. Thus, Defendant's conduct has violated the "unfair" prong of California Business
6 & Professions Code § 17200.

7 **FRAUDULENT**

8 86. California Business & Professions Code § 17200 prohibits any "fraudulent ...
9 business act or practice." In order to prevail under the "fraudulent" prong of the UCL, a
10 consumer must allege that the fraudulent business practice was likely to deceive members of
11 the public.

12 87. The test for "fraud" as contemplated by California Business and Professions
13 Code § 17200 is whether the public is likely to be deceived. Unlike common law fraud, a §
14 17200 violation can be established even if no one was actually deceived, relied upon the
15 fraudulent practice, or sustained any damage.

16 88. Here, not only were Plaintiffs and the Class Members likely to be deceived, but
17 these consumers were actually deceived by Defendant. Such deception is evidenced by the fact
18 that Plaintiffs agreed to purchase monthly subscriptions under the basic assumption that they
19 could be canceled at any time on Defendant's website. Plaintiffs' reliance upon Defendant's
20 deceptive statements is reasonable due to the unequal bargaining powers of Defendant and
21 Plaintiffs. For the same reason, it is likely that Defendant's fraudulent business practice would
22 deceive other members of the public.

23 89. As explained above, Defendant deceived Plaintiffs and other Class Members by
24 representing that the subscriptions could be canceled at any time on Defendant's website, and
25 thus falsely represented the subscription services.

26 90. Thus, Defendant's conduct has violated the "fraudulent" prong of California
27 Business & Professions Code § 17200.

28

1 **UNLAWFUL**

2 91. California Business and Professions Code Section 17200, et seq. prohibits “any
3 unlawful...business act or practice.”

4 92. As explained above, Defendant deceived Plaintiffs and other Class Members by
5 representing the subscription services as able to be canceled at any time on Defendant’s website.

6 93. Defendant used false advertising, marketing, and misrepresentations to induce
7 Plaintiffs and Class Members to purchase the subscriptions, in violation of California Business
8 and Professions Code Section 17500, et seq. Had Defendant not falsely advertised, marketed
9 or misrepresented the subscriptions, Plaintiffs and Class Members would not have purchased
10 them. Defendant’s conduct therefore caused and continues to cause economic harm to Plaintiffs
11 and Class Members.

12 94. These representations by Defendant therefore constitute an “unlawful” business
13 practice or act under Business and Professions Code Section 17200 *et seq.*

14 95. Defendant has thus engaged in unlawful, unfair, and fraudulent business acts
15 entitling Plaintiffs and Class Members to judgment and equitable relief against Defendant, as
16 set forth in the Prayer for Relief. Additionally, pursuant to Business and Professions Code
17 section 17203, Plaintiffs and Class Members seek an order requiring Defendant to immediately
18 cease such acts of unlawful, unfair, and fraudulent business practices and requiring Defendant
19 to correct its actions.

20 **THIRD CAUSE OF ACTION**

21 **Violation of California Automatic Purchase Renewals Statute**
22 **(Cal. Business and Professions Code §§ 17600 *et seq.*)**

23 96. Plaintiffs incorporate by reference each allegation set forth above.

24 97. The California Automatic Purchase Renewals Statute makes it unlawful for any
25 business that makes an automatic renewal offer or continuous service offer to a consumer in
26 this state to do any of the following: “(1) [f]ail to present the automatic renewal offer terms or
27 continuous service offer terms in a clear and conspicuous manner before the subscription or
28 purchasing agreement is fulfilled [...] (2) [c]harge the consumer’s credit or debit card, or the
consumer’s account with a third party, for an automatic renewal or continuous service without

1 first obtaining the consumer’s affirmative consent to the agreement containing the automatic
2 renewal offer terms or continuous service offer terms...” [...] (3) [f]ail to provide an
3 acknowledgement that includes the automatic renewal offer terms or continuous service offer
4 terms, cancellation policy, and information regarding how to cancel in a manner that is capable
5 of being retained by the consumer...” California Bus. & Prof. Code § 17602(a).

6 98. By failing to provide Plaintiffs and Class Members with clear and conspicuous
7 terms of its subscription services, continuing to charge them without their affirmative
8 authorization, and failing to provide them with reasonable means of cancelling such
9 subscription services, Defendant violated California Business & Professions Code §
10 17602(a)(1), (2), and (3).

11 **FOURTH CAUSE OF ACTION**
12 **Violation of Electronic Funds Transfer Act**
13 **(15 U.S.C. §§ 1693 *et seq.*)**

14 99. Plaintiffs incorporate by reference each allegation set forth above.

15 100. The EFTA, 15 U.S.C. §1693e(a), provides that “[a] consumer may stop payment
16 of a preauthorized electronic fund transfer by notifying the financial institution orally or in
17 writing at any time up to three business days preceding the scheduled date of such transfer.”

18 101. Section 205.10(c)(1) of Regulation E provides that “[a] consumer may stop
19 payment of a preauthorized electronic fund transfer from the consumer's account by notifying
20 the financial institution orally or in writing at least three business days before the scheduled
21 date of the transfer.”

22 102. In multiple instances, Defendant debited bank accounts of Plaintiffs and Class
23 Members on a recurring basis after they requested to stop payments of a preauthorized electronic
24 fund transfer from their accounts by notifying the financial institution orally or in writing at
25 least three business days before the scheduled date of the transfer in violation of the EFTA, 15
26 U.S.C. § 1693e(a) and Regulation E, 12 C.F.R. § 205.10(c)(1).

27 **REQUEST FOR JURY TRIAL**

28 103. Plaintiffs request a trial by jury as to all claims so triable.

PRAYER FOR RELIEF

104. Plaintiffs, on behalf of themselves and the Class, requests the following relief:
- (a) An order certifying the Class and appointing Plaintiffs as Representatives of the Class;
 - (b) An order certifying the undersigned counsel as Class Counsel;
 - (c) An order requiring Defendant, at its own cost, to notify all Class Members of the unlawful and deceptive conduct herein;
 - (d) An order requiring Defendant to engage in corrective advertising regarding the conduct discussed above;
 - (e) Actual damages suffered by Plaintiffs and Class Members as applicable or full restitution of all funds acquired from Plaintiffs and Class Members from the sale of misbranded Class Products during the relevant class period;
 - (f) Punitive damages, as allowable, in an amount determined by the Court or jury;
 - (g) All reasonable and necessary attorneys' fees and costs provided by statute, common law or the Court's inherent power;
 - (h) Pre- and post-judgment interest; and
 - (i) All other relief, general or special, legal and equitable, to which Plaintiffs and Class Members may be justly entitled as deemed by the Court.

Dated: March 3, 2021

Respectfully submitted,

LAW OFFICES OF TODD M. FRIEDMAN, PC

By: Todd M. Friedman

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