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SEIU, UNITED HEALTHCARE WORKERS-WEST
7

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10 FRESNO DIVISION

11 GREG PRICE, , individually and on behalf of
12 all others similarly situated,

13 Plaintiff,

14 v.

15 SEIU, UNITED HEALTHCARE WORKERS-
16 WEST, and DOES 1-10,

17 Defendant.
18

No. CaseNumber

NOTICE OF REMOVAL

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1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT:

2 PLEASE TAKE NOTICE that Defendant Service Employees International Union,
3 United Healthcare Workers-West (“SEIU-UHW”) hereby removes this action, currently pending
4 in the Superior Court of the State of California, County of Fresno, to the United States District
5 Court for the Eastern District of California, Fresno Division. This Court has original/federal-
6 question jurisdiction pursuant to 28 U.S.C. sections 1331 and 1441(a), (c). SEIU-UHW further
7 states as follows in support of removal:

8 **THE REMOVED CASE**

9 1. On January 14, 2020, Plaintiff Greg Price, purportedly on behalf of himself and
10 others similarly situated, commenced a civil action against SEIU-UHW in the Superior Court of
11 the State of California in and for the County of Fresno, Case Number 20CECG00176
12 (“Complaint”).

13 2. Plaintiff’s Complaint alleges three causes of action: (1) violations of the Electronic
14 Funds Transfer Act (“EFTA”), 15 U.S.C. section 1693 et seq.; (2) violations of the California
15 Automatic Purchase Renewal Statute (“CAPRS”), Cal. Bus. & Prof. Code section 17600, et seq.;
16 and (3) violations of the California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code
17 section 17600, et seq. All of Plaintiff’s claims are based on his contention that SEIU-UHW
18 debited his bank account on a recurring basis without first obtaining written authorization, and
19 without informing him of “price changes.” (Complaint, ¶ 2.) The latter two causes of action are
20 derivative of the first cause of action in that they seek penalties and other relief for SEIU-UHW’s
21 alleged failure to effectively communicate with Plaintiff regarding his recurring charges.

22 3. On February 25, 2020, Plaintiff emailed to SEIU-UHW’s counsel the Complaint, a
23 Notice and Acknowledgement of Receipt of Summons and Complaint, the Civil Cover Sheet,
24 Notice of Assignment, and Notice of Case Management Conference.

25 4. SEIU-UHW is in possession of the following documents:

- 26 a) Exhibit A – Complaint, filed January 14, 2020
27 b) Exhibit B – SEIU-UHW’s Notice and Acknowledgement of Receipt of Summons
28 and Complaint, executed March 12, 2020

1 c) Exhibit C – Notice of Case Management Conference and Assignment of Judge for
2 All Purposes, filed January 15, 2020

3 d) Exhibit D – Civil Case Cover Sheet, filed January 15, 2020

4 The documents contained in Exhibits A through D constitute all process, pleadings, and
5 orders served on SEIU-UHW in the State Court Action.

6 **REMOVAL IS APPROPRIATE AND TIMELY**

7 5. Removal is appropriate because this Court has original/federal-question
8 jurisdiction pursuant to 28 U.S.C. sections 1331 and 1441(a).

9 6. SEIU-UHW received the Notice and Acknowledgement of Receipt of Summons
10 and Complaint on February 25, 2020, and signed it on March 12, 2020. Therefore, this Notice of
11 Removal of Civil Action is filed within the time provided by 28 U.S.C section 1446(b), in that it
12 was filed within 30 days from the date SEIU-UHW was in receipt of the pleading, “through
13 service or otherwise,” setting forth Plaintiffs’ claim for relief arising under the Constitution or
14 laws of the United States. See *Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S.
15 344, 347-48 (1999) (holding that a defendant’s statutory period to remove does not begin to run,
16 and a defendant is not required to file for removal, until the defendant has been served).

17 **JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT**

18 7. A state court civil action in which there are alleged claims for relief arising under
19 the Constitution and laws of United States may be removed to the United States District Court,
20 without regard to the amount controversy. 28 U.S.C. §§ 1331, 1441(a). This action is properly
21 removed to this Court pursuant to 28 U.S.C. section 1441(a) in that it is a civil action brought
22 under the EFTA, 15 U.S.C. sections 1693 et seq.

23 8. This Court is in the judicial district and division embracing the place where the
24 state court case was brought and is pending. Thus, this court is the proper District Court to which
25 this case should be removed. 28 U.S.C. §§ 1441(a) and 1446(a).

26 9. This action arises in Fresno County. Thus, assignment in the Fresno Division
27 would be appropriate. EDCA Local Rules, rule 120(d).

28

1 **FEDERAL QUESTION JURISDICTION**

2 10. While SEIU-UHW denies all of the allegations in the Complaint, this Court
3 nevertheless has original jurisdiction, pursuant to 28 U.S.C. section 1331, over Plaintiff’s first
4 cause of action. It is irrefutable from the face of the Complaint that this cause of action was
5 brought under the EFTA, 15 U.S.C. section 1693e(a), and it’s implementing regulations.
6 (Complaint, ¶ 1-2, 23, 48-53.) Removal of this cause of action is therefore appropriate under 28
7 U.S.C. section 1441(a).

8 **SUPPLEMENTAL JURISDICTION**

9 11. As stated above, Plaintiff’s second and third causes of action are derivative of his
10 first cause of action, and are therefore likewise subject to this Court’s original/federal question
11 jurisdiction pursuant to 28 U.S.C. sections 1331 and 1441(a). Plaintiff’s first cause of action for
12 violation of the EFTA is based on SEIU-UHW’s alleged failure to obtain Plaintiff’s consent prior
13 to debiting his bank account. Plaintiff’s second and third causes of action seek penalties and
14 other relief relating to that primary claim, i.e., that SEIU-UHW charged Plaintiff’s bank account
15 without authorization and failed to effectively communicate with him about these charges.

16 12. The Court has supplemental jurisdiction over those derivative claims because they
17 form part of the same case or controversy that is the subject of Plaintiff’s federal claim. 28
18 U.S.C. §§ 1367(a), 1441(a); see *City of Chicago v. Int’l Conference of Surgeons*, 522 U.S. 156,
19 156-159, 165 (1997) (District Court properly permitted removal and exercised supplemental
20 jurisdiction over plaintiff’s state law claims where both plaintiff’s state and federal claims derived
21 from “a common nucleus of operative fact”). All three of Plaintiff’s causes of action arise out of
22 the same set of facts — the allegedly improper charges that SEIU-UHW made to Plaintiff’s bank
23 account.

24 13. Various federal courts have exercised supplemental jurisdiction where plaintiffs
25 have brought EFTA claims and related state law claims. See, e.g., *Berenson v. Nat’l Fin. Servs.,*
26 *LLC*, 403 F. Supp. 2d 133, 136, 143 (D. Mass. 2005) (federal question jurisdiction over EFTA
27 claim and supplemental jurisdiction over related violations of Massachusetts Truth in Savings
28 Law and Consumer Protection Act); *Vigneri v. US Bank Nat’l Ass’n*, 437 F. Supp. 2d 1063, 1067-

1 68 n.2 (D. Neb. 2006) (federal question jurisdiction over EFTA claim and supplemental
2 jurisdiction over state law conversion and Nebraska UCC claims).

3 14. Pursuant to the above, Plaintiff’s second and third causes of action are derivative,
4 the Court has jurisdiction over all claims in the Complaint, and SEIU-UHW has properly
5 removed the State Court action.

6 **ALL PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE BEEN**
7 **SATISFIED**

8 15. Promptly following the filing of this Notice of Removal, written notice of the
9 removal of this action will be served upon Plaintiffs pursuant to 28 U.S.C. section 1446(d).

10 16. A copy of this Notice of Removal will be promptly filed with the clerk of the
11 Superior Court of California, County of Fresno, pursuant to 28 U.S.C. section 1446(d).

12 17. No previous application has been made for the relief requested herein.

13 18. The prerequisites for removal under 28 U.S.C. section 1441 have been met. If any
14 question arises as to the propriety of the removal of this action, SEIU-UHW respectfully requests
15 an opportunity to present a written brief and oral argument in support of its position that this case
16 is removable.

17 19. SEIU-UHW reserves the right to amend or supplement this Notice of Removal.

18 WHEREFORE, SEIU-UHW hereby removes this action now pending in the Superior
19 Court of the State of California, County of Fresno, Case No. 20CECG00176 to this Honorable
20 Court, and request this Court to retain jurisdiction over the entire matter for all further
21 proceedings.

22 Dated: March 13, 2020

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

24 By: /s/ BRUCE A. HARLAND
25 BRUCE A. HARLAND

Attorneys for Defendant,
SEIU, UNITED HEALTHCARE WORKERS-
WEST

27 148949\1075151

EXHIBIT A

EXHIBIT A

EXHIBIT A

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Superior Court of California
County of Fresno
By: A. Rodriguez, Deputy

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF FRESNO

12 GREG PRICE, individually and on behalf of)
13 all others similarly situated,)

Case No. 20CECG00176

14 Plaintiff,)

CLASS ACTION

15 vs.)

COMPLAINT FOR VIOLATIONS OF:

16 SEIU UNITED HEALTHCARE WORKERS)
17 WEST and DOES 1-10,)

- 1. VIOLATIONS OF ELECTRONIC FUNDS TRANSFER ACT [15 U.S.C. §1693 ET SEQ.]
- 2. VIOLATIONS OF CALIFORNIA AUTO RENEWAL STATUTE CALIFORNIA BUS. & PROF. CODE §§ 17600, ET SEQ.
- 3. VIOLATIONS OF CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200, ET. SEQ

18 Defendant(s).)
19)
20)
21)
22)
23)
24)
25)

DEMAND FOR JURY TRIAL

26 Plaintiff GREG PRICE (“Plaintiff”), on behalf of himself and all others similarly situated,
27 alleges the following against Defendant SEIU UNITED HEALTHCARE WORKERS WEST
28 (“SEIU UHWW” or “Defendant”), upon information and belief based upon personal knowledge:

1 **INTRODUCTION**

2 1. Plaintiff's Class Action Complaint is brought pursuant to the Electronic Funds
3 Transfer Act, 15 U.S.C. 1693 et seq. ("EFTA") and the California Automatic Purchase Renewal
4 Statute Cal. Bus. & Prof. Code § 17600, et seq. ("CAPRS").

5 2. Plaintiff, individually, and on behalf of all others similarly situated, brings this
6 Complaint for damages, injunctive relief, and any other available legal or equitable remedies,
7 resulting from the illegal actions of Defendants debiting Plaintiff's and also the putative Class
8 members' bank accounts on a recurring basis without obtaining a written authorization signed or
9 similarly authenticated for preauthorized electronic fund transfers from Plaintiff's and also the
10 putative Class members' accounts, thereby violating Section 907(a) of the EFTA, 15 U.S.C. §
11 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b). Additionally, Defendant
12 failed to properly disclose the price changes, thereby violating Cal. Bus. & Prof. Code § 17600
13 *et. seq.* Any material change in the terms of the arrangement must be provided to the consumer
14 in a clear and conspicuous notice, and the notice must inform the consumer how to cancel, yet
15 Defendant's policy and practice was not to inform consumers of material price changes to its
16 service in advance of charging their accounts. Plaintiff alleges as follows upon personal
17 knowledge as to himself and his own acts and experiences, and, as to all other matters, upon
18 information and belief, including investigation conducted by his attorneys.

19 3. Plaintiff alleges as follows upon personal knowledge as to himself and his own
20 acts and experiences, and, as to all other matters, upon information and belief, including
21 investigation conducted by his attorneys.

22 **JURISDICTION AND VENUE**

23 4. This class action is brought pursuant to California Code of Civil Procedure
24 ("CCP") section 382. All claims in this matter arise exclusively under California law.

25 5. This matter is properly venue in the Superior Court of Fresno County, in that
26 Plaintiff was and employed at Defendant's office at 550 E. Shaw, Suite 215, Fresno, CA 93710.
27
28

1 Plaintiff resides in Fresno County, California and Defendant does business, inter alia, in Fresno
2 County, California.

3 **PARTIES**

4 6. Plaintiff, Greg Price (“Plaintiff”), is a natural person residing in Fresno County
5 in the state of California, and is a “consumer” as defined by 15 U.S.C. §1693a (6) and a “person”
6 as defined by Cal. Bus. & Prof. Code § 17201.

7 7. At all relevant times herein, Defendant, SEIU UNITED HEALTHCARE
8 WORKERS WEST (“SEIU UHWW” or “Defendant”), is a California statewide local union of
9 the Service Employees International Union in California in the United States. Defendant is
10 headquartered in Oakland, California and has offices statewide.

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

18 9. Plaintiff is informed and believes that at all relevant times, each and every
19 Defendant was acting as an agent and/or employee of each of the other Defendants and was
20 acting within the course and scope of said agency and/or employment with the full knowledge
21 and consent of each of the other Defendants. Plaintiff is informed and believes that each of the
22 acts and/or omissions complained of herein was made known to, and ratified by, each of the
23 other Defendants.
24

25 **FACTUAL ALLEGATIONS - EFTA**

26 10. Plaintiff was employed at Defendant, SEIU UHWW’s, Fresno office located at
27 550 E. Shaw, Suite 215, Fresno, CA 93710 from 2009 through 2018.

28 11. During his employment with Defendant, Plaintiff registered his son and his

1 daughter as an associate members with SEIU UHWW.

2 12. Plaintiff was billed twenty (20) dollars on a monthly basis for his son's and
3 daughter's memberships.

4 13. Plaintiff registered for the automatic withdrawals from his bank account, and
5 Defendant used their Pledge Up platform so that it could withdraw union dues directly from
6 Plaintiff's bank account.

7 14. In or around September 2018, Plaintiff stopped his employment with Defendant,
8 at that time, he canceled his son's membership, and asked Defendant to cease the automatic
9 withdrawals from his account for his son's dues.

10 15. Defendant initially complied with Plaintiff's request and no payment was taken
11 out between September 2018 and March 2019.

12 16. However, on or around April 15, 2019, Defendant resumed billing Plaintiff's
13 account for "PLEDGEUP DUES & PAC" without providing explicit written notice to or
14 obtaining written permission from Plaintiff.

15 17. Defendant never provided advanced clear and conspicuous notice to Plaintiff of
16 this auto-renewal. Defendant failed to notify Plaintiff in any reasonable manner. Defendant did
17 not send Plaintiff any email, or other written correspondence, nor did Defendant attempt to call
18 Plaintiff to inform him of its intent to renew the twenty (20) dollar auto withdrawal.

19 20 18. As an example, on April 15, 2019, Defendant began auto-debiting Plaintiff's
21 account for twenty (20) dollars for "PLEDGEUP DUES & PAC" twice.

22 19. As a result, Defendant withdrew forty (40) dollars from Plaintiff's account,
23 causing plaintiff to incur overdraft fees.

24 20. Without obtaining authorization from Plaintiff to resume auto withdrawal,
25 Defendant began deducting sums from Plaintiff's account.

26 21. Plaintiff never provided Defendant with any authorization to deduct these sums
27 of money from Plaintiff's banking account.

28 22. Further, Defendants did not provide to Plaintiff, nor did Plaintiff execute, any

1 written or electronic writing memorializing or authorizing these automatic payments.

2 23. Plaintiff alleges such activity to be in violation of the Electronic Funds Transfer
3 Act, 15 U.S.C. 1693 et seq. (“EFTA”), and its surrounding regulations, including, but not limited
4 to, 12 C.F.R. §§1005.7, 1005.8, and 1005.9.

5 24. Plaintiff alleges such activity to be in violation of California’s Automatic
6 Purchase Renewal Statute Cal. Bus. & Prof. Code § 17600, et seq. (“CAPRS”), and its
7 surrounding regulations.

8 25. At all times relevant, Defendant made and continues to make automatic renewal
9 offers and continuous service offers, as those terms are defined by Cal. Bus. & Prof. Code §
10 17600, et seq. (“California’s Automatic Purchase Renewal Statute”) to Plaintiff and other
11 consumers similarly situated.

12 26. At the time Plaintiff purchased the services, Defendant failed to present
13 Defendant’s automatic renewal offer terms or continuous service offer terms in a clear and
14 conspicuous manner, as defined by California’s Automatic Purchase Renewal Statute, before
15 the subscription or purchasing agreement was fulfilled, and in visual or temporal proximity to
16 Defendant’s request for consent to the offer.

17 27. After Plaintiff canceled the services, Defendant automatically charged Plaintiff
18 for the membership dues without obtaining Plaintiff’s affirmative consent to the agreement
19 containing the automatic renewal offer terms or continuous service offer terms.

20 28. Cal. Bus. & Prof. Code § 17602(c) requires that in the case of a material change
21 in the terms of the automatic renewal or continuous service offer that has been accepted by a
22 consumer in this state, the business shall provide the consumer with a clear and conspicuous
23 notice of the material change and provide information regarding how to cancel in a manner that
24 is capable of being retained by the consumer. Defendant failed to provide clear and conspicuous
25 notice of the material changes to its pricing model, or information regarding how to cancel
26 services, prior to automatically charging Plaintiff’s account.

27 29. Defendant never provided Plaintiff with information regarding how to cancel in
28

1 a manner that was capable of being retained by Plaintiff.

2 30. On information and belief, Plaintiff alleges that Defendant's policy and practice
3 is to not notify its customers about such automatic withdrawals.

4 31. At the time Plaintiff registered his son and daughter for Defendant's associate
5 membership, Plaintiff was subjected to Defendant's unlawful policies and/or practices, as set
6 forth herein, in violation of Cal. Bus. & Prof. Code § 17600, et seq.

7 32. The material circumstances surrounding this experience by Plaintiff were the
8 same, or nearly the same, as the other class members Plaintiff proposes to represent, and Plaintiff
9 and all putative class members were required to pay, and did pay, money for the services
10 marketed and sold by Defendant.

11 33. Defendant's undisclosed renewal of membership charges, coupled with any
12 authorization to automatically charge consumers' proffered method of payment, is an unfair,
13 unlawful and fraudulent bait and switch scheme.

14
15 **CLASS ACTION ALLEGATIONS**

16 34. Plaintiff brings this action on behalf of himself and all others similarly situated,
17 as a member of two proposed classes (jointly "The Classes"). The first Class (hereafter "The
18 EFTA Class") defined as follows:

19 All persons in the United States whose bank accounts were debited
20 on a reoccurring basis by Defendant without obtaining a written
21 authorization signed or similarly authenticated for preauthorized
22 electronic fund transfers within the one year prior to the filing of
23 this Complaint.

24 35. The second Class (hereafter "the CAPRS Class") is defined as follows:

25 All persons in California whose bank accounts were debited on a
26 reoccurring and basis by Defendant without Defendant providing
27 clear and conspicuous notice of the intent to initiate or renew the
28 withdrawals, including information on how to cancel Defendant's
services within the four years prior to the filing of this Complaint.

36. Plaintiff represents, and is a member of The EFTA Class, consisting of all persons
within the United States whose bank account was debited on a recurring basis by Defendant

1 without Defendant obtaining a written authorization signed or similarly authenticated for
2 preauthorized electronic fund transfers within the one year prior to the filing of this Complaint.

3 37. Plaintiff represents, and is a member of The CAPRS Class, consisting of all
4 persons in California whose bank accounts were debited on a reoccurring basis by Defendant
5 without Defendant providing clear and conspicuous notice of the increase, including information
6 on how to cancel Defendant's services within the four years prior to the filing of this Complaint.

7 38. Defendant, its employees and agents are excluded from The Classes. Plaintiff
8 does not know the number of members in The Classes, but believe the Classes members number
9 in the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in
10 the expeditious litigation of the matter.

11 39. The Classes are so numerous that the individual joinder of all of their members is
12 impractical. While the exact number and identities of The Classes members are unknown to
13 Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is
14 informed and believes and thereon alleges that The Classes includes thousands of members.
15 Plaintiff alleges that The Classes members may be ascertained by the records maintained by
16 Defendant.

17 40. There are questions of law and fact common to the EFTA Class affecting the
18 parties to be represented. The questions of law and fact to the EFTA Class predominate over
19 questions which may affect individual EFTA Class members and include, but are not necessarily
20 limited to, the following:

- 21
- 22 a. The members of the Class were not provided with, nor did they execute,
23 written agreements memorializing the automatic or recurring electronic
24 payments.
 - 25 b. Defendants did not request, nor did it provide, Class members with
26 written agreements memorializing the automatic or recurring electronic
27 withdrawals.
 - 28 c. The members of the Class did not provide either a written ("wet") or

1 otherwise electronic signature authorizing the automatic or recurring
2 electronic payments.

3 d. Despite not providing written or electronic authorization for payments
4 to be drawn from their accounts, Defendant took unauthorized
5 payments from Class members' accounts.

6 41. There are questions of law and fact common to the CAPRS Class affecting the
7 parties to be represented. The questions of law and fact to the CAPRS Class predominate over
8 questions which may affect individual CAPRS Class members and include, but are not
9 necessarily limited to, the following:

10 a. Whether despite not providing written or electronic authorization for
11 payments to be charged to their credit cards, Defendant took unauthorized
12 payments from Class members' cards.

13 b. Whether the changes to Defendant's pricing model, discussed herein, are
14 "material" changes to any auto-renewal agreement between Defendant and
15 consumers;

16 c. Whether Defendant failed to provide clear and conspicuous notice to Plaintiff
17 and Class Members of its intent to renew withdrawals before automatically
18 deducting funds from their accounts; and

19 d. Whether Defendant failed to provide information to Plaintiff and Class
20 Members regarding how to cancel in a manner that is capable of being
21 retained by the consumer.

22 42. As someone whose bank account was debited on a reoccurring basis by Defendant
23 without Defendant obtaining a written authorization signed or similarly authenticated for
24 preauthorized electronic fund transfers and without being provided clear and conspicuous notice
25 of the charges, Plaintiff is asserting claims that are typical of The Classes.
26

27 43. Plaintiff will fairly and adequately protect the interests of the members of The
28 Classes. Plaintiff has retained attorneys experienced in the prosecution of class actions.

1 Cal. Bus. & Prof. Code § 17600, et seq. (“California’s Automatic Purchase Renewal Statute”),
2 to California consumers and the general public.

3 56. Plaintiff and members of the CAPRS Class have suffered an “injury in fact” and
4 have lost money and/or property as a result of Defendant’s: (a) failure to present Defendant’s
5 automatic renewal offer terms or continuous service offer terms in a clear and conspicuous
6 manner before the services or purchasing agreement is fulfilled and in visual proximity, or in the
7 case of an offer conveyed by voice, in temporal proximity, to the request for consent to the offer;
8 (b) charges to the consumer’s credit or debit card or the consumer’s account for an automatic
9 renewal or continuous service without first obtaining the consumer’s affirmative consent to the
10 agreement containing the automatic renewal offer terms or continuous service offer terms; (c)
11 failure to clearly and conspicuously give notice of a material change in the terms of the automatic
12 renewal or continuous service offer; and (d) failure to provide an acknowledgment that includes
13 the automatic renewal or continuous service offer terms, cancellation policy, and information
14 regarding how to cancel in a manner that is capable of being retained by the consumer; and where
15 Defendant also fails to disclose in the acknowledgment how to cancel and allow the consumer to
16 cancel before the consumer pays for the goods or services, in violation of Cal. Bus. & Prof. Code
17 § 17600, et seq.

19 57. As a direct and proximate result of Defendant’s aforementioned conduct and
20 representations, Defendant received and continues to hold monies rightfully belonging to
21 Plaintiff and other similarly situated consumers.

22 58. As a direct and proximate result of Defendant’s violations of Cal. Bus. & Prof.
23 Code § 17600, et seq., Plaintiff and members of the class are entitled to a declaration that
24 Defendant violated the California Automatic Purchase Renewal Statute.

25 59. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting
26 such conduct in the future.

27 ///

28 ///

COUNT III:

VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200
INDIVIDUALLY AND ON BEHALF OF THE CAPRS CLASS

1
2
3 60. Plaintiff incorporates by reference all of the above paragraphs of this Complaint
4 as though fully stated herein.

5 61. Actions for relief under the unfair competition law may be based on any business
6 act or practice that is within the broad definition of the UCL. Such violations of the UCL occur
7 as a result of unlawful, unfair or fraudulent business acts and practices. A plaintiff is required to
8 provide evidence of a causal connection between a defendant's business practices and the alleged
9 harm--that is, evidence that the defendant's conduct caused or was likely to cause substantial
10 injury. It is insufficient for a plaintiff to show merely that the defendant's conduct created a risk
11 of harm. Furthermore, the "act or practice" aspect of the statutory definition of unfair competition
12 covers any single act of misconduct, as well as ongoing misconduct.
13

UNFAIR

14
15 62. California Business & Professions Code § 17200 prohibits any "unfair ... business
16 act or practice." Defendant's acts, omissions, misrepresentations, and practices as alleged herein
17 also constitute "unfair" business acts and practices within the meaning of the UCL in that its
18 conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical,
19 oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits
20 attributable to such conduct. There were reasonably available alternatives to further Defendant's
21 legitimate business interests, other than the conduct described herein. Plaintiff reserves the right
22 to allege further conduct which constitutes other unfair business acts or practices. Such conduct
23 is ongoing and continues to this date.

24
25 63. In order to satisfy the "unfair" prong of the UCL, a consumer must show that the
26 injury: (1) is substantial; (2) is not outweighed by any countervailing benefits to consumers or
27 competition; and, (3) is not one that consumers themselves could reasonably have avoided.

28 64. Here, Defendant's conduct has caused and continues to cause substantial injury

1 to Plaintiff and members of the CAPRS Class. Plaintiff and members of the Class have suffered
2 injury in fact due to Defendant's material and undisclosed renewal of the automatic withdrawal.
3 Thus, Defendant's conduct has caused substantial injury to Plaintiff and the members of the
4 CAPRS Class.

5 65. Moreover, Defendant's conduct as alleged herein solely benefits Defendant while
6 providing no benefit of any kind to any consumer. Such deception utilized by Defendant
7 converted large sums of money from Plaintiff and CAPRS Class members without written
8 authorization or advance notice. This systematic scheme is tantamount to theft. Thus, the injury
9 suffered by Plaintiff and the members of the CAPRS Class is not outweighed by any
10 countervailing benefits to consumers.

11 66. Finally, the injury suffered by Plaintiff and members of the CAPRS Class is not
12 an injury that these consumers could reasonably have avoided. Defendant misappropriated funds
13 from Plaintiff and other consumers, and these consumers suffered injury in fact due to
14 Defendant's undisclosed and unexpected account withdrawals. As such, Defendant took
15 advantage of Defendant's position of perceived power in order to deceive Plaintiff and the
16 CAPRS Class members. Therefore, the injury suffered by Plaintiff and members of the CAPRS
17 Class is not an injury which these consumers could reasonably have avoided.

18 67. Thus, Defendant's conduct has violated the "unfair" prong of California Business
19 & Professions Code § 17200.
20

21 **FRAUDULENT**

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

25 69. The test for "fraud" as contemplated by California Business and Professions Code
26 § 17200 is whether the public is likely to be deceived. Unlike common law fraud, a § 17200
27 violation can be established even if no one was actually deceived, relied upon the fraudulent
28 practice, or sustained any damage.

PRAYER FOR RELIEF


WHEREFORE, Plaintiff, GREG PRICE, individually, and on behalf of all others similarly situated, respectfully requests judgment be entered against Defendant, for the following:

- a. That this action be certified as a class action on behalf of The Classes and Plaintiff be appointed as the representative of The Classes;
- b. Statutory damages of \$1,000.00, per Class Member, pursuant to the Electronic Fund Transfer Act, §916(a)(2)(A);
- c. Actual damages;
- d. Restitution of the funds improperly obtained by Defendant;
- e. Any and all statutory enhanced damages;
- f. All reasonable and necessary attorneys' fees and costs provided by statute, common law or the Court's inherent power;
- g. For equitable and injunctive and pursuant to California Business and Professions Code § 17203;
- h. For prejudgment interest at the legal rate; and
- i. Any other relief this Honorable Court deems appropriate.

Respectfully submitted this 14th Day of January, 2020.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By:



Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [California Service Employees International Union Branch Automatically Debits Membership Dues Without Consent, Lawsuit Says](#)
