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11 Media, Inc. and CDS Global, Inc.

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 FENELLA ARNOLD and KELLY
15 NAKAI, individually and on behalf of all
16 others similarly-situated,

17 Plaintiffs,

18 v.

19 HEARST MAGAZINE MEDIA, INC., a
20 Delaware corporation; CDS GLOBAL,
21 INC., an Iowa corporation; and DOES 1-
22 50, inclusive,

23 Defendants.

CASE NO. '19CV1969 BEN MDD

PUTATIVE CLASS ACTION

**NOTICE OF REMOVAL OF
DEFENDANTS HEARST MAGAZINE
MEDIA, INC., AND CDS GLOBAL,
INC. PURSUANT TO 28 U.S.C.
SECTION 1332(d)(2)**

Action Filed: September 10, 2019
Action Removed: October 10, 2019

Removed from the Superior Court of the
State of California, County of San Diego,
Case No. 37-2019-00047733-CU-BT-CTL

1 **NOTICE OF REMOVAL OF DEFENDANTS HEARST MAGAZINE MEDIA, INC.**
2 **and CDS GLOBAL, INC.:**

3 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

4 PLEASE TAKE NOTICE that pursuant to the Class Action Fairness Act (“CAFA”),
5 28 U.S.C. §§ 1332, 1441, and 1446, Defendants Hearst Magazine Media, Inc. (“HMM”)
6 and CDS Global, Inc. (“CDS”; together with HMM, “Defendants”) hereby remove the
7 above-captioned putative class action from the Superior Court of California, County of San
8 Diego, to the United States District Court for the Southern District of California.
9 Defendants deny the allegations and relief sought in the Complaint, and file this Notice
10 without waiving any defenses, exceptions, or obligations that may exist in their favor.
11 Defendants also file this Notice without conceding, and specifically reserving, their right to
12 contest the suitability of this lawsuit for certification as a class action. Defendants will
13 provide evidence to support the allegations of this pleading as required in the event a
14 challenge is raised to the Court’s jurisdiction.¹

15 **RELEVANT PROCEDURAL HISTORY**

16 1. On September 10, 2019, Plaintiffs Fenella Arnold and Kelly Nakai
17 (“Plaintiffs”), individually and on behalf of all others similarly situated, filed a proposed
18 Class Action Complaint (“Compl.”) against Defendants, captioned *Fenella Arnold and*
19 *Kelly Nakai v. Hearst Magazine Media, Inc., et al.*, Case No. 37-2019-00047733-CU-BT-

21 ¹ A removing defendant is only required to provide a “short and plain statement” of
22 the bases for removal and need not present or plead evidentiary detail. *Dart Cherokee Basin*
23 *Operating Co., LLC v. Owens*, 135 S. Ct. 547, 551 (2014); *see also Janis v. Health Net,*
24 *Inc.*, 472 F. App’x 533, 534 (9th Cir. 2012) (“Nothing in 28 U.S.C. § 1446 requires a
25 removing defendant to attach evidence of the federal court’s jurisdiction to its notice of
26 removal. Section 1446(a) requires merely a ‘short and plain statement of the grounds for
27 removal.’ Moreover, we have observed that ‘it is clearly appropriate for the district courts,
28 in their discretion, to accept certain post-removal [evidence] as determinative of the
[jurisdictional requirements].”); *Hertz Corp. v. Friend*, 559 U.S. 77, 96-97 (2010) (“When
challenged on allegations of jurisdictional facts, the parties [who assert jurisdiction] must
support their allegations by competent proof.”).

1 CTL, in the Superior Court of California, County of San Diego (“State Court Action”).
2 Plaintiffs served HMM and CDS on September 12, 2019.

3 2. As required by 28 U.S.C. § 1446(a), **Exhibit A** to this Notice contains true
4 copies of all process, pleadings, and orders served upon Defendants in the State Court
5 Action.

6 3. Defendants are the only named defendants in the State Court Action. The
7 defendants designated as DOES 1 through 50 are fictitious defendants, are not parties to the
8 action, have not been named or served, and are properly disregarded for the purpose of this
9 removal. 28 U.S.C. § 1441(a); *McCabe v. Gen. Foods, Inc.*, 811 F.2d 1336, 1339 (9th Cir.
10 1987). All Defendants consent and agree to removal.

11 **ALLEGATIONS OF THE COMPLAINT**

12 4. In the Complaint, Plaintiffs purport to represent two proposed classes. (Compl.
13 ¶ 35.)

14 5. Arnold and Nakai purport to represent the so-called “ARL Class,” which the
15 Complaint defines to be “[a]ll individuals in California who, within the applicable
16 limitations period, were enrolled by Defendants in an automatic renewal program or a
17 continuous service program and had a credit card, debit card, and/or a third-party payment
18 account charged by Defendants as part of such program.” (*Id.* ¶ 36.) According to the
19 Complaint, “[w]hen Arnold submitted the order” for a two-year subscription to HGTV
20 Magazine, “she was not aware that Defendants were going to enroll her in a program under
21 which the subscription would automatically renew for subsequent periods, and she did not
22 consent to be enrolled in such program.” (*Id.* ¶ 23.) The Complaint also alleges that “[i]f
23 Nakai had known that Defendants were going to treat her submission of a sweepstakes entry
24 as enrollment into an automatic-renewal subscription [to Food Network Magazine], she
25 would not have entered the sweepstakes, would not have requested the magazine issue from
26 Defendants, and would not have paid any money to Defendants for that magazine.” (*Id.*
27 ¶ 32.)

1 6. Based on these allegations, the Complaint purports to allege claims on behalf
2 of the ARL Class for: (1) violations of the Automatic Renewal Law, Cal. Bus. & Prof. Code
3 § 17600 *et seq.*; (2) violations of the California Consumer Legal Remedies Act, Cal. Civ.
4 Code § 1750 *et seq.*; (3) violations of the California Unfair Competition Law, Cal. Bus. &
5 Prof. Code § 17200 *et seq.*; and (4) unjust enrichment. (*Id.* ¶¶ 44-47, 53-69.)

6 7. Nakai also purports to represent the so-called “False Invoice Class,” which the
7 Complaint defines to be “[a]ll individuals in California who, within the applicable
8 limitations periods, received an invoice, bill, or account statement from Defendants for
9 magazines that Defendants’ [sic] represented to be ‘free’ and/or for magazine subscriptions
10 that had not been ordered.” (*Id.* ¶ 37.) According to the Complaint, in connection with
11 submitting an entry into a sweepstakes, Nakai requested a “‘FREE’ issue” of Food Network
12 Magazine. (*Id.* ¶ 27.) Nakai then “received emails from Defendants purporting to be an
13 ‘INVOICE’ for a subscription to *Food Network Magazine*,” which she paid. (*Id.* ¶¶ 28-29.)
14 The Complaint alleges that, “[i]f Nakai had known that, upon receipt of her sweepstakes
15 entry, Defendants were going to enroll her in, and charge her for, a one-year subscription
16 for *Food Network Magazine*, she would not have submitted the sweepstakes entry.” (*Id.* ¶
17 30.)

18 8. Based on these allegations, the Complaint purports to allege claims on behalf
19 of the False Invoice Class for: (1) violations of Section 1716 of the California Civil Code;
20 (2) violations of the California Consumer Legal Remedies Act, Cal. Civ. Code § 1750 *et*
21 *seq.*; (3) violations of the California Unfair Competition Law, Cal. Bus. & Prof. Code
22 § 17200 *et seq.*; and (4) unjust enrichment. (*Id.* ¶¶ 48-69.)

23 9. The Complaint seeks restitution, prejudgment interest, costs of suit, attorneys’
24 fees, and injunctive relief. In addition, the Complaint seeks an order “that all goods sent to
25 ARL Class members are unconditional gifts,” and damages “[f]or three times the sum
26 solicited, pursuant to Civil Code § 1716(g).” (Compl. at pp. 17-18, Prayer.)

27 10. Defendants deny any and all liability to Plaintiffs or to the proposed classes
28 they seek to represent, and deny that Plaintiffs or the putative class members are entitled to

1 recover the damages, restitution, and other relief requested in the Complaint. Defendants
2 also submit that this action does not satisfy the requirements for class certification under
3 Fed. R. Civ. P. 23.

4 **SERVICE ON THE STATE COURT**

5 11. As required by 28 U.S.C. § 1446(d), Defendants will promptly file with the
6 Clerk of the San Diego Superior Court and serve on all parties a copy of this Notice of
7 Removal.

8 **VENUE**

9 12. The State Court Action was filed in the Superior Court of the State of
10 California for the County of San Diego. Venue properly lies in the United States District
11 Court for the Southern District of California pursuant to 28 U.S.C. § 1441(a).

12 **TIMELINESS**

13 13. CAFA removal is timely so long as (1) the face of the complaint does not
14 plainly allege all elements needed for diversity jurisdiction under CAFA (including the
15 amount in controversy), and (2) plaintiff has not served some other “paper” that concedes
16 all elements needed for diversity jurisdiction. *See Roth v. CHA Hollywood Med. Ctr., L.P.*,
17 720 F.3d 1121, 1125-26 (9th Cir. 2013) (a removing defendant may remove “on the basis
18 of its own information, provided that it has not run afoul of either of the thirty-day
19 deadlines” set forth in 28 U.S.C. § 1446(b)(1) or (b)(3)).

20 14. This removal is timely. The face of the Complaint does not allege all elements
21 needed for CAFA jurisdiction (including the amount in controversy), and Plaintiffs have
22 not served some other “paper” that concedes all the required elements. For example, no
23 amount in controversy is stated. Regardless, this removal is being filed within 30 days of
24 service.

25 15. Therefore, this removal is timely under CAFA.

26 **ORIGINAL JURISDICTION UNDER CAFA**

27 16. This Court has jurisdiction over this case under CAFA, 28 U.S.C. § 1332(d),
28 and this case may be removed under the provisions of 28 U.S.C. § 1441(a). Specifically,

1 this is a putative civil class action where: (1) the proposed class contains at least 100
2 members; (2) no Defendant is a state, state official or other governmental entity; (3) the
3 total amount in controversy for all putative class members exceeds the sum or value of
4 \$5,000,000, exclusive of interest and costs; and (4) there is diversity between at least one
5 putative class member and one Defendant. Therefore, CAFA authorizes the removal of this
6 action in accordance with 28 U.S.C. § 1446.

7 17. This action satisfies CAFA’s definition of a class action, which is “any civil
8 action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute . . .
9 authorizing an action to be brought by one or more representative persons as a class action.”
10 28 U.S.C. § 1332(d)(1)(B); 28 U.S.C. § 1453(a), (b).

11 **A. The Proposed Class Contains At Least 100 Members.**

12 18. Plaintiffs’ proposed classes contain at least 100 members. Plaintiffs bring this
13 action on their own behalves, and on behalf of the proposed ARL Class and the False
14 Invoice Class. (Compl. ¶ 10.)

15 19. During the four years before the filing of this Complaint, significantly more
16 than 100 individual customers in California were enrolled in a continuous service program
17 (as alleged by Plaintiffs) for their subscriptions to an HMM magazine and had a credit card,
18 debit card, and/or a third-party payment account charged as part of such program. In
19 addition, during the four years before the filing of this Complaint, significantly more than
20 100 individual customers in California received an invoice, bill, or account statement for an
21 HMM magazine after entering a sweepstakes. Plaintiffs also specifically allege that “each
22 class consists of at least 100 members.” (Compl. ¶ 40.)

23 **B. Defendants Are Not States, State Officials, Or Other Governmental Entities.**

24 20. Defendants are not states, state officials, or other governmental entities.

25 **C. The Amount in Controversy Exceeds \$5,000,000.**

26 21. As an initial matter, Defendants in no way concede they have any liability to
27 Plaintiffs or to the putative classes, and deny that Plaintiffs or the putative class members
28

1 are entitled to recover the compensatory damages, statutory damages, restitution, injunctive
2 relief, punitive damages, attorneys' fees, or any other relief.

3 22. That said, the amount in controversy "is what amount is put 'in controversy'
4 by the plaintiff's complaint, not what a defendant will actually owe." *Korn v. Polo Ralph*
5 *Lauren Corporation*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008) (quoting *Rippee v.*
6 *Boston Market Corp.*, 408 F. Supp. 2d 982, 986 (S.D. Cal. 2005)). When measuring the
7 amount in controversy, "a court must 'assume that the allegations of the complaint are true
8 and assume that a jury will return a verdict for the plaintiff on all claims made in the
9 complaint.'" *Campbell v. Vitran Exp., Inc.*, 471 F. App'x 646, 648 (9th Cir. 2012) (citing
10 *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D.
11 Cal. 2002)). Further, defenses that a defendant may assert are not considered in assessing
12 the amount placed in controversy. *See Lara v. Trimac Transp. Servs. (W.) Inc.*, CV 10-
13 4280-GHK JCX, 2010 WL 3119366, at *3 (C.D. Cal. Aug. 6, 2010) ("affirmative defenses,
14 counterclaims, and potential offsets may not be invoked to demonstrate the amount-in-
15 controversy is actually less than the jurisdictional minimum.").

16 23. Under 28 U.S.C. § 1332(d)(6), "[i]n any class action, the claims of the
17 individual class members shall be aggregated to determine whether the matter in
18 controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs."
19 "Congress and the Supreme Court have instructed [courts] to interpret CAFA's provisions
20 under section 1332 broadly in favor of removal," *Jordan v. Nationstar Mortg. LLC*, 781
21 F.3d 1178, 1184 (9th Cir. 2015), and "no antiremoval presumption attends cases invoking
22 CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal
23 court." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014).

24 24. Plaintiffs seek multiple forms of monetary relief, including "restitution of all
25 amounts that Defendants charged to Plaintiffs' and ARL Class members' credit cards, debit
26 cards, or third-party payment accounts during the four years preceding the filing of this
27 Complaint and continuing until Defendants' statutory violations cease" (Compl. ¶ 46), and
28 damages "[f]or three times the sum solicited, pursuant to Civil Code § 1716(g)," (Compl.

1 at p. 17, Prayer), as well as injunctive relief, attorneys’ fees and costs. (Compl. at pp. 17-
2 18, Prayer for Relief.) Plaintiffs do not plead a specific amount of damages.

3 25. The amount sought for the proposed ARL Class alone exceeds \$5,000,000,
4 exclusive of interest and costs. Again, the proposed ARL Class includes “[a]ll individuals
5 in California” who (in the last four years) were enrolled by Defendants “in an automatic
6 renewal program or continuous service program and had a credit card, debit card, and/or a
7 third-party payment account charged by Defendants as part of such program.” (Compl. ¶
8 36.) Although Defendants disagree with Plaintiffs’ characterization of its subscriptions as
9 involving an “automatic renewal program” or a “continuous service program” as defined
10 by California’s ARL and disagree that there has been any violation of the ARL, the
11 Complaint asserts that both Arnold and Nakai are covered by this proposed class (Compl.
12 ¶¶ 25, 32), and they assume that HMM’s various subscription methods and magazines are
13 covered by this proposed class definition. (*Id.* ¶¶ 33-34, 41.) Plaintiffs also expressly seek
14 a 100% refund as to the ARL and UCL claims, alleging that “Plaintiffs and ARL Class
15 members are entitled to restitution of all amounts that Defendants charged to Plaintiffs’ and
16 ARL Class members’ credit cards, debit cards, or third-party payment accounts during the
17 four years preceding the filing of this Complaint....” (Compl. ¶¶ 46, 66.) Based on these
18 allegations and Defendants’ business records, the amount Plaintiffs are seeking as a 100%
19 refund just for members of the proposed ARL Class greatly exceeds \$5,000,000.

20 26. Plaintiffs’ claim for attorneys’ fees must also be considered when calculating
21 the amount in controversy under CAFA. *See, e.g., Galt G/S v. JSS Scandinavia*, 142 F.3d
22 1150, 145 (9th Cir. 1998); *Lowdermilk v. U.S. Bank Nat’l Ass’n*, 479 F.3d 994, 1000 (9th
23 Cir. 2007), *overruled on other grounds, Rodriguez v. AT&T Mobility Servs. LLC*, 728 F.3d
24 975, 977 (9th Cir. 2013).

25 27. Here, Plaintiffs seek attorneys’ fees under Cal. Civ. Code § 1780(d) and Cal.
26 Code Civ. Proc. § 1021.5. In other class-action cases brought under California’s auto-
27 renewal law, class counsel sought to recover attorneys’ fees awards of \$1.6 million and \$2.3
28

1 million. *See, e.g., Noll v. eBay, Inc.*, 309 F.R.D. 593, 612 (N.D. Cal. 2015); *Williamson v.*
2 *McAfee, Inc.*, No. 5:14-CV-00158-EJD, 2017 WL 6033070, at *2 (N.D. Cal. Feb. 3, 2017).

3 28. The additional categories of relief Plaintiffs seek further enlarge the amount in
4 controversy well beyond the \$5,000,000 minimum under CAFA:

5 a. Plaintiffs' claim for "damages in an amount equal to three times the sum
6 solicited by Defendants" from Nakai and members of the proposed False
7 Invoice Class; and

8 b. Plaintiffs' claim for injunctive relief, which, if successful, would likely
9 require Defendants to incur substantial costs in order to, among other
10 things, revise their advertising materials, order forms, and customer
11 processes.

12 29. Thus, the amount Plaintiffs have placed in controversy substantially exceeds
13 the \$5,000,000 threshold.

14 **D. Diversity of Citizenship.**

15 30. CAFA's minimum diversity requirement is satisfied when at least one putative
16 class member is a citizen of a state different from any defendant. 28 U.S.C. § 1332(d)(2).

17 31. For diversity purposes, a person is a "citizen" of the state in which he or she is
18 domiciled. *Gilbert v. David*, 235 U.S. 561, 569 (1915); *Kanter v. Warner-Lambert Co.*, 265
19 F.3d 853, 857 (9th Cir. 2001). Each Plaintiff alleges she is a citizen of the State of
20 California. (Compl. ¶¶ 2-3.)

21 32. For diversity purposes, a corporation "shall be deemed a citizen of any State
22 by which it has been incorporated and of the State where it has its principal place of
23 business." 28 U.S.C. § 1332(c)(1). To determine a corporation's principal place of
24 business, courts apply the "nerve center" test, which deems the principal place of business
25 to be the state in which the corporation's officers direct, control, and coordinate the
26 corporation's activities. *Hertz Corp. v. Friend*, 559 U.S. 77, 91 (2010). A corporation's
27 principal place of business will typically be where the corporation maintains its
28 headquarters. *Id.* at 81.

1 33. Plaintiffs allege HMM is incorporated in the State of Delaware (Compl. ¶ 5).
2 HMM’s principal place of business is in New York, New York, thus making it a citizen of
3 Delaware and New York.

4 34. Plaintiffs allege CDS is incorporated in the State of Iowa (Compl. ¶ 6). CDS’s
5 principal place of business is in Des Moines, Iowa, thus making it a citizen of Iowa.

6 35. Because neither Plaintiff Arnold nor Nakai is a citizen of Delaware, New York,
7 or Iowa, and because neither HMM nor CDS is a citizen of California, at least one putative
8 class member is diverse from a defendant and CAFA’s minimal diversity requirement is
9 met.

10 36. Doe defendants are disregarded when determining diversity jurisdiction for
11 removal. 28 U.S.C. § 1441(b)(1) (“In determining whether a civil action is removable on
12 the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants
13 sued under fictitious names shall be disregarded.”); *see Aguilar v. McKesson Corp.*, No.
14 1:16-CV-00308-LJO-SKO, 2016 U.S. Dist. LEXIS 61342, at *5-6 (E.D. Cal. May 6, 2016)
15 (“the citizenship of the unidentified Doe defendants is immaterial for determining diversity
16 jurisdiction.”).

17 37. Furthermore, all Defendants consent to the removal of this case to federal court
18 under CAFA.

19 **NO ADMISSION**

20 38. By this filing, Defendants do not admit any liability to Plaintiffs or to the
21 putative class members they seek to represent, concede the accuracy of Plaintiffs’
22 allegations, admit Plaintiffs are adequate class representatives for the putative class they
23 seek to represent, or concede Plaintiffs or the putative class members are entitled to any of
24 the relief sought in the Complaint, or any relief of any kind. Defendants also in no way
25 admit the instant action satisfies the requirements for class certification.

26 ///

27 ///

28 ///

CONCLUSION

39. As Defendants have shown in this Notice of Removal and supporting documents, this lawsuit meets CAFA’s requirements. Wherefore, the State Court Action is hereby removed to this Court from the Superior Court of the State of California, County of San Diego.

Respectfully submitted,

Dated: October 10, 2019

GREENBERG TRAURIG, LLP

By: /s/ Robert J. Herrington
Robert J. Herrington
Attorneys for Defendants Hearst Magazine
Media, Inc. and CDS Global, Inc.

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**SUMMONS
(CITACION JUDICIAL)**

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

09/10/2019 at 09:59:37 AM

Clerk of the Superior Court
By Jose Hernandez, Deputy Clerk

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

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

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

FENELLA ARNOLD and KELLY NAKAI, 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): San Diego Superior Court
330 West Broadway
San Diego, CA 92101

CASE NUMBER:
(Número del Caso): 37-2019-00047733-CU-BT-CTL

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):
James T. Hannink (131747); Zach P. Dostart (255071); DOSTART HANNINK & COVENEY LLP
4180 La Jolla Village Dr., Ste. 530, La Jolla, CA 92037; Tel: (858) 623-4200

DATE: 09/11/2019 Clerk, by J. Hernandez, Deputy (Fecha) (Secretario) (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)).



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):
- 3. on behalf of (specify):
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):
- 4. by personal delivery on (date):

1 JAMES T. HANNINK (131747)
jhannink@sdlaw.com
2 ZACH P. DOSTART (255071)
zdostart@sdlaw.com
3 DOSTART HANNINK & COVENEY LLP
4180 La Jolla Village Drive, Suite 530
4 La Jolla, California 92037-1474
Tel: 858-623-4200
5 Fax: 858-623-4299

6 Attorneys for Plaintiffs

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
09/10/2019 at 09:59:37 AM
Clerk of the Superior Court
By Jose Hernandez, Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

11 FENELLA ARNOLD and
12 KELLY NAKAI,
individually and on behalf of all others
13 similarly situated,
14 Plaintiffs,
15 vs.
16 HEARST MAGAZINE MEDIA, INC., a
Delaware corporation;
17 CDS GLOBAL, INC., an Iowa corporation;
and DOES 1-50, inclusive,
18 Defendants.

CASE NO. 37-2019-00047733-CU-BT-CTL
CLASS ACTION
COMPLAINT FOR:
(1) FALSE ADVERTISING – VIOLATION
OF THE CALIFORNIA AUTOMATIC
RENEWAL LAW;
(2) VIOLATION OF CAL. CIV. CODE
§ 1716;
(3) VIOLATION OF THE CALIFORNIA
CONSUMER LEGAL REMEDIES ACT;
(4) VIOLATION OF THE CALIFORNIA
UNFAIR COMPETITION LAW; and
(5) UNJUST ENRICHMENT.
DEMAND FOR JURY TRIAL

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CLASS ACTION COMPLAINT

1 **INTRODUCTION**

2 1. This class action complaint alleges that defendants Hearst Magazine Media, Inc.
3 (“Hearst”) and CDS Global, Inc. (“CDS”) violate California law in connection with magazine
4 marketing and subscription programs. Among other things, Hearst and CDS work together to enroll
5 consumers in automatic-renewal or continuous service subscriptions without providing the “clear
6 and conspicuous” disclosures mandated by California law; post charges to consumers’ credit or
7 debit cards for purported automatic renewal or continuous service subscriptions without first
8 obtaining the consumers’ affirmative consent to an agreement containing the requisite clear and
9 conspicuous disclosures; and solicit payment of money for goods that consumers did not order by
10 sending “invoices” for amounts that are not actually owed. This course of conduct violates the
11 California Automatic Renewal Law (Bus. & Prof. Code, § 17600 et seq.) (“ARL”), California’s
12 statutory prohibition on soliciting payment for unordered goods or services by means of false
13 invoices (Civ. Code, § 1716), the Consumers Legal Remedies Act (Civ. Code, § 1750 et seq.)
14 (“CLRA”), and the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) (“UCL”).

15 **THE PARTIES**

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

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

20 4. Arnold and Nakai are collectively referred to herein as “Plaintiffs.”

21 5. Plaintiffs are informed and believe and thereon allege that defendant Hearst
22 Magazine Media, Inc. is a Delaware corporation that does business in San Diego County, including
23 the marketing of magazine subscriptions.

24 6. Plaintiffs are informed and believe and thereon allege that defendant CDS Global,
25 Inc. is an Iowa corporation that does business in San Diego County, including the marketing and
26 processing of magazine subscriptions.

27 7. Plaintiffs do not know the names of the defendants sued as DOES 1 through 50 but
28 will amend this complaint when that information becomes known. Plaintiffs allege on information

1 and belief that each of the DOE defendants is affiliated with one or more of the named defendants
2 in some respect and is in some manner responsible for the wrongdoing alleged herein, either as a
3 direct participant, or as the principal, agent, successor, alter ego, or co-conspirator of or with one or
4 more of the other defendants. For ease of reference, Plaintiffs will refer to the named defendants
5 and the DOE defendants collectively as “Defendants.”

6 8. Venue is proper in this judicial district because the complained of conduct occurred
7 in this judicial district.

8 BACKGROUND

9 9. Hearst is one of the largest magazine publishers in the world. In the United States,
10 Hearst publishes approximately two dozen magazine titles, including *Food Network*, *Cosmopolitan*,
11 *Good Housekeeping*, *Woman’s Day*, *Country Living*, *HGTV Magazine*, and *Car & Driver*.

12 10. CDS is the largest magazine fulfillment house in the United States. As a fulfillment
13 house, CDS works with magazine publishers to provide services that may include assisting with
14 subscriptions, billing, collection, and/or other account services. Based in Des Moines, Iowa, CDS
15 is a wholly-owned subsidiary of Hearst, and provides fulfillment services for Hearst as well as for
16 other magazine publishers.

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

24 12. During the 1990s, some marketers came to view the traditional model as constraint
25 on sales and profits, and advocated instead adoption of a “negative option” model. In a “negative
26 option,” the seller “interpret[s] a customer’s failure to take an affirmative action, either to reject an
27 offer or cancel an agreement, as assent to be charged for goods or services.” See “*Negative*
28 *Options*,” Federal Trade Commission, January 2009 (available at

1 <https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade->
2 [commission-workshop-analyzing-negative-option-marketing-report-](https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf)
3 [staff/p064202negativeoptionreport.pdf](https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf) (last accessed September 9, 2019). Defendants have
4 implemented a negative option model that does not comply with California law.

5 13. One aspect of Defendants' negative option model is to solicit orders for magazine
6 subscriptions that purport to be for a fixed period of time (e.g., one year, or two years), whereas
7 upon receipt of an order, Defendants enroll the consumer in a program under which the magazine
8 subscription will be "automatically renewed" for subsequent periods, with corresponding charges
9 posted to the consumer's credit card, debit card, or other payment account. Defendants enroll
10 consumers in such "automatic renewal" subscriptions without making the clear and conspicuous
11 disclosures required by California law.

12 14. Another aspect of Defendants' negative option model is to offer consumers a
13 "FREE" magazine issue, which offer is usually made in conjunction with a promotion that
14 simultaneously entices consumers to enter a sweepstakes sponsored by Defendants. When a
15 consumer enters a sweepstakes with a request for the (supposedly) "FREE" issue, Defendants
16 thereafter send the consumer an "invoice" stating that payment is due for a year-long subscription
17 to the magazine when, in fact, the recipient did not previously request a subscription and no money
18 is actually due. California law prohibits such false invoices.

19 **SUMMARY OF APPLICABLE LAW**

20 **The California Automatic Renewal Law**

21 15. In 2009, the California Legislature passed Senate Bill 340, which took effect on
22 December 1, 2010 as Article 9 of Chapter 1 of the False Advertising Law. (Bus. & Prof. Code,
23 § 17600 *et seq.* (the California Automatic Renewal Law or "ARL").) SB 340 was introduced
24 because:

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

1 See Exhibit 1.

2 16. The Assembly Committee on Judiciary provided the following background for the
3 legislation:

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

8 See Exhibit 2.

9 17. The ARL seeks to ensure that, before there can be a legally-binding automatic
10 renewal or continuous service arrangement, there must first be adequate disclosure of certain terms
11 and conditions and affirmative consent by the consumer. To that end, Bus. & Prof. Code § 17602(a)
12 makes it unlawful for any business making an automatic renewal offer or a continuous service offer
13 to a consumer in California to do any of the following:

14 (1) Fail to present the automatic renewal offer terms or continuous service offer terms
15 in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled and
16 in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the
17 request for consent to the offer. For this purpose, “clear and conspicuous” means “in larger type
18 than the 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 manner
20 that clearly calls attention to the language.” (Bus. & Prof. Code, § 17601(c).) In the case of an
21 audio disclosure, “clear and conspicuous” means in a volume and cadence sufficient to be readily
22 audible and understandable. (*Id.*)

23 (2) Charge the consumer’s credit or debit card, or the consumer’s account with a
24 third party, for an automatic renewal or continuous service without first obtaining the consumer’s
25 affirmative consent to the agreement containing the automatic renewal offer terms or continuous
26 service offer terms, including the terms of an automatic renewal offer or continuous service offer
27 that is made at a promotional or discounted price for a limited period of time.

28

1 (3) Fail to provide an acknowledgment that includes the automatic renewal or
2 continuous service offer terms, cancellation policy, and information regarding how to cancel in a
3 manner that is capable of being retained by the consumer. If the offer includes a free trial, the
4 business shall also disclose in the acknowledgment how to cancel and allow the consumer to cancel
5 before the consumer pays for the goods or services.

6 18. Bus. & Prof. Code § 17602(b) requires that the acknowledgment specified in
7 § 17602(a)(3) include “a toll-free telephone number, electronic mail address, a postal address if the
8 seller directly bills the consumer, or it shall provide another cost-effective, timely, and easy-to-use
9 mechanism for cancellation that shall be described in the acknowledgment.”

10 19. If a business sends any goods to a consumer under a purported automatic renewal or
11 continuous service arrangement without first obtaining the consumer’s affirmative consent to an
12 agreement containing the “clear and conspicuous” disclosures as specified in the ARL, the goods
13 are deemed to be an unconditional gift to the consumer, who may use or dispose of them without
14 any obligation whatsoever. (Bus. & Prof. Code, § 17603.) In addition, violation of the ARL gives
15 rise to restitution and injunctive relief under the general remedies provision of the False Advertising
16 Law, Bus. & Prof. Code § 17535. (Bus. & Prof. Code, § 17604, subd. (a).)

17 **Civil Code § 1716**

18 20. Civil Code § 1716 sets forth California’s statutory prohibition of false invoices.
19 Section 1716 prohibits the practice of soliciting payment of money by means of a written statement
20 or invoice for goods that were not ordered or services that were not performed. Specifically,
21 § 1716(a) makes it unlawful to “solicit payment of money by another by means of a written
22 statement or invoice, or any writing that reasonably could be considered a bill, invoice, or statement
23 of account due, but is in fact a solicitation for an order, unless the solicitation conforms to
24 subdivisions (b) to (f), inclusive.”

25 21. Civil Code § 1716(b) requires that any written statement that is in fact a solicitation
26 for an order must bear a conspicuous notice or disclaimer, one permissible version of which is:
27 “THIS IS NOT A BILL. THIS IS A SOLICITATION. YOU ARE UNDER NO OBLIGATION
28 TO PAY THE AMOUNT STATED ABOVE UNLESS YOU ACCEPT THIS OFFER.”

1 22. Any person damaged by noncompliance with § 1716 is entitled to damages in an
2 amount equal to three times the sum solicited. (Civ. Code, § 1716, subd. (g).)

3 **FACTS GIVING RISE TO THIS ACTION**

4 **Fenella Arnold's Transaction With Defendants**

5 23. In or about June 2017, in response to one of Defendants' advertisements, Arnold
6 submitted an order for a two-year subscription to *HGTV Magazine*. On July 3, 2017, Defendants
7 charged \$22.00 to Arnold's credit card for that two-year subscription. Arnold does not have a copy
8 of the specific advertisement to which she responded, and will seek production from Defendants
9 through discovery. When Arnold submitted the order for that two-year subscription, she was not
10 aware that Defendants were going to enroll her in a program under which the subscription would
11 automatically renew for subsequent periods, and she did not consent to be enrolled in such program.

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

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

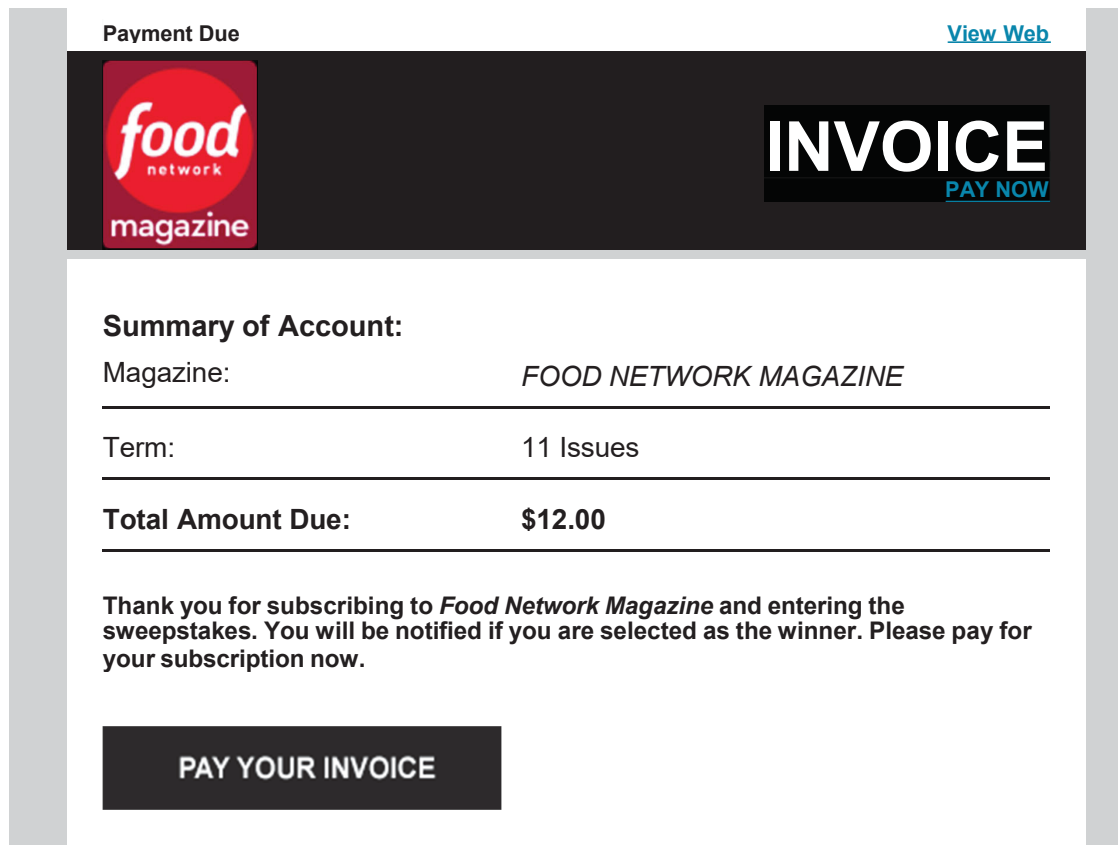
17 **Kelly Nakai's Transaction With Defendants**

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

24 27. Upon clicking the "ENTER NOW" button, Nakai was presented with a webpage
25 containing additional promotional material for the sweepstakes. A true and correct copy of a
26 printout of that webpage is attached hereto as Exhibit 4. A portion of that webpage contains fields
27 in which a consumer can enter his or her name, address, and email information to enter the
28 sweepstakes. Above those fields is a narrative statement, set forth in bold text, that the consumer

1 can “[f]ill in the fields below to get 1 FREE issue of Food Network Magazine and be
 2 automatically entered for your chance to win.” Farther down the page is a large “SUBMIT”
 3 button by which the consumer can submit the sweepstakes entry and the request for the “FREE”
 4 issue. Nakai submitted a sweepstakes entry, which included a request for the “FREE” issue.

5 28. Thereafter, Nakai did receive an issue of *Food Network Magazine*. However, Nakai
 6 also received emails from Defendants purporting to be an “INVOICE” for a subscription to *Food*
 7 *Network Magazine*, stating that there is now a “Payment Due” of \$12.00. A true and correct copy
 8 of that invoice is depicted below:



24 29. Nakai assumed she owed Defendants the money that was stated as the “Amount
 25 Due,” and Nakai paid the “invoice” with her credit card, in the amount of \$12.00. In fact, Nakai
 26 had never ordered a subscription to *Food Network Magazine*, and no money was actually due.

27 30. If Nakai had known that, upon receipt of her sweepstakes entry, Defendants were
 28 going to enroll her in, and charge her for, a one-year subscription for *Food Network Magazine*, she

1 would not have submitted the sweepstakes entry.

2 31. If Nakai had known that Defendants had no basis to assert that she owed money, and
3 that in fact she did not owe any money to Defendants, she would not have paid the purported invoice.

4 32. Nakai is informed and believes and thereon alleges that the *Food Network Magazine*
5 subscription into which Defendants enrolled her is an automatic-renewal subscription. If Nakai had
6 known that Defendants were going to treat her submission of a sweepstakes entry as enrollment into
7 an automatic-renewal subscription, she would not have entered the sweepstakes, would not have
8 requested the magazine issue from Defendants, and would not have paid any money to Defendants
9 for that magazine.

10 **DEFENDANTS’ DECEPTION OF OTHER CONSUMERS**

11 33. Plaintiffs are not the only consumers to be victimized by Defendants in connection
12 with magazine subscriptions. There are hundreds of consumer complaints about similar deceptive
13 conduct posted on a variety of websites, including but not limited to the Better Business Bureau
14 (“BBB”), Yelp, Complaints Board, and pissedconsumer.com.

15 34. Customer reviews of Hearst posted on the BBB website and other consumer websites
16 illustrate that Defendants’ scheme is effective and has affected many consumers. Many complaints
17 involve consumers receiving invoices from Defendants when no payment is due, and/or being
18 automatically renewed for magazines without consent.

19 **Brouca (March 30, 2019).** Less than 1 star for service. I have a paid subscription
20 to **** ***** Yet I keep receiving threatening notices to pay an overdue account
21 to renew my subscription. When I login into my acct, it says paid through November
22 2019. I have sent a paper letter, responded to email and sent a message through
online customer service and still I receive these threatening email messages
regularly.

23 A true and correct printout of that complaint is attached as Exhibit 5.

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

28 A true and correct printout of that complaint is attached as Exhibit 6.

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

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

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

9 A true and correct printout of that complaint is attached as Exhibit 8.

10 **Billing/Collection Issues (January 8, 2018).** I hope Woman's Day is reading this
11 because I got a subscription that I don't want; probably got because I entered a
12 sweepstakes and inadvertently said "yes" somewhere in the process! (Very sneaky).
13 They don't have a phone # on the invoice, can't find it online. When you go to their
14 customer service page they want all kinds of information from you; you have to log
15 in, etc. etc. This takes way too much time to have to "undo" something which I didn't
16 want in the first place. Since I can't get in touch with a "human", I'm putting this on
17 Facebook, and complaining to BBB. Address on invoice: ** *** ***** **
18 *****.

15 A true and correct printout of that complaint is attached as Exhibit 9.

16 **Advertising/Sales Issues (July 17, 2017).** I received an email from Veranda stating
17 that I have a chance to win outdoor furniture. I clicked on the link and it took me to
18 this page: ***** After reading the terms and
19 conditions, I entered my information. I then received an email stating that I
20 subscribed to House Beautiful for \$10 per month. I did not agree to a subscription.
21 No where in the terms or the above link mentioned a subscription. I called the
22 company and they noted my request to cancel but could not cancel it since the
23 subscription had not come through yet. This is a very unethical business practice.

21 A true and correct printout of that complaint is attached as Exhibit 10.

22 **Advertising/Sales Issues (May 8, 2017).** I filled out an online form for a "Garage
23 Make-Over" sweepstakes type of advertisement on Facebook. The next day I
24 received an email saying I owe Car & Driver \$10! First I tried finding a contact
25 avenue for Car and Driver...there is none unless you are a subscriber. I found a way
26 to contact the editor online for Car and Driver I told them in so uncertain terms that
27 I DO NOT want a subscription to Car and Driver I never wanted a subscription to
28 Car and Driver and to stop contacting me about a subscription to Car and Driver.
29 Now Car and driver is sending me mail demanding their \$10 for a subscription that
30 was gained by FALSE ADVERTISEMENT online. Please let Hearst
31 Communications know that I've communicated I DO NOT WANT A
32 SUBSCRIPTION TO CAR AND DRIVER!!

28 A true and correct printout of that complaint is attached as Exhibit 11.

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CLASS ACTION ALLEGATIONS

35. Plaintiffs bring this lawsuit as a class action under Code of Civil Procedure § 382 on behalf of two classes: (1) the “ARL Class” and (2) the “False Invoice Class.”

36. Plaintiffs Arnold and Nakai seek to represent the ARL Class, which is defined as follows: “All individuals in California who, within the applicable limitations period, were enrolled by Defendants in an automatic renewal program or a continuous service program and had a credit card, debit card, and/or a third-party payment account charged by Defendants as part of such program. Excluded from the ARL Class are all employees of Defendants, all employees of Plaintiffs’ counsel, and the judicial officers to whom this case is assigned.”

37. Plaintiff Nakai seeks to represent the False Invoice Class, which is defined as follows: “All individuals in California who, within the applicable limitations period, received an invoice, bill, or account statement from Defendants for magazines that Defendants’ represented to be “free” and/or for magazine subscriptions that had not been ordered. Excluded from the False Invoice Class are all employees of Defendants, all employees of Plaintiffs’ counsel, and the judicial officers to whom this case is assigned.”

38. Ascertainability. The members of each class may be ascertained by reviewing records in the possession of Defendants and/or third parties, including without limitation Defendants’ marketing and promotion records, customer records, and billing records.

39. Common Questions of Fact or Law. There are questions of fact or law that are common to the members of each class, which predominate over individual issues. Common questions regarding the ARL Class include, without limitation: (1) whether Defendants present all statutorily-mandated automatic renewal or continuous service offer terms, within the meaning of § 17601(b); (2) whether Defendants present automatic renewal or continuous service offer terms in a manner that is “clear and conspicuous,” within the meaning of § 17601(c), and in “visual proximity” to a request for consent to the offer (or in the case of an offer conveyed by voice, in temporal proximity to a request for consent to the offer), as required by § 17602; (3) whether Defendants obtain consumers’ affirmative consent to an agreement containing clear and conspicuous disclosure of automatic renewal or continuous service offer terms before charging a

1 credit card, debit card, or third-party payment account; (4) whether Defendants provide consumers
2 with an acknowledgment that includes clear and conspicuous disclosure of all statutorily-mandated
3 automatic renewal or continuous service offer terms, the cancellation policy, and information
4 regarding how to cancel in a manner that is capable of being retained by the consumer;
5 (5) Defendants' record-keeping practices; (6) the appropriate remedies for Defendants' conduct; and
6 (7) the appropriate terms of an injunction. Common questions regarding the False Invoice Class
7 include, without limitation: (1) whether Defendants provide the required statutory disclaimer or
8 alternative notice on any solicitation disclosing to the consumer that the document is a solicitation
9 for an order of goods or services, or both, and not a bill, invoice, or statement of account due, and
10 that the consumer is under no obligation to make any payments unless the consumer accepts the
11 offer; (2) whether Defendants display a notice or disclaimer in a manner that complies with the
12 requirements specified in Civ. Code § 1716; (3) Defendants' record-keeping practices; and (4) the
13 appropriate remedies for Defendants' conduct.

14 40. Numerosity. Each class is so numerous that joinder of all class members would be
15 impracticable. Plaintiffs are informed and believe and thereon allege that each class consists of at
16 least 100 members.

17 41. Typicality and Adequacy. Plaintiffs' claims are typical of the claims of the members
18 of each class. Plaintiffs allege on information and belief that Defendants enrolled ARL Class
19 members in automatic renewal or continuous service offer programs without presenting the
20 applicable terms in the manner required by law, charged ARL Class members' credit cards, debit
21 cards, or third-party accounts without first obtaining the ARL Class members' affirmative consent
22 to an agreement containing clear and conspicuous disclosure of all automatic renewal offer terms,
23 and failed to provide the requisite acknowledgment in a manner capable of being retained by ARL
24 Class members. Plaintiffs have no interests that are adverse to those of the other ARL Class,
25 members. Plaintiffs will fairly and adequately protect the interests of the ARL Class members.
26 Plaintiff Nakai alleges on information and belief that Defendants sent the False Invoice Class
27 members invoices or other written statements for goods not ordered or services not performed.
28 Plaintiff Nakai has no interests that are adverse to those of the other False Invoice Class members.

1 Plaintiff Nakai will fairly and adequately protect the interests of the False Invoice Class members.

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

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

12 **FIRST CAUSE OF ACTION**

13 False Advertising – Violation of the Automatic Renewal Law

14 (By All Plaintiffs Against All Defendants)

15 44. Plaintiffs incorporate the previous allegations as though set forth herein.

16 45. Plaintiffs are informed and believe and thereon allege that, during the applicable
17 statute of limitations period, Defendants have enrolled consumers, including Plaintiffs and ARL
18 Class members, in automatic renewal programs and/or continuous service programs and have
19 (a) failed to present the automatic renewal or continuous service offer in a clear and conspicuous
20 manner before the subscription or purchasing agreeing is fulfilled and in visual proximity, or in the
21 case of an offer conveyed by voice, in temporal proximity, to the request for consent to the offer;
22 (b) charged the consumer’s credit or debit card or the consumer’s third-party payment account for
23 an automatic renewal or continuous service without first obtaining the consumer’s affirmative
24 consent to the agreement containing the automatic renewal offer terms or continuous service offer
25 terms; and (c) failed to provide an acknowledgment that includes the automatic renewal or
26 continuous service offer terms, cancellation policy, and information regarding how to cancel in a
27 manner that is capable of being retained by the consumer.

28 46. As a result of Defendants’ conduct, pursuant to Bus. & Prof. Code §§ 17603 and

1 17535, all good received by Plaintiffs and ARL Class members are deemed to be an unconditional
2 gift, and Plaintiffs and ARL Class members are entitled to restitution of all amounts that Defendants
3 charged to Plaintiffs' and ARL Class members' credit cards, debit cards, or third-party payment
4 accounts during the four years preceding the filing of this Complaint and continuing until
5 Defendants' statutory violations cease.

6 47. Pursuant to Bus. & Prof. Code § 17535, Plaintiffs and the Class members are entitled
7 to an injunction enjoining Defendants from making automatic renewal or continuous service offers
8 to California consumers that do not comply with California law.

9 **SECOND CAUSE OF ACTION**

10 Violation of Civ. Code, § 1716

11 (By Nakai and the False Invoice Class Against All Defendants)

12 48. Plaintiff Nakai incorporates the allegations of paragraphs 1-43 as though set forth
13 herein.

14 49. Defendants sent to Nakai and members of the False Invoice Class documents
15 purporting to be an "invoice" for a magazine subscription when, in fact, no subscription had been
16 requested and no money was due.

17 50. The "invoices" that Defendants sent to Nakai and members of the False Invoice Class
18 did not bear a disclaimer or notice prescribed by Civil Code § 1716(b).

19 51. Nakai and members of the False Invoice Class have been damaged as a result of
20 Defendants' violation of Civil Code § 1716.

21 52. Pursuant to Civil Code § 1716(g), Nakai and members of the False Invoice Class are
22 entitled to damages in an amount equal to three times the sum solicited by Defendants.

23 **THIRD CAUSE OF ACTION**

24 Violation of the Consumers Legal Remedies Act

25 (By All Plaintiffs Against All Defendants)

26 53. Plaintiffs incorporate the previous allegations as though fully set forth herein.
27
28

1 54. Plaintiffs and the members of the ARL Class and the False Invoice Class are
2 “consumers” within the meaning of Civil Code § 1761(d) in that Plaintiffs and the goods and/or
3 services sought or acquired were for personal, family, or household purposes.

4 55. Defendants’ “FREE” magazine offers and/or other subscription offers pertain to
5 “goods” and/or “services” within the meaning of Civil Code § 1761(a) and (b).

6 56. The purchases and payments by Plaintiffs and class members are “transactions”
7 within the meaning of Civil Code § 1761(e).

8 57. Defendants have violated Civil Code § 1770, subdivisions (a)(5), (a)(9), (a)(13),
9 (a)(14), and (a)(17), by representing that Defendants’ goods and services have certain characteristics
10 that they do not have; advertising goods and services with the intent not to sell them as advertised;
11 making false and misleading statements of fact concerning the reasons for, existence of and amounts
12 of price reductions; representing that a transaction confers or involves rights, remedies, or
13 obligations that it does not have or involve, or that are prohibited by law; and by representing that
14 the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit
15 is contingent on an event to occur subsequent to the consummation of the transaction.

16 58. Plaintiffs, on behalf of themselves and all other class members, seek an injunction
17 prohibiting Defendants from continuing their unlawful practices in violation of the Consumers Legal
18 Remedies Act, as described above.

19 **FOURTH CAUSE OF ACTION**

20 Violation of the California Unfair Competition Law

21 (By All Plaintiffs Against All Defendants)

22 59. Plaintiffs incorporate the previous allegations as though fully set forth herein.

23 60. The California Unfair Competition Law (“UCL”), Bus. & Prof. Code § 17200 *et seq.*,
24 defines unfair competition as including “any unlawful, unfair or fraudulent business act or practice.”

25 61. In the course of conducting business within the applicable limitations period,
26 Defendants committed “unlawful,” “unfair,” and/or “fraudulent” business practices by, *inter alia*
27 and without limitation: (a) failing to present the terms of automatic renewal or continuous service
28 offers in a clear and conspicuous manner before a magazine selection, subscription, or purchasing

1 agreement is fulfilled and in visual proximity (or in the case of an offer conveyed by voice, in
2 temporal proximity), to a request for consent to the offer, in violation of Bus. & Prof. Code
3 § 17602(a)(1); (b) charging the consumer's credit card, debit card, or third-party payment account
4 for an automatic renewal or continuous service without first obtaining the consumer's affirmative
5 consent to an agreement containing clear and conspicuous disclosures of automatic renewal offer
6 terms or continuous service offer terms, in violation of Bus. & Prof. Code § 17602(a)(2); (c) failing
7 to provide an acknowledgment that includes clear and conspicuous disclosure of automatic renewal
8 or continuous service offer terms, cancellation policy, and information regarding how to cancel in a
9 manner that is capable of being retained by the consumer, in violation of Bus. & Prof. Code
10 § 17602(a)(3); (d) sending consumers invoices for goods not ordered, in violation of Civil Code
11 § 1716; (e) representing that Defendants' goods and services have certain characteristics that they
12 do not, in violation of Civil Code § 1770(a)(5); (f) advertising goods and services with the intent
13 not to sell them as advertised, in violation of Civil Code § 1770(a)(9); (g) making false and
14 misleading statements of fact concerning the reasons for, existence of and amounts of price
15 reductions, in violation of Civil Code § 1770(a)(13); (h) representing that a transaction confers or
16 involves rights, remedies, or obligations that it does not have or involve, or that are prohibited by
17 law, in violation of Civil Code § 1770 (a)(14); and (i) representing that the consumer will receive a
18 rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to
19 occur subsequent to the consummation of the transaction, in violation of Civil Code § 1770(a)(17).
20 Plaintiffs reserve the right to allege other violations of law that constitute unlawful or unfair business
21 acts or practices.

22 62. Defendants' acts and omissions as alleged herein violate obligations imposed by
23 statute, are substantially injurious to consumers, offend public policy, and are immoral, unethical,
24 oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits
25 attributable to such conduct.

26 63. There were reasonably available alternatives to further Defendants' legitimate
27 business interests, other than the conduct described herein.

28 64. Defendants' acts, omissions, nondisclosures, and misleading statements as alleged

1 herein were and are false, misleading, and/or likely to deceive the consuming public.

2 65. Plaintiffs have suffered injury in fact and lost money as a result of Defendants' acts
3 of unfair competition.

4 66. Pursuant to Bus. & Prof. Code § 17203, Plaintiffs and the class members are entitled
5 to an order: (1) requiring Defendants to make restitution of all amounts received in connection with
6 the statutory violations alleged above; (2) enjoining Defendants from making automatic renewal or
7 continuous service offers in the State of California that do not comply with the ARL; and
8 (3) enjoining Defendants from sending invoices or other written statements for products not ordered,
9 without the disclaimer required by Civil Code § 1716.

10 **FIFTH CAUSE OF ACTION**

11 Unjust Enrichment

12 67. Plaintiffs incorporate the previous allegations as though fully set forth herein.

13 68. Defendants have received money from Plaintiffs and class members in connection
14 with Defendants' conduct in violation of California law. Defendants would be unjustly enriched if
15 they were permitted to retain those funds, and Defendants should be ordered to restore said funds to
16 Plaintiffs and the class members.

17 69. Plaintiffs allege this unjust enrichment claim in the alternative to relief provided
18 under any legal claim alleged herein.

19 **PRAYER**

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

21 On the First Cause of Action:

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

25 On the Second Cause of Action:

- 26 4. For three times the sum solicited, pursuant to Civil Code § 1716(g);
27 5. For a public injunction for the benefit of the People of the State of California.
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On the Third Cause of Action:

- 6. For a public injunction for the benefit of the People of the State of California;
- 7. For an award of attorneys’ fees pursuant to Civil Code § 1780(d);

On the Fourth Cause of Action:

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

On the Fifth Cause of Action:

- 10. For restitution;

On All Causes of Action:

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

DATED: September 10, 2019 DOSTART HANNINK & COVENEY LLP

Zachary Paul Jostart

 ZACH P. DOSTART
 Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all claims and causes of action so triable. Dated:
 September 10, 2019 DOSTART HANNINK & COVENEY LLP

Zachary Paul Jostart

 ZACH P. DOSTART
 Attorneys for Plaintiffs

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ClassAction.org

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