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7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION
11

12 JIALU WU, individually and on behalf
13 of all others similarly situated;

14 Plaintiff,

15 vs.

16 ITALK GLOBAL
17 COMMUNICATIONS, INC., a Texas
18 corporation;

19 Defendant.
20

CASE No. 2:20-cv-7150

NOTICE OF REMOVAL

[Diversity Jurisdiction, 28 U.S.C. §§
1332(d)(2), 1441, 1446 and 1453]

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT, ALL PARTIES, AND
2 THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE THAT Defendant iTalk Global Communications,
4 Inc. (“Defendant”) hereby removes this action to the United States District Court for
5 the Central District of California, and in support thereof, respectfully submits the
6 following:

7 **STATEMENT OF THE CASE**

8 1. Plaintiff seeks to certify a class of “[a]ll persons in California who
9 purchased an iTalkBB [sic] or other similar service from Defendant via Defendant's
10 website as part of an automatic renewal plan or continuous service offer for products
11 and services from Defendant within the four years prior to the filing of this
12 Complaint.” Declaration of Michael Williams (“Williams Decl.”), Ex. 1
13 (“Complaint”) ¶ 45.

14 2. Plaintiff seeks, on behalf of himself and the purported class, restitution,
15 disgorgement, injunctive relief, and attorneys’ fees and costs.

16 3. The Class Action Complaint was filed on July 6, 2019 and served on
17 July 10, 2019, and is removable under the Class Action Fairness Act of 2005
18 (“CAFA”), 28 U.S.C. §§ 1332(d)(2) and 1453(b). Defendant has satisfied all
19 procedural requirements of 28 U.S.C. § 1446 and thereby removes this action to the
20 United States District Court for the Northern District of California pursuant to 28
21 U.S.C. §§ 1332, 1441, 1446, and 1453.

22 **THE REQUIREMENTS FOR REMOVAL**

23 **UNDER CAFA ARE SATISFIED**

24 4. CAFA fundamentally changed the legal standards governing removal
25 jurisdiction for class actions. Congress explicitly stated that CAFA’s “provisions
26 should be read broadly, with a strong preference that interstate actions should be
27 heard in a federal court,” on the grounds that state courts were not adequately
28 protecting defendants against class action abuses. S. Rep. No. 109-14, at *43

1 (2005). Rather than emphasizing a strict constructionist view of the statute against
2 removal jurisdiction, Congress instructed district courts to “err in favor of exercising
3 jurisdiction.” *Id.* at *42-43; *see also Dart Cherokee Basin Operating Co., LLC v.*
4 *Owens*, 574 U.S. 81 (2014) (“no antiremoval presumption attends cases invoking
5 CAFA, which Congress enacted to facilitate adjudication of certain class actions in
6 federal court”) (citation omitted). As shown below, this action satisfies the
7 requirements for diversity jurisdiction under CAFA.

8 5. ***Class Action.*** This lawsuit is a class action as defined by 28 U.S.C. §
9 1332(d)(1)(B). CAFA defines a “class action” as “any civil action filed under rule
10 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial
11 procedure authorizing an action to be brought by 1 or more representative persons as
12 a class action.” *Id.* Plaintiff styles his complaint a “Class Action” and alleges that
13 he brings it “individually and on behalf of all others similarly situated.” Williams
14 Decl., Ex. 1 ¶ 2.

15 6. ***Diversity of Citizenship.*** Plaintiff alleges in his complaint that
16 Defendant is a “Limited Liability Company formed under the laws of the State of
17 Texas, with headquarters in Washington and Virginia.” Williams Decl., Ex. 1 ¶ 11.
18 Plaintiff alleges that he is a resident and citizen of the County of Los Angeles, State
19 of California. *Id.* ¶ 10. Because at least one member of the proposed class is from a
20 state other than Texas, Washington, or Virginia, the diversity requirement of 28
21 U.S.C. § 1332(d)(2)(A) is met.

22 7. ***Amount in Controversy.*** “[A] defendant's notice of removal need
23 include only a plausible allegation that the amount in controversy exceeds the
24 jurisdictional threshold. Evidence establishing the amount is required by §
25 1446(c)(2)(B) only when the plaintiff contests, or the court questions, the
26 defendant's allegation.” *Dart Cherokee*, 574 U.S. 81. Here, the matter in
27 controversy exceeds the sum or value of \$5 million, exclusive of interest and costs,
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1 satisfying the amount-in-controversy requirement of 28 U.S.C. § 1332(d)(2). The
2 Complaint seeks relief that includes:

- 3 a. Injunctive relief;
- 4 b. Restitution;
- 5 c. Disgorgement;
- 6 d. Attorneys’ fees and costs.

7 *See* Williams Decl., Ex. 1 at Prayer for Relief.

8 Plaintiff asserts one cause of action for violation of California Business and
9 Professions Code § 17200. *Id.* ¶¶ 59-75. Plaintiff’s purported harm is premised on
10 allegations that he and the putative class have “lost money and/or property” because
11 Defendant failed to follow California requirements set forth under Cal. Bus. & Prof.
12 Code §§ 17600, *et seq.*, for “making automatic renewal offers and continuous
13 service offers.” *Id.* ¶ 64. Plaintiff’s claim under California Business and
14 Professions Code § 17200 has a four-year statute of limitations period. *Perez v.*
15 *Nidek Co.*, 657 F. Supp. 2d 1156, 1166 (S.D. Cal. 2009), *aff’d*, 711 F.3d 1109 (9th
16 Cir. 2013) (“[C]laims under Cal. Bus. & Prof. Code § 17200 are subject to a four-
17 year statute of limitations[.]”) (quotations and citation omitted).

18 The remedy of restitution that Plaintiff seeks is available for alleged
19 violations of section 17200. *See, e.g., Feitelberg v. Credit Suisse First Bos., LLC*,
20 134 Cal. App. 4th 997, 1012 (2005) (“[T]wo remedies are available to redress
21 violations of the UCL: injunctive relief and restitution.”). An order for restitution is
22 one “compelling a UCL defendant to return money obtained through an unfair
23 business practice to those persons in interest from whom the property was taken,
24 that is, to persons who had an ownership interest in the property or those claiming
25 through that person.” *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th
26 1134, 1144–45 (2003). Here, Plaintiff seeks “all funds acquired by means of any act
27 or practice” held to be “an unlawful, fraudulent, or unfair business act or practice, in
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1 violation of laws, statutes or regulations, or constituting unfair competition[.]”
2 Williams Decl., Ex. 1 at Prayer for Relief.

3 Plaintiff seeks restitution for the \$57 per year that he paid Defendant for
4 internet television services from 2017-2019 and the \$74.99 that he paid for the
5 services in 2020, which amounts to a total of \$245.99 *Id.* ¶¶ 32-34. Plaintiff alleges
6 that he “believes the Class members number in the hundreds of thousands, if not
7 more.” *Id.* ¶ 46. Plaintiff alleges that the “material circumstances surrounding this
8 [purchase] experience by Plaintiff were the same, or nearly the same, as the other
9 class members Plaintiff proposes to represent,” and that all class members “were
10 required to pay, and did pay” for the services as he did. *Id.* ¶ 43. These allegations
11 plausibly suggest at least 200,000 class members (since there are allegedly
12 “hundreds of thousands” of them) seek restitution of approximately \$245.99, which
13 means the amount in controversy equals \$49,998,000.¹

14 Even if Plaintiff were to claim he is not seeking one-hundred percent of the
15 sales amount in restitution (contrary to the complaint’s assertions that he and the
16 class seek “all funds acquired” from the services at issue), the amount in controversy
17 would need to be reduced by more than 90% to fall below the threshold amount.
18 Courts have repeatedly rejected such unreasonable reductions in assessing the
19 amount in controversy in CAFA removal cases. *See, e.g., Allred v. Kellogg Co.*,
20 2018 WL 332904, at *3 (S.D. Cal. Jan. 9, 2018) (rejecting plaintiff’s argument that

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22 ¹ Of course, Defendant denies that a class is the proper vehicle for Plaintiff’s
23 claims, that any calculations herein are relevant to the amount of actual damages, or
24 that Defendant is liable for any claims. However, “[w]hen measuring the amount in
25 controversy, a court must assume that the allegations of the complaint are true and
26 that a jury will return a verdict for the plaintiff on all claims made in the complaint. .
27 . . The ultimate inquiry is what amount is put ‘in controversy’ by the plaintiff’s
28 complaint, not what a defendant will actually owe.” *Stern v. RMG Sunset, Inc.*,
2018 WL 2296787, at *5 (S.D. Cal. May 21, 2018) (quotations and citations
omitted).

1 defendant could not assume the class members sought “a full restitution award” and
2 holding that even if defendant’s “assumptions were reduced by 50%, . . . \$5 million
3 is easily exceeded.”); *Schneider v. Ford Motor Co.*, 756 F. App’x 699, 701 (9th Cir.
4 2018) (rejecting plaintiff’s argument that the amount in controversy fell below the
5 jurisdictional threshold where such argument would require the court to reduce
6 defendant’s valuation “by 99.84 percent of the original amount calculated”);
7 *Carrera v. First Am. Home Buyers Prot. Co.*, 2013 WL 12114623, at *3 (S.D. Cal.
8 Sept. 6, 2013) (rejecting plaintiff’s argument that the amount in controversy fell
9 below the jurisdictional threshold where such argument would require the court to
10 reduce defendant’s valuation “by over 99%”).

11 In addition, Plaintiff’s Complaint seeks recovery of attorneys’ fees. Although
12 Defendant does not concede this type of relief would be recoverable under the
13 claims pleaded, attorneys’ fees can be properly considered for purposes of
14 determining CAFA jurisdiction. *See, e.g., Stern v. RMG Sunset, Inc.*, 2018 WL
15 2296787, at *5 (S.D. Cal. May 21, 2018) (“[T]he Court finds that Defendants have
16 met their burden to show that Plaintiff’s restitution, punitive damages, and
17 attorney’s fees exceeds \$5,000,000.”). “Twenty-five percent is the Ninth Circuit
18 benchmark in common fund cases.” *Stern*, 2018 WL 2296787 at *5. An attorneys’
19 fee award would increase the amount in controversy to \$62,497,500.²

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23 ² This does not even include the cost to Defendant if injunctive relief is ordered
24 requiring changes to its policies and processes for making automatic renewal offers
25 and continuous service offers to the public. The cost of complying with such an
26 order is another cognizable component of the amount-in-controversy calculation.
27 *See Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 416 (9th Cir. 2018) (“The
28 amount in controversy may include damages ... and the cost of complying with an
injunction”).

1 8. ***Number of Proposed Class Members.*** The putative class exceeds 100
2 members. *See Williams Decl., Ex. 1 ¶ 46* (alleging “the Class members number in
3 the hundreds of thousands, if not more”).

4 9. ***Timeliness.*** This removal notice is timely, as required by 28 U.S.C. §
5 1446(b). Defendant was served with the complaint on July 10, 2020 and filed this
6 notice within thirty days of being served with the Complaint.

7 10. ***Venue.*** The United States District Court for the Central District of
8 California is a federal judicial district embracing the Superior Court of the State of
9 California in the County of Los Angeles, where Plaintiff originally filed this suit.
10 Venue is therefore proper under 28 U.S.C. § 1441(a).

11 11. ***No Exceptions Apply.*** The exceptions to removal under 28 U.S.C. §§
12 1332(d) and 1446 do not apply here.

13 **THE OTHER PROCEDURAL REQUISITES**
14 **FOR REMOVAL ARE SATISFIED**

15 12. Defendant has complied with 28 U.S.C. §§ 1446(a) and (d). Under 28
16 U.S.C. §§ 1446(a), a true and correct copy of all of the process, pleadings, or orders
17 on file in the state court and served on Defendant in the state court are attached to
18 the Williams Declaration, filed concurrently. Williams Decl., Exs. 1-8. Pursuant to
19 28 U.S.C. §§ 1446(d), a notice of filing of removal, with a copy of this notice of
20 removal attached thereto, will be promptly filed with the clerk of the Superior Court
21 of the State of California in the County of Los Angeles, Case No. 20STCV25343,
22 and Defendant has served a notice of filing of removal, with a copy of the notice of
23 removal attached thereto, on Plaintiff’s attorneys. Copies of the notice are attached
24 to the Williams Declaration. Williams Decl. ¶ 12, Ex. 9.

25 **CONCLUSION**

26 Defendant intends no admission of fact, law, or liability by this notice, and
27 reserves all defenses, motions, and pleas. Defendant prays that this action be
28 removed to this Court for determination; that all further proceedings in the state

1 court suit be stayed; and that Defendant obtain all additional relief to which it is
2 entitled.

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DATED: August 10, 2020

QUINN EMANUEL URQUHART &
SULLIVAN, LLP



By _____
Michael E. Williams
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Communications, Inc.

EXHIBIT 1

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FILED
Superior Court of California
County of Los Angeles

JUL 06 2020

Therri R. Carter, Executive Officer/Clerk
[Signature], Deputy
Dita Nazarian

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF LOS ANGELES – CIVIL COMPLEX**

15 JIALU WU, Individually and On Behalf Of All
16 Others Similarly Situated,

17 Plaintiff,

18 vs.

19 ITALK GLOBAL COMMUNICATIONS, INC.,

20 Defendant.
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Case No.: **20STCV25343**

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF CALIFORNIA'S
UNFAIR COMPETITION LAW, CAL.
BUS & PROF. CODE §§ 17200, ET SEQ.**

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1 INTRODUCTION

- 2 1. Plaintiff JIALU WU (“Plaintiff”) brings this Class Action Complaint to challenge the
3 deceptive advertising and business practices of Defendant, ITALK GLOBAL
4 COMMUNICATIONS INC. (“iTALK” or “Defendant”) with regard to Defendant’s practice of
5 making automatic renewal offers and continuous service offers, as those terms are defined by
6 Cal. Bus. & Prof. Code §§ 17600, *et seq.* (“California’s Automatic Renewal Law”), to
7 California consumers in violation of California’s Unfair Competition Law (“UCL”), Cal.
8 Bus. & Prof. Code §§ 17200, *et seq.* Among other things, Defendant enrolls consumers in
9 automatic renewal and continuous service subscriptions without providing consumers with
10 clear and conspicuous disclosures as required by California Law; charges consumers’ for said
11 services without first obtaining the consumer’s affirmative consent; and fails to provide
12 consumers with the ability to cancel Defendant’s services online.
- 13 2. Through this action, Plaintiff, individually and on behalf of the class of all other similarly
14 situated consumers, seeks to enjoin Defendant’s practice of making automatic renewal offers
15 and continuous service offers, as those terms are defined by California’s Automatic Renewal
16 Law, to California consumers and the general public, for Defendant’s commercial purposes
17 and pecuniary gain.
- 18 3. Defendant’s automatic renewal and continuous service offers are a scheme carried out by
19 Defendant which involves making money from California consumers through false,
20 deceptive, and misleading means by charging California consumers for automatic renewal
21 offers as defined by California’s Automatic Renewal Law, without the knowledge of those
22 consumers, throughout the period covered by the applicable statute of limitations in violation
23 of California’s Unfair Competition Law.
- 24 4. Defendant makes automatic renewal or continuous service offers to California consumers,
25 including Plaintiff and Class members, in violation of California’s Automatic Renewal Law.
- 26 5. Plaintiff alleges as follows based upon information and belief, with the exception of those
27 allegations that pertain to Plaintiff, which Plaintiff alleges upon personal knowledge as to
28 himself and his own acts and experiences.



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1 6. Unless otherwise indicated, the use of any Defendant’s name in this Complaint includes all
2 agents, employees, officers, members, directors, heirs, successors, assigns, principals,
3 trustees, sureties, subrogees, representatives and insurers of the named Defendant.

4 **JURISDICTION AND VENUE**

5 7. Subject matter jurisdiction is proper in this Court as the amount in controversy is within the
6 jurisdictional limit of this Court.

7 8. This Court has personal jurisdiction over Defendant because Defendant conducts business in
8 the County of Los Angeles, State of California, and has numerous storefronts in the County
9 of Los Angeles.

10 9. Venue is proper in the Los Angeles County Superior Court pursuant to Code of Civil
11 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur
12 in this County. Defendants conducted and continue to conduct business in this County as it
13 relates to its subscription services.

14 **PARTIES**

15 10. Plaintiff is, and at all times mentioned herein was, a resident of the County of Los Angeles,
16 State of California. Plaintiff is, and at all times mentioned herein was, a natural person and a
17 “consumer” for purposes of Cal. Bus. & Prof. Code § 17601(d) and a “person” as defined by
18 Cal. Bus. & Prof. Code § 17201.

19 11. Defendant is a Limited Liability Company formed under the laws of the State of Texas, with
20 headquarters in Washington and Virginia and a “person” as defined by Cal. Bus. & Prof.
21 Code § 17201.

22 12. Defendant offers consumers international phone, internet, and television equipment and
23 services, which can be purchased on Defendant’s website, and Defendant conducts business
24 in the State of California and in the County of Los Angeles.

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FACTUAL ALLEGATIONS

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- 13. Plaintiff realleges and incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
- 14. At all times relevant, Defendant made and continues to make automatic renewal offers and continuous service offers, as those terms are defined by Cal. Bus. & Prof. Code § 17600, *et seq.* (“California’s Automatic Renewal Law”) to Plaintiff and other consumers similarly situated.
- 15. Defendant is in the business of providing international communication and television services to consumers around the globe.
- 16. Part of Defendant’s telecommunication services includes Defendant’s iTalkBB Chinese TV (“iTalkBB”), which is similar to a cable box and connects to a consumer’s television.
- 17. Once Defendant’s iTalkBB service is connected, a consumer has unlimited access to popular Chinese movies and television shows in high definition.
- 18. Part of the purchase of iTalkBB requires a consumer to elect to either pay a one-time activation fee for iTalkBB and purchase a telephone service at the same time, or the consumer can elect to pay a monthly payment for only the iTalkBB service.
- 19. Defendant automatically renews purchases of Defendant’s services in a manner that violates California law by offering consumers a one-time payment for Defendant’s services, when Defendant is actually enrolling consumers into an automatic renewal program and continuous service, without consumers’ affirmative consent.
- 20. On or about October 15, 2016, Plaintiff purchased an iTalkBB Program (the “Service”) online from Defendant’s website, <https://www.italkbb.com/us/en/index.html>.
- 21. Plaintiff elected to purchase the iTalkBB service from Defendant for a one-year period.
- 22. At the time Plaintiff purchased the iTalkBB service, it was represented to Plaintiff that Plaintiff was signing up for a one-year promotional bundle service, which included the iTalkBB, a landline phone, and internet.
- 23. Defendant offered this promotion to Plaintiff for \$49.99 for one year of service.

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- 1 24. Defendant's Service is an automatic renewal and/or continuous service plan or arrangement
2 as defined by Cal. Bus. & Prof. Code § 17601.
- 3 25. Based on the representations on Defendant's website which Plaintiff relied upon, Plaintiff
4 believed the Service was a one-time purchase, lasting for a period of one-year.
- 5 26. The Service is listed as "US TV 1yr Signup no contract" on Plaintiff's receipt, and Plaintiff
6 paid \$49.99 for this one-year Service.
- 7 27. At the time Plaintiff purchased the Service on the Defendant's website, there were no clear
8 and conspicuous disclosures alerting Plaintiff that Plaintiff would be consenting to an
9 automatic renewal offer and/or continuous service.
- 10 28. Defendant did not provide Plaintiff with a clear process for cancellation, or any direct link to
11 an online cancellation procedure, or any refund policies.
- 12 29. At the time Plaintiff purchased the Service, Defendant did not disclose to Plaintiff that the
13 Service would continue beyond Plaintiff's one-time purchase, and did not clearly and
14 conspicuously state how and when Plaintiff could cancel before automatically being charged
15 again by Defendant.
- 16 30. After Plaintiff's purchase of the Service, Defendant failed to provide disclosures that Plaintiff
17 would be automatically charged, and Defendant failed to obtain Plaintiff's explicit consent
18 before charging Plaintiff again.
- 19 31. Defendant did not include any information on Defendant's website indicating how to cancel
20 the Service, and provided no mechanism to cancel the Service on Defendant's website.
- 21 32. In or around October 2017, Defendant charged \$57 to Plaintiff's credit card without
22 Plaintiff's affirmative consent for the iTalkBB service.
- 23 33. Defendant has continued to charge Plaintiff annually for the iTalkBB service, without
24 Plaintiff's affirmative consent.
- 25 34. Most recently, in February 2020, when the iTalkBB service automatically renewed,
26 Defendant increased the price without notice to Plaintiff and charged \$74.99 to Plaintiff's
27 credit card without Plaintiff's affirmative consent for the iTalkBB service.
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- 1 35. At the time Plaintiff purchased the Service, Defendant failed to present Defendant's
- 2 automatic renewal offer terms or continuous service offer terms in a clear and conspicuous
- 3 manner, as defined by California's Automatic Renewal Law, before the subscription or
- 4 purchasing agreement was fulfilled, and in visual or temporal proximity to Defendant's
- 5 request for consent to the offer.
- 6 36. At the time Plaintiff purchased this subscription, Defendant charged Plaintiff for an
- 7 automatic renewal offer without first obtaining Plaintiff's affirmative consent to the
- 8 agreement containing the automatic renewal offer terms or continuous service offer terms.
- 9 37. At the time Plaintiff subscribed to Defendant's Service, Plaintiff was subjected to
- 10 Defendant's unlawful policies and/or practices, as set forth herein, in violation of Cal. Bus. &
- 11 Prof. Code §§ 17600, *et seq.*
- 12 38. Defendant failed provided an acknowledgment that includes the automatic renewal or
- 13 continuous service offer terms, cancellation policy, and information regarding how to cancel
- 14 the Service in a manner that is capable of being retained by the consumer, in violation of Cal.
- 15 Bus. & Prof. Code §§ 17600, *et seq.*
- 16 39. Defendant failed to provide Plaintiff a cost-effective, timely, and easy-to-use mechanism for
- 17 cancelation of the Service, in violation of Cal. Bus. & Prof. Code §§ 17600, *et seq.*
- 18 40. Defendant failed to provide Plaintiff with a means to terminate the automatic renewal or
- 19 continuous service exclusively online, in violation of Cal. Bus. & Prof. Code §§ 17600, *et*
- 20 *seq.*
- 21 41. Defendant failed to provide clear and conspicuous notice of the material change and provide
- 22 information regarding how to cancel the Service in a manner that is capable of being retained
- 23 by the consumer, in violation of Cal. Bus. & Prof. Code §§ 17600, *et seq.*
- 24 42. Had Plaintiff known that Defendant would enroll Plaintiff in a program under which
- 25 Defendant would automatically renew Plaintiff's purchase for a subsequent term and
- 26 automatically charge the associated renewal fee, especially at an increased rate, to Plaintiff's
- 27 credit card without clear and conspicuous advanced notice or Plaintiff's affirmative consent,
- 28 Plaintiff would not have purchased the Service.

1 43. The material circumstances surrounding this experience by Plaintiff were the same, or nearly
2 the same, as the other class members Plaintiff proposes to represent, and Plaintiff and all
3 putative class members were required to pay, and did pay, money for the Service advertised,
4 marketed, and sold by Defendant to Plaintiff and other similarly situated consumers.

5 CLASS ACTION ALLEGATIONS

6 44. Plaintiff brings this action, on behalf of himself and all others similarly situated (“the Class”).

7 45. Plaintiff represents, and is a member of, the Class, consisting of:

8 All persons in California who purchased an iTalkBB or other similar service
9 from Defendant via Defendant’s website as part of an automatic renewal
10 plan or continuous service offer for products and services from Defendant
within the four years prior to the filing of this Complaint.

11 46. Defendant and its employees or agents are excluded from the Class. Plaintiff does not know
12 the number of members in the Class, but believes the Class members number in the hundreds
13 of thousands, if not more. Thus, this matter should be certified as a Class action to assist in
14 the expeditious litigation of this matter.

15 47. The “Class Period” means four years prior to filing of the Complaint in this action.

16 48. Plaintiffs reserve the right to redefine the Class, and to add and redefine any additional
17 subclasses as appropriate based on discovery and specific theories of liability.

18 49. There is a well-defined community of interest in the litigation, the proposed class is easily
19 ascertainable, and Plaintiff is a proper representative of the Class.

20 50. *Ascertainability*: Class members are readily ascertainable from Defendant’s own records
21 and/or Defendant’s agents’ records.

22 51. *Numerosity*: The potential Class members as defined are so numerous and so diversely
23 located throughout California, that joinder of all the members of the Class impracticable.
24 Class members are dispersed throughout California. Joinder of all members of the proposed
25 class is therefore not practicable.

26 52. *Commonality*: There are questions of law and fact common to Plaintiff and the Class that
27 predominate over any questions affecting only individual members of the Class. These
28 common questions of law and fact include, without limitation:

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- i) Whether Defendant charged Plaintiff and Class members' payment method for an automatic renewal or continuous service without first obtaining Plaintiff's and Class members' affirmative consent to the agreement containing the automatic renewal offer terms or continuous service offer terms;
- ii) Whether Defendant's conduct is an unfair, fraudulent, or unlawful act or practice within the meaning of California Business & Professions Code §§ 17200, *et seq.*;
- iii) Whether Defendant's advertising is unfair, deceptive, untrue or misleading within the meaning of California Business & Professions Code §§ 17200, *et seq.*;
- iv) Whether the Plaintiff and Class members are entitled to equitable relief, including but not limited to injunctive relief as sought herein.

53. **Typicality:** Plaintiff's claims are typical of the claims of the members of the Class in that Plaintiff is a member of the Class that Plaintiff seeks to represent. Similar to members of the Class, Defendant enrolled Plaintiff in an automatic renewal and continuous service subscription without being provided clear and conspicuous disclosures as required by California Law, Plaintiff was charged for said services without Plaintiff's affirmative consent; and Plaintiff was not provided with information on how to cancel said services. Plaintiff is advancing the same claims and legal theories on behalf of himself and all absent members of the Class. Defendant has no defenses unique to the Plaintiff.

54. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff's interests do not conflict with those of Class members. Plaintiff has retained counsel experienced in consumer protection law, including class actions, and specifically, California's Automatic Purchase Renewal Law. Plaintiff has no adverse or antagonistic interest to those in the Class and will fairly and adequately protect the interests of the Class. Plaintiff's attorneys are aware of no interests adverse or antagonistic to those of Plaintiff and proposed Class.

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1 55. *Superiority of Class Action:* A Class Action is superior to other available means for the fair
2 and efficient adjudication of this controversy. Individual joinder of all Class members is not
3 practicable, and questions of law and fact common to the Class predominate over any
4 questions affecting only individual members of the Class. Plaintiff and Class members have
5 suffered or may suffer loss in the future by reason of Defendant’s unlawful policies and/or
6 practices. Certification of this case as a class action will allow those similarly situated
7 persons to litigate their claims in the manner that is most efficient and economical for the
8 parties and the judicial system. Certifying this case as a class action is superior because it
9 allows for efficient relief to Class members, and will thereby effectuate California’s strong
10 public policy of protecting the California public from violations of its laws.

11 56. Even if every individual Class member could afford individual litigation, the court system
12 could not. It would be unduly burdensome to the courts if individual litigation of the
13 numerous cases were to be required. Individualized litigation also would present the potential
14 for varying, inconsistent, or contradictory judgments, and would magnify the delay and
15 expense to all parties and to the court system resulting from multiple trials of the same
16 factual issues.

17 57. By contrast, conducting this action as a class action will present fewer management
18 difficulties, conserve the resources of the parties and the court system, and protect the rights
19 of each Class member. Further, it will prevent the very real harm that would be suffered by
20 numerous putative Class members who will be unable to enforce individual claims of this
21 size on their own, and by Defendant’s competitors, who will be placed at a competitive
22 disadvantage because they chose to obey the law. Plaintiff anticipates no difficulty in the
23 management of this case as a class action.

24 58. Plaintiff reserves the right to expand the Class definition to seek recovery on behalf of
25 additional persons as warranted as facts are learned in further investigation and discovery.

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FIRST CAUSE OF ACTION

VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.

[CALIFORNIA’S UNFAIR COMPETITION LAW (“UCL”)]

59. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

60. Plaintiff and Defendant are each “person[s]” as defined by California Business & Professions Code § 17201. California Bus. & Prof. Code § 17204 authorizes a private right of action on both an individual and representative basis.

61. “Unfair competition” is defined by Business and Professions Code Section § 17200 as encompassing several types of business “wrongs,” all three of which are at issue here: (1) an “unlawful” business act or practice, (2) an “unfair” business act or practice, (3) a “fraudulent” business act or practice, and (4) “unfair, deceptive, untrue or misleading advertising.” The definitions in § 17200 are drafted in the disjunctive, meaning that each of these “wrongs” operates independently from the others.

62. By and through Defendant’s conduct alleged in further detail above and herein, Defendant engaged in conduct that constitutes (a) unlawful, (b) unfair, and (c) fraudulent business practices prohibited by Bus. & Prof. Code §§ 17200 et seq.

(a) Unlawful” Prong

63. As a result of Defendant’s acts and practices in violation of California’s Automatic Renewal Law, California’s Bus. & Prof. Code §§ 17600, et seq., Defendant has violated California’s Unfair Competition Law, Business & Professions Code §§ 17200 et seq., which provides a cause of action for an “unlawful” business act or practice perpetrated on members of the California public.

64. Specifically, at a date presently unknown to Plaintiff, but at least four years prior to the filing of this action, and as set forth above, Defendant has engaged in the practice of making automatic renewal offers and continuous service offers, as those terms are defined by Cal. Bus. & Prof. Code §§ 17600, et seq. (“California’s Automatic Purchase Renewal Law”), to California consumers and the general public.

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1 65. Plaintiff and members of the Class have suffered an “injury in fact” and have lost money
 2 and/or property as a result of Defendant’s: (a) failure to present Defendant’s automatic
 3 renewal offer terms or continuous service offer terms in a clear and conspicuous manner
 4 before the subscription or purchasing agreement is fulfilled and in visual proximity, or in the
 5 case of an offer conveyed by voice, in temporal proximity, to the request for consent to the
 6 offer; (b) charges to the consumer’s credit or debit card or the consumer’s account for an
 7 automatic renewal or continuous service without first obtaining the consumer’s affirmative
 8 consent to the agreement containing the automatic renewal offer terms or continuous service
 9 offer terms; (c) failure to provide an acknowledgment that includes the automatic renewal or
 10 continuous service offer terms, cancellation policy, and information regarding how to cancel
 11 in a manner that is capable of being retained by the consumer; and where Defendant’s offer
 12 includes a free trial, Defendant also fails to disclose in the acknowledgment how to cancel
 13 and allow the consumer to cancel before the consumer pays for the goods or services; (d)
 14 failure to provide cost-effective, timely, and easy-to-use mechanism for cancellation; (e)
 15 failure to provide consumers who accept an automatic renewal or continuous service offer
 16 online to terminate the automatic renewal or continuous service exclusively online, in
 17 violation of Cal. Bus. & Prof. Code §§ 17600, *et seq.*; and (f) failing to provide clear and
 18 conspicuous notice of the material change and provide information regarding how to cancel
 19 in a manner that is capable of being retained by the consumer in violation of Cal. Bus. &
 20 Prof. Code §§ 17600, *et seq.*

21 66. Pursuant Cal. Bus. & Prof. Code § 17603, all products received by Plaintiff and Class
 22 members are deemed to be an unconditional gift.

23 67. Defendant had other reasonably available alternatives to further its legitimate business
 24 interest, other than the conduct described herein, such as adequately disclosing the terms of
 25 Defendant’s automatic renewal offers and continuous service offers, as set forth by Cal. Bus.
 26 & Prof. Code §§ 17600, *et seq.*

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1 68. Plaintiff and Class members reserve the right to allege other violations of law, which
2 constitute other unlawful business practices or acts, as such conduct is ongoing and continues
3 to this date.

4 **(b) "Unfair" Prong**

5 69. Defendant's actions and representations constitute an "unfair" business act or practice under
6 § 17200 in that Defendant's conduct is substantially injurious to consumers, offends public
7 policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct
8 outweighs any alleged benefits attributable to such conduct. Without limitation, it is an unfair
9 business act or practice for Defendant to knowingly or negligently fail to adequately disclose
10 the terms of Defendant's automatic renewal offers and continuous service offers, as set forth
11 by Cal. Bus. & Prof. Code §§ 17600, *et seq.*

12 70. At a date presently unknown to Plaintiff, but at least four years prior to the filing of this
13 action, and as set forth above, Defendant has committed acts of unfair competition as defined
14 by Cal. Bus. & Prof. Code §§ 17200 *et seq.*, as alleged further detail above and herein.

15 71. Plaintiff and other members of the Class could not have reasonably avoided the injury
16 suffered by each of them.

17 72. Plaintiff reserves the right to allege further conduct that constitutes other unfair business acts
18 or practices. Such conduct is ongoing and continues to this date, as Defendant continues to
19 make automatic renewal offers and continuous service offers in the manner described above
20 in herein, in violation of California Business & Professions Code §§ 17600, *et seq.* and
21 California Business & Professions Code §§ 17200, *et seq.*

22 **(c) "Fraudulent" Prong**

23 73. The UCL also prohibits any "fraudulent business act or practice." Defendant's above-
24 described claims, omissions, nondisclosures and misleading statements were false,
25 misleading and likely to deceive the consuming public in violation of the UCL.

26 74. As a direct and proximate result of Defendant's conduct, wrongful actions, inaction,
27 omissions, and nondisclosures, Plaintiff and the Class have suffered (and will continue to
28 suffer) damages.

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1 75. Unless enjoined, Plaintiff and the general public will continue to face injury, as Defendant
2 will continue to engage in the above-described wrongful conduct. Plaintiff therefore, on
3 behalf of himself and the Class and the general public, also seeks restitution and an
4 injunction prohibiting Defendant from continuing such business practices and requiring
5 Defendant to modify its disclosures and notices regarding automatic renewal of its services
6 or programs, its refund policies, and a clear and conspicuous notice in the initial offer
7 explaining how consumers can cancel before being charged again, and a clear process for
8 cancellation with a direct link to cancellation procedures online.

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, Plaintiff respectfully requests the Court grant Plaintiff and the Class
11 members damages against Defendant and relief as follows:

- 12 • That this action be certified as a Class Action, establishing the Class and any appropriate
13 sub-classes that the Court may deem appropriate;
- 14 • Appointing Plaintiff as the representative of the Class;
- 15 • Appointing the law firms representing Plaintiff as Class Counsel;
- 16 • That the Court find and declare that Defendant has violated the UCL and committed unfair,
17 unlawful, and/or deceptive business practices;
- 18 • An order requiring Defendant to pay restitution to Plaintiff and the Class due to Defendant's
19 UCL violations, pursuant to Cal. Bus. & Prof. Code §§ 17200-17205 in the amount of their
20 subscription agreement payments;
- 21 • An order requiring imposition of a constructive trust and and/or disgorgement of
22 Defendant's ill-gotten gains and to pay restitution to Plaintiff and all members of the Class
23 and to restore to Plaintiff and members of the Class all funds acquired by means of any act
24 or practice declared by this court to be an unlawful, fraudulent, or unfair business act or
25 practice, in violation of laws, statutes or regulations, or constituting unfair competition;
- 26 • Injunctive relief requiring Defendant to truthfully advertise and clearly and conspicuously
27 disclose its automatic renewal terms, cancelation procedure, and refund policy for its
28 iTalkBB and other similar services pursuant to Bus. & Prof. Code § 17203;

- 1 • An award of reasonable attorneys' fees and costs of this suit for Plaintiff and the Class
- 2 pursuant to Code of Civil Procedure § 1021.5 and/or any other applicable law; and,
- 3 • Any and all other relief as this Court may deem necessary or appropriate.

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5 Dated: July 6, 2020

Respectfully submitted,

6 **KAZEROUNI LAW GROUP, APC**

7
8 By: _____

9 *ABBAS KAZEROUNIAN, ESQ.*
10 *MONA AMINI, ESQ.*
11 *PAMELA PRESCOTT, ESQ.*
12 *Attorneys 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 Claims California Customers' iTalkBB Services Automatically Renew Without Authorization](#)
