

1 Frank S. Hedin (SBN 291289)  
2 **HEDIN HALL LLP**  
3 Four Embarcadero Center, Suite 1400  
4 San Francisco, CA 94104  
5 Telephone: (415) 766-3534  
6 Facsimile: (415) 402-0058  
7 Email: fhedin@hedinhall.com

Electronically FILED by  
Superior Court of California,  
County of Los Angeles  
4/20/2023 9:50 AM  
David W. Slayton,  
Executive Officer/Clerk of Court,  
By D. Jackson Aubry, Deputy Clerk

8 *Counsel for Plaintiff and the Putative Class*

9 [Additional Counsel on Signature Page]

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF LOS ANGELES**

12 DAMON TATE, INDIVIDUALLY  
13 AND ON BEHALF OF ALL OTHERS  
14 SIMILARLY SITUATED;

15 PLAINTIFF,

16 V.

17 800-FLOWERS, INC., D/B/A 1-800-  
18 FLOWERS.COM, HARRY & DAVID,  
19 PERSONALIZATION MALL,  
20 SHARI'S BERRIES, 1-800-  
21 BASKETS.COM, SIMPLY  
22 CHOCOLATE, FRUIT  
23 BOUQUETS.COM, CHERYL'S  
24 COOKIES, THE POPCORN  
25 FACTORY, WOLFERMAN'S  
26 BAKERY, AND VITAL CHOICE,

27 DEFENDANT.

CASE NO.: 23STCV08774

**CLASS ACTION COMPLAINT  
FOR VIOLATIONS OF:**

**UNFAIR COMPETITION LAW,  
CAL. BUS. & PROF. CODE §§  
17200, ET SEQ.**

**FALSE ADVERTISING LAW,  
CAL. BUS. & PROF. CODE §§  
17500, ET SEQ.**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Damon Tate, individually and on behalf of all others similarly  
2 situated, complains and alleges as follows based on personal knowledge as to  
3 himself, on the investigation of his counsel, and on information and belief as to all  
4 other matters.

5 **NATURE OF THE ACTION**

6 1. Plaintiff brings this Class Action Complaint against 800-Flowers, Inc.  
7 (“Defendant”) for engaging in an illegal “automatic renewal” scheme with respect  
8 to its Celebrations Passport product, which Defendant sells on its network of  
9 websites. Defendant is an online retailer of flowers and gifts. Defendant’s  
10 Celebrations Passport is a membership program that provides customers free  
11 shipping and no service fees for the first year at a cost of \$19.99, and then  
12 automatically renews every year after the initial year at a cost of \$29.99 plus tax  
13 (the “Automatic Renewal Fee”), which is charged to the consumer’s stored credit  
14 card, debit card or third-party payment account (collectively the “Payment  
15 Method”). Prior to assessing the Automatic Renewal Fees, Defendant not only  
16 failed to obtain Plaintiff’s and other California consumers’ consent to be charged  
17 these fees – Defendant failed to even disclose the existence of the fee to them in a  
18 clear and conspicuous manner. By assessing the Automatic Renewal Fees to  
19 Plaintiff and other California consumers without providing adequate notice or  
20 obtaining the requisite consent, Defendant violated California’s Automatic  
21 Renewal Law (“ARL”), Cal. Bus. & Prof. Code §§ 17600, *et seq.*

22  
23 2. The ARL requires online retailers like Defendant that sell  
24 automatically renewing subscriptions to California consumers to, *inter alia*: (a)  
25 obtain affirmative consent prior to the consumer’s purchase; (b) provide the  
26 complete auto-renewal terms in a clear and conspicuous manner and in visual  
27 proximity to the request for consent prior to the purchase; and (c) provide customers  
28

1 notice of an automatic renewal between 15 and 45 days before the offer renews. As  
2 is set forth herein, Defendant has violated all three of these requirements.

3 3. Specifically, Defendant systematically violates the ARL by: (i) failing  
4 to present the automatic renewal offer terms applicable to the Celebrations Passport  
5 in a clear and conspicuous manner and in visual proximity to the request for consent  
6 to the offer before the subscription or purchasing agreement is fulfilled, in violation  
7 of Section 17602(a)(1); (ii) charging consumers' Payment Method without first  
8 obtaining affirmative consent to the agreement containing the automatic renewal  
9 offer terms, in violation of Section 17602(a)(2); and (iii) failing to provide notice  
10 of the renewal between 15 and 45 days before the automatic renewal occurs, in  
11 direct violation of Section 17602(b)(2). Cal. Bus. & Prof. Code §§ 17602(a)(1),  
12 (a)(2), and (b)(2). As a result, all goods, wares, merchandise, or products sent to  
13 Plaintiff and the Class through the unlawful automatic renewal of a continuous  
14 service agreement are deemed to be "unconditional gifts" under the ARL. Cal. Bus.  
15 & Prof. Code § 17603.

17 4. Accordingly, Plaintiff brings this action individually and on behalf of  
18 all California purchasers of Celebrations Passport whose stored Payment Method  
19 was charged an Automatic Renewal Fee during the class period. Based on  
20 Defendant's unlawful conduct, Plaintiff seeks damages, restitution, injunctive  
21 relief, and reasonable attorneys' fees and costs, for: (i) violation of California's  
22 Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*; and  
23 (ii) violation of California's False Advertising Law ("FAL"), Cal. Bus. & Prof.  
24 Code §§ 17500, *et seq.*

25 **JURISDICTION AND VENUE**

26 5. Plaintiff brings this class action pursuant to Cal. Civ. Proc. Code § 382.  
27  
28



1 **California's Autorenewal LAW ("ARL")**

2 **Cal. Bus. Prof. Code § 17600, et. seq.**

3 11. In the 2009 Legislative Session the California Legislature passed the  
4 ARL, which was intended "to end the practice of ongoing charging of consumer  
5 credit or debit cards or third-party payment accounts without the consumers'  
6 explicit consent for ongoing shipments of a product or ongoing deliveries of  
7 service." Cal. Bus. Prof. Code § 17600.

8 12. The ARL addresses "increasingly common" consumer complaints of  
9 unwanted credit charges for products or services consumers did not explicitly  
10 request or know they were agreeing to, "often the result of agreements enumerated  
11 in the "fine print" on an order or advertisement that the consumer responded to."  
12 California Bill Analysis, S.B. 340 Sen., 4/21/2009.

13 13. Under the ARL an "automatic renewal means a plan or arrangement in  
14 which a paid subscription or purchasing agreement is automatically renewed at the  
15 end of a definite term for a subsequent term." Cal. Bus. Prof. Code § 17601(a).

16 14. The ARL requires that the following disclosures pertaining to an  
17 automatic renewal be "clear and conspicuous":  
18

- 19 1) That the subscription or purchasing agreement will continue until the  
20 consumer cancels;
- 21 2) The description of the cancellation policy that applies to the offer;
- 22 3) The recurring charges that will be charged to the consumer's credit or  
23 debit card or payment account with a third party as part of the  
24 automatic renewal plan or arrangement, and that the amount of the  
25 charge may change, if that is the case, and the amount to which the  
26 charge will change, if known;
- 27 4) The length of the automatic renewal term or that the service is  
28 continuous, unless the length of the term is chosen by the consumer;

1           5) The minimum purchase obligation, if any.

2 Cal. Bus. Prof. Code § 17601(b)

3           15. “Clear and conspicuous” or “clearly conspicuous” means in larger type  
4 than the surrounding text, or in contrasting type, font, or color to the surrounding  
5 text of the same size, or set off from the surrounding text of the same size by  
6 symbols or other marks, in a manner that clearly calls attention to the language.

7 Cal. Bus. & Prof. Code § 17601(c).

8           16. The ARL makes it unlawful for a business to (1) make an automatic  
9 renewal offer that fails to present the “automatic renewal offer terms” in a “clear  
10 and conspicuous manner” “before the subscription or purchasing agreement is  
11 fulfilled and in visual proximity . . . to the request for consent to the offer”; and (2)  
12 to charge the consumer’s Payment Method without first obtaining the consumer’s  
13 “affirmative consent” to the automatic renewal. Cal. Bus. Prof. Code § 17602(a)(1)  
14 & (2).

15           17. Under the ARL, where the initial term of an autorenewal offer is one  
16 year or longer, the consumer must be provided notice of renewal of the offer at least  
17 15 days before, but not more than 45 days before, the offer renews. Cal Bus. &  
18 Prof. Code § 17601(b)(2).

19  
20           **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

21           ***(a) The Celebrations Passport***

22           18. Defendant operates multiple consumer brands including 1-800-  
23 Flowers.com, Harry & David, Personalization Mall, Shari’s Berries, 1-800-  
24 Baskets.com, Simply Chocolate, Fruit Bouquets.com, Cheryl’s Cookies, the  
25 Popcorn Factory, Wolferman’s Bakery, and Vital Choice. These different brands  
26 offer products in various categories for the purpose of gift giving, such as flowers,  
27 gift baskets, cookies, healthy snacks, and fruit arrangements.  
28

1 19. Defendant charges customers shipping and handling fees for gift  
2 deliveries, and service fees for floral deliveries, across all of its brands. Defendant's  
3 "Celebrations Passport" product gives customers free shipping and allows  
4 customers to avoid service fees for one year for all orders made on Defendant's  
5 various websites.

6 20. On its network of websites Defendant advertises that it costs \$19.99 to  
7 purchase the Celebrations Passport and touts the benefits of free shipping and  
8 waived service fees. But what Defendant's offer deceptively conceals from  
9 consumers is that each year following the purchase of the Celebrations Passport,  
10 Defendant automatically charges the customer an Automatic Renewal Fee of  
11 \$29.99 – \$10.00 more (plus tax) than the initial fee – to the Payment Method  
12 supplied by the customer (and stored by Defendant) at enrollment. Defendant's  
13 offer also deceptively conceals from consumers that they may cancel the  
14 Celebration Passport service before it automatically renews.  
15

16 21. Defendant has used various means to induce customers to add the  
17 Celebrations Passport to their orders on the various websites where it does business.  
18 One tactic Defendant has used is to automatically add Celebrations Passport to  
19 customers' carts without customers requesting the Celebrations Passport be added.  
20 Defendant has also used a check box in its check-out flow, which requires a  
21 customer to select the Celebrations Passport as an item to be included in his or her  
22 cart. But regardless of the means Defendant has used to induce consumers to  
23 purchase the Celebrations Passport, Defendant has uniformly failed to disclose the  
24 key, statutorily required autorenewal terms, in a clear and conspicuous manner,  
25 *prior to* the customer's completion of the check-out process – namely: (a) the fact  
26 that the Celebrations Passport automatically renews, (b) that the renewal fee is  
27 \$29.99, \$10.00 higher than the introductory fee, and (c) that the customer's stored  
28

1 payment method will be charged every year, each of which is an independent  
2 violation of the ARL Cal. Bus. & Prof. Code §17602(a)(1).

3 22. It is unlawful under the ARL for Defendant to charge customers'  
4 Payment Method an Automatic Renewal Fee without first obtaining the consumers'  
5 affirmative consent to agreement containing the automatic renewal offer terms. Cal.  
6 Bus. & Prof. Code § 17602(a)(2). To the extent Defendant's checkout flow has  
7 included the necessary automatic renewal terms, these disclosures were not "clear  
8 and conspicuous" as required under the ARL and as such did not manifest a  
9 customer's consent to the autorenewal terms. "Clear and Conspicuous" means the  
10 disclosure of key terms is presented in larger type than the surrounding text, or in  
11 contrasting type, font, or color to the surrounding text of the same size, or set off  
12 from the surrounding text of the same size by symbols or other marks, in a manner  
13 that clearly calls attention to the language. Cal. Bus. & Prof. Code § 17601(c).

14 23. Defendant's websites do not display the required autorenewal  
15 disclosures in larger type than the surrounding text, or in contrasting type, font, or  
16 color to the surrounding text of the same size, or set off from the surrounding text  
17 of the same size by symbols or other marks, in a manner that clearly calls attention  
18 to the language. Cal. Bus. & Prof. Code § 17601(c).

19 24. Rather, to capture more revenue per transaction, Defendant designed  
20 its websites to present the terms of the Celebrations Passport in an intentionally  
21 inconspicuous manner, including by hiding the fact that Celebrations Passport is  
22 automatically renewed each year and that a customer's stored Payment Method will  
23 be automatically charged each year (and that the customer can cancel at any time)  
24 – such as, by displaying such language in font type that is smaller than and not  
25 otherwise in contrast to surrounding text, and not otherwise in a manner that clearly  
26 calls attention to such language – and by falsely representing to consumers that the  
27 product costs \$19.99/year when in fact it renews every year after the initial year at  
28 the price at \$29.99 plus tax.

1           25. Further, once a customer is enrolled in the Celebrations Passport,  
2 Defendant does not send customers who are enrolled in service a notice between  
3 15 and 45 days before Celebrations Passport automatically renews for another year,  
4 as required under Cal. Bus. & Prof. Code § 17602(b)(2) – even though Defendant  
5 previously obtained these customers’ mailing addresses, email addresses, and  
6 phone numbers at the time of their initial purchases and could thus readily provide  
7 them with such notices.

8           ***(b) Plaintiff’s Purchase of Celebrations Passport***

9           26. In 2020, Plaintiff made a purchase from Defendant on its 1-800-  
10 Flowers.com website, and such purchase included the Celebrations Passport.  
11 Plaintiff was assessed \$19.99 (plus taxes) for the Celebration Passport. Plaintiff  
12 provided his address, email address, and telephone number to Defendant at the time  
13 of his purchase  
14

15           27. At the time of his 2020 purchase, Defendant stored Plaintiff’s Visa  
16 credit card information.

17           28. Defendant then automatically charged Plaintiff’s Visa credit card  
18 \$33.06 (representing the \$29.99 Automatic Renewal Fee plus taxes). For example,  
19 on or about March 10, 2023, Defendant charged Plaintiff’s Visa card a \$33.06  
20 Automatic Renewal Fee for Celebrations Passport.

21           29. Plaintiff was not aware of either the Automatic Renewal Fee or its ten-  
22 dollar price increase because Defendant failed to present the Celebration Passport’s  
23 “automatic renewal offer terms” in “a clear and conspicuous manner” on its 1-800-  
24 Flowers.com website. Indeed, Defendant’s 1-800-Flowers.com website did not  
25 display the required autorenewal disclosures in larger type than the surrounding  
26 text, or in contrasting type, font, or color to the surrounding text of the same size,  
27 or set off from the surrounding text of the same size by symbols or other marks, in  
28

1 a manner that clearly calls attention to the language. Cal. Bus. & Prof. Code §  
2 17601(c).

3 30. Plaintiff did not affirmatively consent to his credit card information  
4 being stored, his credit card being charged the Automatic Renewal Fee for the  
5 Celebrations Passport, or the increased price for the Automatic Renewal Fee,  
6 because such terms were not adequately disclosed when he made his initial purchase  
7 in 2020..

8 31. Nor did Defendant provide Plaintiff notice between 15 and 45 days  
9 before Celebrations Passport automatically renewed and Defendant charged  
10 Plaintiff's Visa credit card \$33.06 on or about March 10, 2023.

11 32. Had Plaintiff known that his initial purchase in 2020, which included  
12 the Celebrations Passport, was subject to automatic renewal or the Automatic  
13 Renewal Fee, that his Visa card would automatically be charged each year, or that  
14 Automatic Renewal Fee was \$10.00 more than the stated fee for the initial year,  
15 Plaintiff would not have purchased the Celebrations Passport in the first place, due  
16 to, among other reasons, the hassle of monitoring a subscription and timely  
17 cancelling. Plaintiff did not know these facts because of the deceptive marketing  
18 Defendant used (and continues to use) to sell Celebrations Passport, including  
19 Defendant's failure to present the automatic renewal offer terms clearly and  
20 conspicuously in a manner which clearly calls attention to the auto renewal terms  
21 of Defendant's offer before Plaintiff agreed to purchase Celebrations Passport.  
22 Moreover, Plaintiff could not reasonably cancel his Celebrations Passport before it  
23 automatically renewed because, in addition to the foregoing, Defendant failed to  
24 notify Plaintiff of the Celebration Passport's renewal between 15 and 45 days in  
25 advance of the automatic renewal as required by the ARL.

26 33. The facts giving rise to Plaintiff's claims are materially the same as the  
27 Class he seeks to represent.

28



1           38. *Well-Defined Community of Interest.* There is a well-defined  
2 community of interest among the members of the class because common questions  
3 of law and fact exist as to all members of the class and predominate over any  
4 questions affecting solely individual members of the class. Common question of  
5 law and fact include, but are not limited to:

- 6           (a) Whether Defendant’s annual renewal of Celebrations Passport  
7 constitutes an “automatic renewal” within the meaning of Cal. Bus. &  
8 Prof. Code § 17601(a);  
9  
10          (b) Whether Defendant failed to present the automatic renewal offer terms,  
11 or continuous service offer terms, in a clear and conspicuous manner  
12 before the subscription or purchasing agreement was fulfilled and in  
13 visual proximity to the request for consent to the offer, in violation of  
14 Cal. Bus. & Prof. Code § 17602(a)(1);  
15          (c) Whether Defendant charged Plaintiff’s and Class members’ stored  
16 Payment Method an Automatic Renewal Fee without first obtaining their  
17 affirmative consent to the automatic renewal offer terms in violation of  
18 Cal. Bus. & Prof. Code §17602(a)(2);  
19          (d) Whether the goods and services provided by Defendant are deemed  
20 “unconditional gifts” in accordance with Cal. Bus. & Prof. Code § 17603;  
21          (e) Whether Defendant’s conduct alleged herein violated California’s Unfair  
22 Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.*  
23 and/or California’s False Advertising Law (“FAL”), Cal. Bus. & Prof.  
24 Code §§ 17500, *et seq.*;  
25          (f) Whether Plaintiff and the Class are entitled to, and the amount of any,  
26 damages and/or restitution;  
27          (g) Whether Defendant should be enjoined from further engaging in the  
28 misconduct alleged herein; and

1 (h) Whether Plaintiff and the Class are entitled to attorneys' fees and costs  
2 under Cal. Civ. Proc. Code § 1021.5.

3 39. **Typicality.** Plaintiff's claims are typical of the claims of the Class in  
4 that Plaintiff and the Class sustained damages as a result of Defendant's uniform  
5 wrongful conduct, based upon Defendant's failure to obtain Plaintiff's and the  
6 Class's affirmative consent to automatic renewal offer terms or continuous service  
7 offer terms before charging their Payment Methods.

8 40. **Adequacy.** Plaintiff will fairly and adequately protect Class members'  
9 interests. Plaintiff has no interests antagonistic to Class members' interests, and  
10 Plaintiff has retained counsel that have considerable experience and success in  
11 prosecuting complex class-actions and consumer-protection cases.

12 41. **Superiority.** A class action is superior to all other available methods  
13 for the fair and efficient adjudication of this controversy because joinder of all  
14 members is impracticable, the likelihood of individual class members prosecuting  
15 separate claims is remote, and individual class members do not have a significant  
16 interest in individually controlling the prosecution of separate actions. Relief  
17 concerning Plaintiff's rights under the laws alleged herein and with respect to the  
18 class as a whole would be appropriate. Plaintiff knows of no difficulty to be  
19 encountered in the management of this action that would preclude its maintenance  
20 as a class action.

21 42. Defendant has acted or failed to act on grounds generally applicable to  
22 the Class, thereby making appropriate final injunctive relief with respect to the  
23 Class as a whole.

24 43. Without a class action, Defendant will continue a course of action that  
25 will result in further damages to Plaintiff and members of the Class and will likely  
26 retain the benefits of its wrongdoing.  
27  
28



1 B. Defendant charged Plaintiff's and the Class's credit or debit cards, or  
2 the consumer's account with a third party, for an automatic renewal or  
3 continuous service without first obtaining the consumer's affirmative  
4 consent to the agreement containing the automatic renewal offer terms  
5 or continuous offer terms, as required by Cal. Bus. & Prof. Code §§  
6 17602(a)(2); and

7 C. Defendant failed to provide notice of the automatic renewal of an  
8 automatic renewal offer or continuous service offer with an initial term  
9 of one year or longer, that automatically renews unless the consumer  
10 cancels the automatic renewal or continuous service, at least 15 days  
11 and not more than 45 days before the automatic renewal offer or  
12 continuous service offer renews, as required by Cal. Bus. & Prof. Code  
13 §§ 17602(b)(2).  
14

15 50. Under the "unfair" prong of the UCL, a business practice is unfair if  
16 that practice offends an established public policy or when the practice is immoral,  
17 unethical, oppressive, unscrupulous or substantially injurious to consumers.

18 51. Defendant committed unfair acts and practices in violation of the UCL  
19 by, *inter alia*, mispresenting in marketing materials and creating the false  
20 impression that the Celebration Passport's fee was \$19.99 for each and every year  
21 when, in fact, the fee automatically increased to \$29.99 after the first year.

22 52. Plaintiffs and the Class reserve the right to allege other violations of  
23 law which constitute unlawful, unfair, or fraudulent business acts or practices as  
24 Defendant's conduct is ongoing and continues to this date.

25 53. All products received from Defendant in violation of the ARL  
26 constitute "unconditional gifts." See Cal. Bus. Prof. Code § 17603. As a direct and  
27 proximate result of Defendant's unlawful and/or unfair practices described herein,  
28 Defendant has received, and continues to hold, unlawfully obtained property and

1 money belonging to Plaintiff and the Class in the form of automatic renewal  
2 payments made by Plaintiff and the Class for Celebrations Passport. Defendant has  
3 profited from its unlawful and/or unfair acts and practices in the amount of the  
4 monies obtained from those unlawful renewals and interest accrued thereon.

5 54. Defendant's acts and omissions as alleged herein violate obligations  
6 imposed by statute, are substantially injurious to consumers, offend public policy,  
7 and are immoral, unethical, oppressive and unscrupulous as the gravity of the  
8 conduct outweighs any alleged benefits attributable to such conduct.

9 55. There were reasonably available alternatives to further Defendant's  
10 legitimate business interests, other than the conduct described herein.

11 56. Defendant's acts, omissions, nondisclosures, and misleading  
12 statements as alleged herein were and are false, misleading, and/or likely to deceive  
13 the consuming public.

14 57. As a result of Defendant's unlawful and unfair business practices,  
15 Plaintiffs and the Class have suffered an injury in fact and have lost money in an  
16 amount to be determined at the trial of this action.

17 58. Pursuant to Cal. Bus. & Prof. Code §17203, Plaintiff and the other  
18 members of the Class are entitled to an order: (1) requiring Defendant to make  
19 restitution to Plaintiff and the Class; (2) enjoining Defendant from charging  
20 Plaintiff's and Class members' credit cards, debit cards, and/or third party payment  
21 accounts until such time as Defendant obtains the consumer's affirmative consent  
22 to an agreement that contains clear and conspicuous disclosures of all automatic  
23 renewal or continuous service offer terms; and (3) enjoining Defendant from  
24 making automatic renewal or continuous service offers in the State of California  
25 that do not comply with the ARL.  
26  
27  
28

1  
2  
3                                   **SECOND CLAIM FOR RELIEF**  
4                   **Violations of California’s False Advertising Law (“FAL”),**  
5                   **(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

6           59. Plaintiff re-alleges and incorporates by reference every allegation set  
7 forth in the paragraphs 1- 44 of this Complaint as though alleged in this claim.

8           60. Plaintiff brings this claim individually and on behalf of the members  
9 of the proposed Class against Defendant.

10           61. California’s False Advertising Law, Cal. Bus. & Prof. Code §§ 17500,  
11 *et seq.*, makes it “unlawful for any person to make or disseminate or cause to be  
12 made or disseminated before the public in this state, . . . in any advertising device .  
13 . . or in any other manner or means whatever, including over the Internet, any  
14 statement, concerning . . . personal property or services, professional or otherwise,  
15 or performance or disposition thereof, which is untrue or misleading and which is  
16 known, or which by the exercise of reasonable care should be known, to be untrue  
17 or misleading.

18           62. Defendant committed acts of false advertising, as defined by § 17500,  
19 by intentionally making and disseminating statements to consumers in California  
20 and the general public concerning Celebrations Passport, as well as circumstances  
21 and facts connected to such products and services, which are untrue and misleading  
22 on their face and by omission, and which are known (or which by the exercise of  
23 reasonable care should be known) by Defendant to be untrue or misleading, as  
24 alleged above. Defendant has also intentionally made or disseminated such untrue  
25 or misleading statements and material omissions to consumers in California and to  
26 the public as part of a plan or scheme with intent not to sell those services as  
27 advertised, as alleged above.  
28

1           63. As set forth above, Defendant's statements include but are not limited  
2 to representations and omissions made to consumers before the purchase of  
3 Celebrations Passport regarding the terms of payment and cancellation of a  
4 consumer's automatic payments. Such representations and omissions in  
5 Defendant's marketing materials constitute false and deceptive advertisements.

6           64. Defendant violated CAL. BUS. & PROF. CODE § 17500 by, *inter*  
7 *alia*:

- 8           A. Stating and creating the false impression that the Celebrations Passport  
9 cost \$19.99 annually when after the first year Celebrations Passport  
10 cost \$29.99 (plus tax);  
11           B. Omitting the fact that Celebrations Passport would be automatically  
12 renewed;  
13           C. Omitting the fact that Defendant's stored customers' Payment  
14 Methods and said Payment Methods would be automatically charged;  
15 and  
16           D. Omitting the means and method by which a customer may cancel their  
17 Celebrations Passport subscription.  
18

19           65. Defendant's actions in violation of § 17500, as described herein, were  
20 false and misleading such that the general public is and was likely to be deceived.

21           66. Plaintiff and the members of the Class were deceived by Defendant's  
22 statements and omissions made online when they signed up and paid for  
23 Celebrations Passport. There is a strong probability that other California consumers  
24 and members of the public were also or are likely to be deceived as well. Any  
25 reasonable consumer would be misled by Defendant's false and misleading  
26 statements and material omissions. Plaintiff and other members of the Class did not  
27 learn of Defendant's automatic payment or cancellation policies until after they had  
28

1 already purchased Celebrations Passport and were wrongly charged a renewal fee.  
2 As such, they relied on Defendant's statements and omissions to their detriment.

3 67. Plaintiff and the Class lost money or property as a result of  
4 Defendant's violations of CAL. BUS. & PROF. CODE § 17500 because they would  
5 not have purchased Celebrations Passport on the same terms if the true facts were  
6 known about the product as Celebrations Passport does not have the characteristics  
7 represented by Defendant.

8 68. Plaintiff, individually and on behalf of all similarly situated California  
9 consumers, seeks individual, representative, and public injunctive relief and any  
10 other necessary orders or judgments that will prevent Defendant from continuing  
11 with its false and deceptive advertisements and omissions; restitution that will  
12 restore the full amount of their money or property; disgorgement of Defendant's  
13 relevant profits and proceeds; and an award of costs and reasonable attorneys' fees.  
14

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- 17 A. For an order certifying Plaintiff as a Class representative under Cal. Civ.  
18 Proc. Code § 382 and appointing Plaintiff's counsel as Class counsel;  
19 B. For an order finding in favor of Plaintiff and the Class on all claims  
20 alleged herein;  
21 C. For actual, compensatory, statutory, and/or punitive damages in amounts  
22 to be determined by the Court and/or jury;  
23 D. For prejudgment interest on all amounts awarded;  
24 E. For an order of restitution and all other forms of equitable monetary relief;  
25 F. For injunctive relief as pleaded or as the Court may deem proper; and  
26 G. For an order awarding Plaintiff and the Class their reasonable attorneys'  
27 fees expenses, and costs of suit; and  
28

1 H. Awarding such other equitable or other relief as the Court may deem just  
2 and proper.

3  
4 **JURY DEMAND**

5 Plaintiff hereby demands a trial by jury on all claims and issues so triable.

6  
7 Dated: April 19, 2023

Respectfully Submitted,

8 **HEDIN HALL LLP**

9 By: /s/ Frank S. Hedin

10 Frank S. Hedin (SBN 291289)

11 fhedin@hedinhall.com

12 David W. Hall (SBN 274921)

13 dhall@hedinhall.com

14 Armen Zohrabian (SBN 230492)

15 azohrabian@hedinhall.com

16 **HEDIN HALL LLP**

17 Four Embarcadero Center, Suite 1400

18 San Francisco, CA 94104

19 Telephone: (415) 766-3534

20 Facsimile: (415) 402-0058

21  
22  
23  
24  
25  
26  
27  
28  
*Counsel for Plaintiff and the Putative Class*

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [1-800-Flowers Celebrations Passport Program Auto-Renewals Violate California Law, Class Action Says](#)

---