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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 INEZ VASQUEZ-COSSIO, individually
and on behalf of all others similarly
12 situated,

13 Plaintiff,

14 v.

15 YOGA CLUB, LLC, a Delaware limited
liability company; and DOES 1 – 10,
16 inclusive,

17 Defendants.
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Case No. 5:19-cv-348

CLASS ACTION COMPLAINT FOR:

1. **VIOLATIONS OF CALIFORNIA’S.
AUTOMATIC RENEWAL LAW
(BUSINESS AND PROFESSIONS
CODE §§ 17600-17604); and**
 2. **VIOLATIONS OF CALIFORNIA’S
UNFAIR COMPETITION LAW
(BUSINESS AND PROFESSIONS
CODE §§ 17200-17204).**
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1 Plaintiff Inez Vasquez-Cossio (“Plaintiff”), on behalf of herself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION & OVERVIEW OF CLAIMS**

4 1. Plaintiff brings this class action on behalf of herself and a class of others
5 similarly situated consisting of all persons in the United States who, within the
6 applicable statute of limitations period up to and including the date of judgment in this
7 action, purchased subscriptions for any products (such as yoga workout clothing) from
8 Yoga Club, LLC (“Defendant”). The class of others similarly situated to Plaintiff is
9 referred to herein as “Class Members.” The claims for damages, restitution, injunctive
10 and/or other equitable relief, and reasonable attorneys’ fees and costs arise under
11 California Business and Professions Code (hereinafter “Cal. Bus. & Prof. Code”) §§
12 17602, 17603, and 17604) and 17200, *et seq.*, and California Code of Civil Procedure §
13 1021.5. Plaintiff and Class Members are consumers for purposes of Cal. Bus. & Prof.
14 Code §§ 17600-17606.

15 2. During the Class Period, Defendant made automatic renewal or continuous
16 service offers to consumers in and throughout the United States and failed to provide an
17 acknowledgment that includes the automatic renewal or continuous service offer terms,
18 cancellation policy, and information regarding how to cancel in a manner that is
19 capable of being retained by the consumer in violation of Cal. Bus. & Prof. Code §§
20 17602(a)(3) and 17602(b). As a result, all goods, wares, merchandise, or products sent
21 to Plaintiff and Class Members under the automatic renewal of continuous service
22 agreements are deemed to be an unconditional gift pursuant to Cal. Bus. & Prof. Code §
23 17603.

24 3. As a result of the above, Plaintiff, on behalf of herself and Class Members,
25 seeks damages, restitution, declaratory relief, injunctive relief and reasonable attorneys’
26 fees and costs pursuant to Cal. Bus. & Prof. Code, §§ 17603, 17203, and 17204, and
27 Code of Civil Procedure § 1021.5.

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JURISDICTION AND VENUE

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2 4. This Court has diversity jurisdiction over this class action pursuant to 28
3 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005 because the
4 amount in controversy exceeds five million dollars (\$5,000,000.00), exclusive of
5 interest and costs, and is a class action in which some members of the class are citizens
6 of different states than Defendant. *See* 28 U.S.C. § 1332(d)(2)(A).

7 5. This Court also has personal jurisdiction over Defendant because
8 Defendant currently does business in this state.

9 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because
10 Defendant is subject to personal jurisdiction in this District and a substantial portion of
11 the conduct complained of herein occurred in this District.

PARTIES

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13 7. Plaintiff purchased a subscription plan from Defendant in California
14 during the Class Period. Plaintiff and Class Members are consumers as defined under
15 Cal. Bus. & Prof. Code § 17601(d).

16 8. Plaintiff is informed and believes, and upon such information and belief
17 alleges, that Defendant Yoga Club, LLC is a Delaware limited liability company with
18 its principal place of business located in El Segundo, California. Defendant operates in
19 California and has done business throughout California and throughout the United
20 States at all times during the Class Period. Also during the Class Period, Defendant
21 made automatic renewal or continuous service offers to consumers in California and
22 throughout the United States. Defendant operates a website which markets
23 subscriptions for yoga workout clothing and related products.

24 9. The true names and capacities of the Defendants sued herein as DOES 1
25 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such
26 Defendants by fictitious names. Each of the Defendants designated herein as a DOE is
27 legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of
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1 Court to amend this Complaint to reflect the true names and capacities of the DOE
2 Defendants when such identities become known.

3 10. At all relevant times, each and every Defendant was acting as an agent
4 and/or employee of each of the other Defendants and was acting within the course
5 and/or scope of said agency and/or employment with the full knowledge and consent of
6 each of the Defendants. Each of the acts and/or omissions complained of herein were
7 alleged and made known to, and ratified by, each of the other Defendants (Yoga Club,
8 LLC and DOE Defendants will hereafter collectively be referred to as “Defendant”).

9 **FACTUAL BACKGROUND**

10 **California Business Professions Code §§ 17600-17606**

11 11. On December 1, 2010, sections 17600-17606 of the Cal. Bus. & Prof.
12 Code came into effect. The Legislature’s stated intent for this Article was to end the
13 practice of ongoing charges to consumers’ Payment Methods without consumers’
14 explicit consent for ongoing shipments of a product or ongoing deliveries of service.
15 *See* Cal. Bus. & Prof. Code § 17600.

16 12. Cal. Bus. & Prof. Code § 17602(a) makes it unlawful for any business
17 making an automatic renewal or continuous service offer to a consumer in this state to
18 do, among other things, the following:

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

24 13. Cal. Bus. & Prof. Code § 17601(a) defines the term “Automatic renewal”
25 as a “plan or arrangement in which a paid subscription or purchasing agreement is
26 automatically renewed at the end of a definite term for a subsequent term.”

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

11 15. Pursuant to Cal. Bus. & Prof. Code § 17601(c), “clear and conspicuous” or
12 “clearly and conspicuously” means “in larger type than the surrounding text, or in
13 contrasting type, font, or color to the surrounding text of the same size, or set off from
14 the surrounding text of the same size by symbol ls or other marks, in a manner that
15 clearly calls attention to the language.”

16 16. Section 17602(b) provides: “A business making automatic renewal or
17 continuous service offers shall provide a toll-free telephone number, electronic mail
18 address, a postal address only when the seller directly bills the consumer, or another
19 cost-effective, timely, and easy-to-use mechanism for cancellation that shall be
20 described in the acknowledgment specified in paragraph (3) of subdivision (a).”

21 17. Section 17603 of Cal. Bus. & Prof. Code provides: “In any case in which a
22 business sends any goods, wares, merchandise, or products to a consumer, under a
23 continuous service agreement or automatic renewal of a purchase, without first
24 obtaining the consumer’s affirmative consent as described in Section 17602, the goods,
25 wares, merchandise, or products shall for all purposes be deemed an unconditional gift
26 to the consumer, who may use or dispose of the same in any manner he or she sees fit
27 without any obligation whatsoever on the consumer’s part to the business, including,
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1 but not limited to, bearing the cost of, or responsibility for, shipping any goods, wares,
2 merchandise, or products to the business.”

3 18. The courts have recognized a private right of action under sections 17600-
4 17606 of the Cal. Bus. & Prof. Code (the “Automatic Renewal Law” or “ARL”). In
5 *Kissel v. Code 42 Software, Inc.* 2016 WL 7647691 (C.D. Cal. Apr. 14, 2016), the
6 Court held that “in viewing the statutory text of the ARL as well as the statutory scheme
7 of which it is a part, we conclude that the ARL reflects a clear legislative intent to
8 provide a private right of action.” (*Id.* at *7.)

9 **Defendant’s Business**

10 19. At all relevant times, Defendant provided, among other things,
11 subscription programs for **yoga workout clothing** and related **products**. Defendant’s
12 services plan constitutes an automatic renewal and/or continuous service plan or
13 arrangement for the purposes of Cal. Bus. & Prof. Code § 17601.

14 **Defendant Failed to Provide an Acknowledgment as Required by Cal. Bus. &**
15 **Prof. Code §§ 17602(a)(3) and 17602(b)**

16 20. After Plaintiff and Class Members subscribed to one of Defendant’s
17 subscription plans, Defendant sent to Plaintiff and Class Members an email entitled
18 “Here's Your YogaClub Order Receipt :).” However, Defendant has failed, and
19 continues to fail, to provide an acknowledgement that includes the automatic renewal or
20 continuous service offer terms, cancellation policy, and information on how to cancel in
21 a manner that is capable of being retained by Plaintiff and Class Members in violation
22 of Cal. Bus. & Prof. Code §§ 17602(a)(3) and 17602(b). Moreover, Defendant failed to
23 provide Plaintiff and Class Members with an acknowledgement regarding how to
24 cancel the subscription and allow Plaintiff and Class Members to cancel before
25 payment.

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1 From: **YogaClub** <info@yogaclub.com>
2 Date: Wed, Jun 21, 2017 at 3:15 PM
3 Subject: Here's Your YogaClub Order Receipt :)
4 To:



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9 **YogaClub**

ORDER #

10 Hey INEZ,

11 Thank you so much once again for your YogaClub order! Our hand curated,
12 stylish yoga apparel will make you look and feel beautiful, both on and off the
13 mat.

14 This is your official order receipt so please keep this email for future reference
15 on any customer service inquiries that you might have. Here are your order
16 details:

Order Summary



The Chakra (Ships every 1 Month) × 1

\$45.00

Subtotal

\$45.00

Shipping

\$4.95

State Tax

\$2.70

Total

\$52.65 USD

Your Membership Information

Shipping address

INEZ VASQUEZ-COSSIO

Billing address

INEZ VASQUEZ-COSSIO

Shipping method

Shipping & Handling

Payment method

— **\$52.65 USD**

Was this a gift card purchase?

1 You will receive your unique gift code in an email within the next 24 hours.
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9 You are receiving this email because you made a purchase at YogaClub
10 If you have any questions, contact us at support@yogaclub.zendesk.com
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15 CLASS ACTION ALLEGATIONS

16 21. Plaintiff brings this action, on behalf of herself and all others similarly
17 situated, as a class action pursuant to Rule 23(a) of the Federal Rules of Civil
18 Procedure. The proposed Class (the “Class”) that Plaintiff seeks to represent is
19 composed of and defined as:

20 **“All persons within California that, within the applicable statute of**
21 **limitations period, up to and including the date of judgment in this**
22 **action, purchased any product or service in response to an offer**
23 **constituting an “Automatic Renewal” as defined by § 17601(a) of the**
24 **Business and Professions Code from Yoga Club, LLC, its**
25 **predecessors, or its affiliates, via the website yogaclub.com.”**

26 22. This action is brought and may be properly maintained as a class action
27 pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4) and 23(b)(1)-
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1 (3). This action satisfies the numerosity, typicality, adequacy, predominance and
2 superiority requirements of those provisions.

3 23. [Fed. R. Civ. P. 23(a)(1)] The Class is so numerous that the individual
4 joinder of all of its members is impractical. While the exact number and identities of
5 Class members are unknown to Plaintiff at this time and can only be ascertained
6 through appropriate discovery, Plaintiff is informed and believes the Class includes
7 hundreds of thousands of members. Plaintiff alleges that the Class may be ascertained
8 by the records maintained by Defendant.

9 24. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all
10 members of the Class that predominate over any questions affecting only individual
11 members of the Class. These common legal and factual questions, which do not vary
12 from class member to class member, and which may be determined without reference to
13 the individual circumstances of any class member, include, but are not limited to, the
14 following:

- 15 i) Whether Defendant failed to provide an acknowledgement that
16 included the automatic renewal or continuous service offer terms,
17 cancellation policy, and information on how to cancel in a manner
18 that is capable of being retained by Plaintiff and Class Members, in
19 violation of Cal. Bus. & Prof. Code § 17602(a)(3);
- 20 ii) Whether Defendant failed to provide an acknowledgment that
21 describes a cost-effective, timely, and easy-to-use mechanism for
22 cancellation in violation of Cal. Bus. & Prof. Code § 17602(b);
- 23 iii) Whether Plaintiff and the Class Members are entitled to restitution
24 of money paid in circumstances where the goods and services
25 provided by Defendant are deemed an unconditional gift in
26 accordance with Cal. Bus. & Prof. Code § 17603;
- 27 iv) Whether Plaintiff and Class Members are entitled to restitution in
28 accordance with Cal. Bus. & Prof. Code §§ 17200, 17203;

- 1 v) Whether Plaintiff and Class Members are entitled to injunctive relief
- 2 under Cal. Bus. & Prof. Code § 17203;
- 3 vi) Whether Plaintiff and Class Members are entitled to attorneys' fees
- 4 and costs under California Code of Civil Procedure § 1021.5; and
- 5 vii) The proper formula(s) for calculating the restitution owed to Class
- 6 Members.

7 25. [Fed. R. Civ. P. 23(a)(3)] Plaintiff's claims are typical of the claims of the
8 members of the Class. Plaintiff and all members of the Class have sustained injury and
9 are facing irreparable harm arising out of Defendant's common course of conduct as
10 complained of herein. The losses of each member of the Class were caused directly by
11 Defendant's wrongful conduct as alleged herein.

12 26. [Fed. R. Civ. P. 23(a)(4)] Plaintiff will fairly and adequately protect the
13 interests of the members of the Class. Plaintiff has retained attorneys experienced in the
14 prosecution of class actions, including complex consumer and mass tort litigation.

15 27. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available
16 methods of fair and efficient adjudication of this controversy, since individual litigation
17 of the claims of all Class members is impracticable. Even if every Class member could
18 afford individual litigation, the court system could not. It would be unduly burdensome
19 to the courts in which individual litigation of numerous issues would proceed.
20 Individualized litigation would also present the potential for varying, inconsistent, or
21 contradictory judgments and would magnify the delay and expense to all parties and to
22 the court system resulting from multiple trials of the same complex factual issues. By
23 contrast, the conduct of this action as a class action, with respect to some or all of the
24 issues presented herein, presents fewer management difficulties, conserves the
25 resources of the parties and of the court system, and protects the rights of each Class
26 member.

27 28. [Fed. R. Civ. P. 23(b)(1)(A)] The prosecution of separate actions by
28 thousands of individual Class members would create the risk of inconsistent or varying

1 adjudications with respect to, among other things, the need for and the nature of proper
2 notice, which Defendant must provide to all Class members.

3 29. [Fed. R. Civ. P. 23(b)(1)(B)] The prosecution of separate actions by
4 individual class members would create a risk of adjudications with respect to them that
5 would, as a practical matter, be dispositive of the interests of the other Class members
6 not parties to such adjudications or that would substantially impair or impede the ability
7 of such non-party Class members to protect their interests.

8 30. [Fed. R. Civ. P. 23(b)(2)] Defendant has acted or refused to act in respects
9 generally applicable to the Class, thereby making appropriate final injunctive relief with
10 regard to the members of the Class as a whole.

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PROVIDE ACKNOWLEDGMENT WITH**
13 **AUTOMATIC RENEWAL TERMS AND INFORMATION REGARDING**
14 **CANCELLATION POLICY**

15 **(CAL. BUS. & PROF. CODE §§ 17602(a)(3), 17602(b))**

16 **(By Plaintiff, on her own behalf and on behalf of the Class, against All Defendants)**

17 31. The foregoing paragraphs are alleged herein and are incorporated herein
18 by reference.

19 32. Cal. Bus. & Prof. Code§ 17602(a)(3) provides:

20 (a) It shall be unlawful for any business making an automatic renewal or
21 continuous service offer to a consumer in this state to do any of the
22 following:

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

27 33. Cal. Bus. & Prof. Code§ 17602(b) provides:
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“A business making automatic renewal or continuous service offers shall provide a toll-free telephone number, electronic mail address, a postal address only when the seller directly bills the consumer, or another cost-effective, timely, and easy-to-use mechanism for cancellation that shall be described in the acknowledgment specified in paragraph (3) of subdivision (a).”

34. Plaintiff and Class Members purchased Defendant’s **yoga workout clothing** and related **products** for personal, family or household purposes. Defendant failed to provide an acknowledgement that includes the automatic renewal or continuous service offer terms, cancellation policy, and information on how to cancel in a manner that is capable of being retained by Plaintiff and Class Members.

35. As a result of Defendant’s violations of Cal. Bus. & Prof. Code §§ 17602(a)(3) and 17602(b), Defendant is subject to all civil remedies under Cal. Bus. & Prof. Code § 17604 that apply to a violation of Article 9, of Chapter 1 of Part 3, of Division 7 of the Cal. Bus. & Prof. Code.

36. Plaintiff, on behalf of herself and Class Members, requests relief as described below.

SECOND CAUSE OF ACTION

VIOLATION OF THE UNFAIR COMPETITION LAW

(CAL. BUS. & PROF. CODE § 17200 *et. seq.*)

(By Plaintiff, on her own behalf and on behalf of the Class, against All Defendants)

37. The foregoing paragraphs are alleged herein and are incorporated herein by reference.

38. Cal. Bus. & Prof. Code § 17200, *et seq.* (the “UCL”) prohibits unfair competition in the form of any unlawful or unfair business act or practice. Cal. Bus. & Prof. Code § 17204 allows “a person who has suffered injury in fact and has lost money or property” to prosecute a civil action for violation of the UCL. Such a person may bring such an action on behalf of himself or herself and others similarly situated who are affected by the unlawful and/or unfair business practice or act.

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1 39. Since December 1, 2010, and continuing to the present, Defendant has
2 committed unlawful and/or unfair business acts or practices as defined by the UCL, by
3 violating Cal. Bus. & Prof. Code §§ 17602(a)(3) and 17602(b). The public policy
4 which is a predicate to a UCL action under the unfair prong of the UCL is tethered to a
5 specific statutory provision. *See* Cal. Bus. & Prof. Code §§ 17600, 17602. In addition,
6 besides offending an established public policy, Defendant's act or practice is immoral,
7 unethical, oppressive, unscrupulous or substantially injurious to consumers. Further,
8 the utility of Defendant's conduct is outweighed by the gravity of the harm to Plaintiff
9 and Class Members.

10 40. Plaintiff has standing to pursue this claim because she suffered injury in
11 fact and has lost money or property as a result of Defendant's actions as set forth herein.
12 Plaintiff purchased Defendant's **yoga workout clothing** and related **products** for
13 personal, family, or household purposes.

14 41. As a direct and proximate result of Defendant's unlawful practices
15 described herein, Defendant has received, and continues to hold, unlawfully obtained
16 property and money belonging to Plaintiff and Class Members in the form of payments
17 made for subscription agreements by Plaintiff and Class Members. Defendant has
18 profited from its unlawful and/or unfair acts and practices in the amount of those
19 business expenses and interest accrued thereon.

20 42. Plaintiff and similarly-situated Class Members are entitled to restitution
21 pursuant to Cal. Bus. & Prof. Code § 17203 for all monies paid by Class Members
22 under the subscription agreements from December 1, 2010, to the date of such
23 restitution at rates specified by law. Defendant should be required to disgorge all the
24 profits and gains it has reaped and restore such profits and gains to Plaintiff and Class
25 Members, from whom they were unlawfully taken.

26 43. Plaintiff and similarly situated Class Members are entitled to enforce all
27 applicable penalty provisions pursuant to Cal. Bus. & Prof. Code § 17202, and to obtain
28 injunctive relief pursuant to Cal. Bus. & Prof. Code § 17203.

1 44. Plaintiff, on behalf of herself and Class Members, request relief as
2 described below.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff requests the following relief:

5 A. That the Court determine that this action may be maintained as a class
6 action under Rule 23(a) of the Federal Rules of Civil Procedure, and define the Class as
7 requested herein;

8 B. That the Court find and declare that Defendant has violated Cal. Bus. &
9 Prof. Code § 17602(a)(3) by failing to provide an acknowledgement that includes the
10 automatic renewal or continuous service offer terms, cancellation policy and
11 information on how to cancel in a manner that is capable of being retained by Plaintiff
12 and Class Members;

13 C. That the Court find and declare that Defendant has violated Cal. Bus. &
14 Prof. Code § 17602(b) by failing to provide an acknowledgment that describes a toll-
15 free telephone number, electronic mail address, a postal address only when the seller
16 directly bills the consumer, or another cost-effective, timely, and easy-to-use
17 mechanism for cancellation;

18 D. That the Court find and declare that Defendant has violated the UCL and
19 committed unlawful business practices by violating Cal. Bus. & Prof. Code § 17602.

20 E. That the Court award to Plaintiff and Class Members damages and full
21 restitution in the amount of the subscription payments made by them pursuant to Cal.
22 Bus. & Prof. Code§ 17603, in an amount to be proved at trial;

23 F. That Defendant be ordered to pay restitution to Plaintiff and the Class due
24 to Defendant's UCL violations, pursuant to Cal. Bus. & Prof. Code §§ 17200-17205 in
25 the amount of their subscription agreement payments;

26 G. That the Court find that Plaintiff and Class Members are entitled to
27 injunctive relief pursuant to Cal. Bus. & Prof. Code § 17203;

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1 H. That Plaintiff and the Class be awarded reasonable attorneys' fees and
2 costs pursuant to California Code of Civil Procedure § 1021.5, and/or other applicable
3 law; and

4 I. That the Court award such other and further relief as this Court may deem
5 appropriate.

6 Dated: February 22, 2019

PACIFIC TRIAL ATTORNEYS, APC

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8 By: /s/ Scott J. Ferrell
9 Scott. J. Ferrell
Attorney for Plaintiff

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action: Yoga Club Fails to Provide Required Details for Automatic Subscription Renewals](#)
