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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

In re: Fight Pass Auto-Renewal Litigation

CASE NO.: 2:23-cv-00802-CDS-EJY

Member Case Nos.: 2:23-cv-01211-CDS-EJY,
2:23-cv-01259-CDS-EJY

This Document Relates To: All Actions

**FIRST AMENDED CONSOLIDATED
CLASS ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

1 Plaintiffs Moises Reza, Frank Garza, Tanner Pendergraft, Isaiah Sanchez, and Saul Garcia
2 (“Plaintiffs”) bring this action on behalf of themselves, and all others similarly situated against
3 Defendants Zuffa, LLC d/b/a Ultimate Fighting Championship (“UFC”) and Neulion USA, LLC
4 (“Defendants”). Plaintiffs make the following allegations pursuant to their attorneys’ reasonable
5 investigations, and on information and belief, except as to the allegations specifically pertaining
6 to themselves, which are based on personal knowledge.

7 I. INTRODUCTION

8 1. This complaint challenges Defendants’ unlawful “automatic renewal” scheme for
9 Fight Pass automatic renewal agreements sold to California consumers in violation of the
10 California Automatic Renewal Law (“ARL”). Defendant Zuffa, LLC is a privately owned
11 company involved in the production of mixed martial arts (“MMA”) competitions, primarily under
12 the banner of the Ultimate Fighting Championship (or “UFC”). Defendant, through its website
13 www.ufcfightpass.com (the “Fight Pass Platform”), offers a streaming platform for exclusive
14 MMA and UFC content including, but not limited to, live UFC fighting events, original
15 programming, and recordings of past MMA fights (the “Fight Pass Products”). When consumers
16 purchase Fight Pass Products via the Fight Pass Platform, Defendant enrolls them into an
17 automatically renewing monthly or yearly autorenewal (the “Fight Pass Autorenewal(s)”) that
18 results in ongoing charges on consumer credit card, debit card, or third-party payment account
19 (“Billing Information”) unless and until the consumer cancels their Fight Pass Autorenewal.

20 2. Defendant Neulion contracts with Zuffa, LLC to provide services that provide the
21 consumer with the ability to access and view UFC Fight Pass content, and Neulion processes the
22 subscription fees charged by Zuffa, LLC. Based on information and belief, the UFC Fight Pass
23 service and/or access to view UFC fights and/or other UFC content is processed by Neulion so
24 UFC Fight Pass users can view UFC fights and/or other UFC content.

25 3. Pursuant to the ARL, businesses that offer automatic renewal agreements
26 California consumers must, *inter alia*: (a) provide all material automatic renewal terms in a clear
27 and conspicuous manner and in visual proximity to the request for consent prior to the purchase,
28 Cal. Bus. & Prof. Code § 17602(a)(1); (b) obtain affirmative consent to the automatic renewal

1 before charging consumers, *id.* § 17602(a)(2); and (c) provide consumers with an
2 acknowledgement that includes the automatic renewal agreement’s offer terms that also describes
3 the cancellation policy and explains how to cancel, *id.* § 17602(a)(3). Defendants’ Fight Pass
4 Autorenewals fail to comply with these legal requirements and Defendants unlawfully charged
5 Plaintiffs’ and the Class’s, and continues to unlawfully charge California consumers’, Billing
6 Information in violation of the ARL’s core requirements.

7 4. Specifically, Defendants do not provide all material Fight Pass Autorenewal offer
8 terms, as defined under the ARL, “clearly and conspicuously” and in “visual proximity” to its
9 request for consent to the Fight Pass Autorenewal before the purchase is fulfilled, in violation of
10 ARL section 17602(a)(1). Defendants do not obtain the affirmative consent of its consumers before
11 charging their Billing Information, in violation of ARL section 17602(a)(2). And Defendants do
12 not provide a post-purchase acknowledgement containing all material Fight Pass Autorenewal
13 offer terms, a description of Defendants’ cancellation policy, and an explanation of how to cancel
14 a Fight Pass Autorenewal, in violation of ARL section 17602(a)(3). California consumers who
15 have not yet transacted with Defendants, but are likely to in the future, remain at risk of future
16 harm because of Defendants’ ongoing unlawful conduct unless and until its illegal Fight Pass
17 Autorenewal enrollment processes is enjoined and corrected.

18 5. Plaintiffs would not have made their initial purchases of the Fight Pass Products
19 associated with their Fight Pass Autorenewal had Defendants complied with the ARL by notifying
20 Plaintiffs that they were being enrolled into the Fight Pass Autorenewal with automatic recurring
21 charges. As such, and resulting from Defendants’ violations of the ARL, Defendants never had
22 Plaintiffs’, nor the Class’s, affirmative consent to the automatic renewing charges. Plaintiffs have
23 thus suffered economic loss and have otherwise been financially injured because of Defendants’
24 violations of the ARL. The Fight Pass Products associated with the Fight Pass Autorenewal
25 including images, videos, audio, and text were sent to Plaintiffs and the class by Defendants and
26 can be downloaded, printed out, retained, and/or used in physical form. Accordingly, because of
27 Defendants’ violations of the ARL, the Fight Pass Products associated with the Fight Pass
28

1 Autorenewal were unconditional gifts for which Defendants could not lawfully charge Plaintiffs
2 and the Class, *see id* § 17603, and restitution is warranted. *See id.* § 17203.

3 6. For the foregoing reasons, Plaintiffs bring this action individually and on behalf of
4 all similarly situated California residents who, within the applicable statute of limitation period up
5 to and including the date of judgment in this action, incurred fees for Defendants' unlawful Fight
6 Pass Autorenewals. Based on Defendants' unlawful conduct, Plaintiffs seek monetary relief,
7 declaratory relief, private injunctive relief, public injunctive relief on behalf of the general public
8 in California to prevent Defendants from continuing to engage in its unlawful practices (*see McGill*
9 *v. Citibank, N.A.*, 393 P.3d 85 (Cal. 2017)), reasonable attorneys' fees and costs pursuant to
10 California Code of Civil Procedure § 1021.5 and other applicable laws, and all other relief deemed
11 just and equitable in the circumstances for Defendants' violation of the ARL, UCL, CLRA, and
12 other applicable law.

13 7. Plaintiffs' separate request for public injunctive relief is not sought for the Class
14 but rather on behalf of the general public, *i.e.*, consumers in who have yet to transact with
15 Defendants but are at risk of doing so in the future. *See McGill, supra*. The Fight Pass Platform
16 continues to generate new customers on an ongoing and continuing basis and therefore, as time
17 passes, new members of the general public are at risk of new harms and injuries from the legal
18 violations complained of herein, unless those practices are enjoined and corrected so that they fully
19 comply with the ARL, UCL, CLRA, and other applicable law including the Electronic Funds
20 Transfer Act as further described below. Plaintiffs bring this action on behalf of such persons in
21 their individual capacity and class certification is not necessary for this type of public injunctive
22 relief. This action and the relief sought for the general public will provide a public benefit.

23 **II. THE PARTIES**

24 7. Plaintiff Moises Reza is a citizen of California, residing in California. Plaintiff Reza
25 was enrolled into a monthly Fight Pass Autorenewal through the Fight Pass Platform in or around
26 January 2020. Plaintiff Reza paid an initial fee of \$9.99 for his Fight Pass Autorenewal after which
27 Defendants enrolled Plaintiff Reza in a monthly autorenewal without providing the clear and
28 conspicuous and visually proximate disclosures required by the ARL. Plaintiff Reza first attempted

1 to cancel the Fight Pass Autorenewal in or around March 2020 but was unable to do so. Defendants
2 continued to automatically renew Plaintiff Reza's Fight Pass Autorenewal on a monthly basis,
3 charging his Billing Information until in or around October 2021 for a total of out-of-pocket loss
4 of at least \$219.78. Plaintiff Reza did not know and did not expect that his initial Fight Pass
5 transaction would automatically convert into an automatic renewal wherein he would continue to
6 be charged on a recurring monthly basis unless and until he cancelled. Had Plaintiff Reza received
7 clear and conspicuous disclosures in visual proximity to Defendant's request for purchase, as
8 required under the ARL, at the time he made his initial purchase of Fight Pass Products, Plaintiff
9 Reza would not have consented to his initial purchase. As a direct result of Defendant's violations
10 of the ARL, Plaintiff Reza suffered an economic injury. Plaintiff Reza has standing to assert the
11 claims set forth herein.

12 8. Plaintiff Frank Garza is a citizen of California, residing in California. Plaintiff
13 Garza was enrolled into a monthly Fight Pass Autorenewal through the Fight Pass Platform in or
14 around July 2020. Plaintiff Garza paid the initial fee for his Fight Pass Autorenewal after which
15 Defendants enrolled Plaintiff Garza in a monthly autorenewal without providing the clear and
16 conspicuous and visually proximate disclosures required by the ARL. Plaintiff Garza first
17 attempted to cancel the Fight Pass Autorenewal in or around December 2020 but was unable to do
18 so. Defendants continued to automatically renew Plaintiff Garza Fight Pass Autorenewal on a
19 monthly basis, charging his Billing Information until in or around February 2021. Plaintiff Garza
20 did not know and did not expect that his initial Fight Pass transaction would automatically convert
21 into an automatic renewal wherein he would continue to be charged on a recurring monthly basis
22 unless and until he cancelled. Had Plaintiff Garza received clear and conspicuous disclosures in
23 visual proximity to Defendant's request for purchase, as required under the ARL, at the time he
24 made his initial purchase of Fight Pass Products, Plaintiff Garza would not have consented to his
25 initial purchase. As a direct result of Defendant's violations of the ARL, Plaintiff Garza suffered
26 an economic injury. Plaintiff Garza has standing to assert the claims set forth herein.

27 9. Plaintiff Tanner Pendergraft is a citizen of California, residing in California.
28 Plaintiff Pendergraft was enrolled into a monthly Fight Pass Autorenewal through the Fight Pass

1 Platform in or around November 2021. Plaintiff Pendergraft paid the initial fee for his Fight Pass
2 Autorenewal after which Defendants enrolled Plaintiff Pendergraft in a monthly autorenewal
3 without providing the clear and conspicuous and visually proximate disclosures required by the
4 ARL. Plaintiff Pendergraft first attempted to cancel the Fight Pass Autorenewal in or around
5 January 2022 but was unable to do so. Defendants continued to automatically renew Plaintiff
6 Pendergraft Fight Pass Autorenewal on a monthly basis, charging his Billing Information until in
7 or around April 2022. Plaintiff Pendergraft did not know and did not expect that his initial Fight
8 Pass transaction would automatically convert into an automatic renewal wherein he would
9 continue to be charged on a recurring monthly basis unless and until he cancelled. Had Plaintiff
10 Pendergraft received clear and conspicuous disclosures in visual proximity to Defendant's request
11 for purchase, as required under the ARL, at the time he made his initial purchase of Fight Pass
12 Products, Plaintiff Pendergraft would not have consented to his initial purchase. As a direct result
13 of Defendant's violations of the ARL, Plaintiff Pendergraft suffered an economic injury. Plaintiff
14 Pendergraft has standing to assert the claims set forth herein.

15 10. Plaintiff Isaiah Sanchez is a citizen of California, residing in Los Angeles,
16 California. Plaintiff Sanchez was enrolled into a monthly Fight Pass Autorenewal through the
17 Fight Pass Platform in or around July 2020. Plaintiff Sanchez paid an initial fee of \$9.99 for his
18 Fight Pass Autorenewal after which Defendants enrolled Plaintiff Sanchez in a monthly automatic
19 renewal without providing the clear and conspicuous and visually proximate disclosures required
20 by the ARL. Defendants continued to automatically renew Plaintiff Sanchez's Fight Pass
21 Autorenewal on a monthly basis, charging his Billing Information an additional fourteen times for
22 a total out-of-pocket loss of at least \$136.86. Plaintiff Sanchez did not know and did not expect
23 that his initial Fight Pass transaction would automatically convert into an automatic renewal in
24 which he would continue to be charged on a recurring monthly basis unless and until he cancelled.
25 Had Plaintiff Sanchez received clear and conspicuous disclosures in visual proximity to
26 Defendant's request for purchase, as required under the ARL, at the time he made his initial
27 purchase of Fight Pass Products, Plaintiff Sanchez would not have consented to his initial
28

1 purchase. As a direct result of Defendant’s violations of the ARL, Plaintiff Sanchez suffered an
2 economic injury. Plaintiff Sanchez has standing to assert the claims set forth herein.

3 12. Plaintiff Saul Garcia is a citizen of California, residing in Los Angeles, California.
4 Plaintiff Garcia was enrolled into a monthly Fight Pass Autorenewal through the Fight Pass
5 Platform in or around October of 2022. Plaintiff Garcia paid an initial fee of \$9.99 for his Fight
6 Pass Autorenewal after which Defendants enrolled Plaintiff Garcia in a monthly autorenewal
7 without providing the clear and conspicuous and visually proximate disclosures required by the
8 ARL. Defendants continued to automatically renew Plaintiff Garcia’s Fight Pass Autorenewal on
9 a monthly basis, charging his Billing Information an additional eight times for a total out-of-pocket
10 loss of at least \$89.91. Plaintiff Garcia did not know and did not expect that his initial Fight Pass
11 transaction would automatically convert into an automatic renewal in which he would continue to
12 be charged on a recurring monthly basis unless and until he cancelled. Had Plaintiff Garcia
13 received clear and conspicuous disclosures in visual proximity to Defendant’s request for
14 purchase, as required under the ARL, at the time he made his initial purchase of Fight Pass
15 Products, Plaintiff Garcia would not have consented to his initial purchase. As a direct result of
16 Defendant’s violations of the ARL, Plaintiff Garcia suffered an economic injury. Plaintiff Garcia
17 has standing to assert the claims set forth herein.

18 13. Defendant Zuffa, LLC is a Nevada limited liability company having its principal
19 place of business located at 6650 S. Torrey Pines Dr., Las Vegas, Nevada. Defendant owns,
20 controls, and operates the Fight Pass Platform and charges consumer Billing Information for the
21 Fight Pass Products associated with the Fight Pass Autorenewals. Defendant is also responsible
22 for the promotion, advertising, and marketing of the automatically renewing Fight Pass
23 Autorenewals. Defendant offers the Fight Pass Autorenewals to California consumers.
24 Defendant’s online Fight Pass Autorenewal enrollment process imbedded in the Fight Pass
25 Platform is the same in all material respects for California consumers as it is for consumers in other
26 states.

1 14. Defendant Neulion USA, LLC, (“Neulion”) is a Delaware limited liability company
2 that, at all relevant times, was authorized to do business within the State of California and is doing
3 business in the State of California.

4 15. As set forth in Defendant Zuffa’s Terms of Use, it may nominate or otherwise
5 contract with an agent(s) (NeuLion, Inc. and/or NeuLion, Limited (collectively “NeuLion”)) for
6 the collection and/or processing of Fight Pass Autorenewal fees for certain consumers, depending
7 on type of payment method and/or the consumer’s location.

8 16. Plaintiffs reserve the right to amend this Complaint to add different or additional
9 defendant, including without limitation any officer, director, employee, supplier, distributor,
10 agents, affiliates, subsidiaries, or parent of Defendant.

11 **III. JURISDICTION AND VENUE**

12 17. The Court has subject matter jurisdiction pursuant to the Class Action Fairness Act
13 of 2005, 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship from
14 defendant, there are 100 or more Class members nationwide, and the aggregate amount in
15 controversy exceeds \$5,000,000.

16 18. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because the
17 Court has personal jurisdiction over Defendants, a substantial portion of the alleged wrongdoing
18 occurred in this District, and Defendants have sufficient contacts with this District.

19 19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a
20 substantial part of the events or omissions giving rise to the claims at issue arose in this District.

21 **IV. ZUFFA’S CHOICE OF LAW PROVISION IS UNENFORCEABLE**

22 20. Zuffa’s Terms of Use incorporate a choice of law provision designating the
23 application of Nevada Law and a one-year limitation on claims provision. Both terms are
24 unenforceable as applied to Plaintiffs’ individual and class claims.

25 21. First, the ARL and, in turn, the UCL are fundamental public policies of the State of
26 California having the purpose of protecting California consumers from ongoing charges by
27 businesses for automatic renewal agreements without the consumer’s explicit consent. The
28 California Legislature enacted the ARL with the express intent to “end the practice of ongoing

1 charging of consumer credit or debit cards or third party payment accounts without the consumers’
2 explicit consent for ongoing shipments of a product or ongoing deliveries of service.” Cal. Bus. &
3 Prof. Code § 17600. The legislative history of the ARL notes that “[c]urrent consumer protection
4 statutes do not address automatic renewal clauses or provisions in subscriptions or purchasing
5 agreements” and that the ARL “is intended to close this gap in the law.”¹ Accordingly, the ARL is
6 a fundamental California policy that is not subject to waiver by choice of law. *See Kissel v. Code*
7 *42 Software, Inc.*, No. 15-cv-01936, 2016 WL 7647691, at *5 (C.D. Cal. Apr. 14, 2016) (holding
8 that the ARL reflects a fundamental policy of California); *King v. Bumble Trading, Inc.*, 393 F.
9 Supp. 3d 856, 868 (N.D. Cal. 2019) (“the Renewal Law nonetheless represents a fundamental
10 public policy”). And, because Plaintiffs’ UCL claim is predicated on a violation of fundamental
11 California policy, Plaintiffs’ UCL claim is also not subject to waiver by choice of law. *King*, 393
12 F. Supp. 3d at 867 (explaining “[w]hether a UCL claim implicates fundamental California policy
13 depends on the predicate violation.”) (quoting *Cardonet, Inc. v. IBM Corp.*, No. 06-cv-06337,
14 2007 WL 518909, at *5 (N.D. Cal. Feb. 14, 2007)).

15 22. Likewise, Plaintiffs’ CLRA claim represents a fundamental California policy that
16 cannot be waived by choice of law. *See* Cal. Civ. Code § 1751 (“Any waiver by a consumer of
17 [the CLRA] is contrary to public policy and shall be unenforceable and void.”); *id.* § 3513 (“... a
18 law established for a public reason cannot be contravened by a private agreement.”). As is
19 Plaintiffs’ individual claim for public injunctive relief. *See McGill, supra*.

20 23. Additionally, although Plaintiff Garcia was enrolled into the Fight Pass
21 Autorenewal within one year of this class action lawsuit, the one-year limitation period contained
22 in Defendant’s Terms of Use is substantively unconscionable because it reduces the UCL’s four
23 year statute of limitations and the CLRA’s three year statute of limitations, *see Gostev v. Skillz*
24 *Platform, Inc.*, 88 Cal.App.5th 1035, 1060 (2023) (the shortened limitations period of one-year for
25 CLRA and UCL claims, in part, rendered the arbitration agreement substantively unconscionable);
26

27
28 ¹ Senate Judiciary Committee Analysis of Senate Bill 340, at p. 1 (Apr. 14, 2009), available at:
https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200920100SB340.

1 *see also Fisher v. MoneyGram International, Inc.*, 66 Cal.App.5th 1084, 1105 (2021) (same), and
 2 is tantamount to an impermissible waiver of policies fundamental to California. *See* Cal. Civ. Code
 3 § 1751 (“Any waiver by a consumer of [the CLRA] is contrary to public policy and shall be
 4 unenforceable and void.”); *see id.* § 3513 (“ . . . a law established for a public reason cannot be
 5 contravened by a private agreement.”).

6 24. Since the choice of law provision is unenforceable, federal law also applies. Here
 7 Plaintiffs allege that Defendants’ Fight Pass Autorenewal violates the Electronic Funds Transfer
 8 Act, 15 U.S.C. 1693, *et seq.* (“EFTA”). The EFTA provides a basic framework establishing the
 9 rights, liabilities, and responsibilities of participants in an electronic fund transfer system. 15
 10 U.S.C. §§ 1693 *et seq.*

11 25. Importantly, any waiver of EFTA rights is void. “No writing or other agreement
 12 between a consumer and any other person may contain any provision which constitutes a waiver
 13 of any right conferred or cause of action created by this subchapter.” 15 U.S.C. § 1693l.

14 V. FACTUAL ALLEGATIONS

15 A. **Background on the Automatic Renewal e-Commerce Industry**

16 26. The e-commerce autorenewal business model centers on retailers providing goods
 17 or services in exchange for regular and automatic payment from the customer.² The e-commerce
 18 autorenewal market is enormous. Globally, in 2022, the autorenewal marketplace reached around
 19 \$120 billion, or an approximate \$50 billion increase from 2021.³ By 2026, it is expected that this
 20 e-commerce market will reach \$900 billion.⁴ In turn, consumers are spending more on automatic
 21 renewals. In 2021, for example, consumers spent \$273 per month on automatic renewals, up from
 22 \$237 in 2018.⁵ Automatic renewals have become so prevalent, in no small measure, because they

23 _____
 24 ² Sam Saltis, *How to Run an eCommerce Subscription Service: The Ultimate Guide*, CORE DNA
 25 (May 19, 2020), <https://www.coredna.com/blogs/ecommerce-subscription-services>.

26 ³ Jia Wertz, *The Growth of Subscription Commerce*, FORBES (Jul. 15, 2022, 2:04AM EDT),
 27 <https://www.forbes.com/sites/jiawertz/2022/07/15/the-growth-of-subscription-commerce/?sh=64ddfdbeb572>.

28 ⁴ *Id.*

⁵ WEST MONROE, *The State of Subscription Services Spending* (Aug. 2021),
<https://www.westmonroe.com/perspectives/report/the-state-of-subscription-services-spending>.

1 provide companies with stable and enormous profits. Companies with automatic renewals have
 2 seen their financial positions dramatically improve because of the stability and strong cash flow
 3 generated by their purchasers. Simply put, autorenewals make money. According to Intuit,
 4 autorenewal are “217% more profitable for businesses than a one-time payment model.”⁶

5 27. Fight Pass Autorenewals have generated incredible revenue for Defendants. In
 6 2018, Defendants had approximately 400,000 subscribers.⁷ As with other e-commerce
 7 subscription businesses, the COVID-19 pandemic only accelerated the growth of Defendants’
 8 Fight Pass Autorenewals. Since 2019, according to Fight Pass Platform and Autorenewal vice
 9 president and general manager, Crowley Sullivan, UFC has seen a 23 percent year-over-year
 10 increase in its Fight Pass members.⁸ UFC’s year-over-year Fight Pass Autorenewal growth
 11 reportedly generated \$59 million in revenue in 2021 alone.⁹ Accordingly, out of the estimated
 12 \$1.14 billion Defendant’s UFC MMA league and other products generated in 2022,¹⁰ the vast
 13 majority originating from the United States,¹¹ Defendants’ Fight Pass Autorenewal represent a
 14 small but significant portion of its annual revenue stream.

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 16
 17 ⁶ Intuit QuickBooks Blog, *Subscription Model or One-Time Sale: Which Should you Choose?*
 18 (Jan. 31, 2017), <https://quickbooks.intuit.com/in/resources/running-a-business/subscription-model-one-time-sale/>.

19 ⁷ Dade Hayes, *Can UFC Still Land a Knockout TV Deal Despite Ratings Slide and Talent*
 20 *Drain?*, DEADLINE (Feb. 20, 2018, 8:00AM), <https://deadline.com/2018/02/can-ufc-still-land-a-knockout-tv-deal-despite-ratings-slide-and-talent-drain-1202289928/>.

21 ⁸ Pat Evans, *UFC Fight Pass Overhaul Hits at Prime Time, Revenue Streams Growing*, FRONT
 22 OFFICE SPORTS (Sept. 4, 2020, 2:17PM), <https://frontofficesports.com/ufc-fight-pass-overhaul/>.

23 ⁹ *How the UFC is Becoming the Ultimate Fighting Championship*, TIFOSY CAPITAL & ADVISORY
 24 (Feb. 11, 2022), <https://www.tifosy.com/en/insights/how-the-ufc-is-becoming-the-ultimate-fighting-championship-3558>.

25 ¹⁰ Endeavor Group Holdings, Inc. Form 8-K, at F-20,
 26 <https://otp.tools.investis.com/clients/us/wwe/SEC/sec-show.aspx?FilingId=16649900&Cik=0001091907&Type=PDF&hasPdf=1>; see also John S.
 27 Nash, *UFC Admits to ‘Lower Athlete Costs,’ as they Boast ‘Best Financial Year’ in 2022*,
 28 BLOODY ELBOW (Feb. 2023), <https://bloodyelbow.com/2023/03/07/ufc-admits-to-lower-athlete-costs-as-they-boast-best-financial-year-in-2022/>; see also Jacob Debets, *UFC Doesn’t Have an Integrity Problem—It Has a Capitalism Problem*, JACOBIN (May 25, 2023), <https://jacobin.com/2023/05/ufc-james-krause-betting-scandal-fighters-wages-exploitation>.

¹¹ *Supra* note 10, at F-35 (noting that \$1.11 billion of Defendant’s \$1.14 billion in revenue in 2022 was generated from the United States).

1 28. Although the autorenewal model is easy to enter, and can produce high profits,
2 businesses struggle with high churn rates and consumer cancellation. Consumers, however, when
3 confronted with the recurring nature of the service, billing practices, or unclear or complicated
4 cancellation policies, “lose interest” but “may be too harried to take the extra step of cancelling
5 their membership[s].”¹² In other words, businesses realized that the “real money is in the inertia.”¹³
6 To facilitate consumer inertia, subscription-based e-commerce companies implement
7 manipulative designs to trick users into signing up for an automatic renewal. That is, companies
8 engaging in autorenewal-based e-commerce “are now taking advantage of subscriptions to trick
9 users into signing up for expensive or recurring plans. They do this by [among other things]
10 intentionally confusing users with their [website or] app’s design and flow, by making promises
11 of ‘free trials’ that convert after only a matter of days, and other misleading tactics,” such as failure
12 to fully disclose the terms of the automatic renewal or continuous service programs.¹⁴

13 29. E-commerce businesses also deliberately design the process to make consumer
14 cancellation confusing and onerous. Once enrolled, “[o]ne of the biggest complaints consumers
15 have about brand/retailers is that it’s often difficult to discontinue a subscription marketing plan.”¹⁵
16 As such, “the rapid growth of subscriptions has created a host of challenges for the economy, far
17 outpacing the government’s ability to scrutinize aggressive marketing practices and ensure that
18 consumers are being treated fairly[.]”¹⁶ Thus, although federal regulators have sought to make it
19 harder for companies to trap consumers in subscriptions, draining their bank accounts, and have
20

21
22 ¹² Amrita Jayakumar, *Little-Box Retailing: Subscription Services Offer New Possibilities to*
Consumers, Major Outlets, WASHINGTON POST (Apr. 7, 2014),
23 https://www.washingtonpost.com/business/economy/tktktk/2014/04/07/f68135b6-a92b-11e3-8d62-419db477a0e6_story.html.

24 ¹³ *Id.*

25 ¹⁴ Sarah Perez, *Sneaky Subscriptions Are Plaguing the App Store*, TECHCRUNCH (Oct. 15, 2018,
3:21 PM), <https://techcrunch.com/2018/10/15/sneaky-subscriptions-are-plaguing-the-app-store/>.

26 ¹⁵ Rich Meyer, *The Problem with Subscription Marketing*, NEW MEDIA AND MARKETING (Mar.
17, 2019), <https://www.newmediaandmarketing.com/the-problem-with-subscription-marketing/>;
27 *supra* note 12 (“‘Subscription services are a sneaky wallet drain,’ said Angela Myers, 29, of
Pittsburgh. ‘You keep signing up for things and they make it really hard to cancel.’”).

28 ¹⁶ *Supra* note 12.

1 attempted to respond to the proliferation of abuses,¹⁷ widespread utilization of “dark patterns” and
 2 deliberate attempts to obfuscate cancellation persist. Dark patterns are tricks and deceptive design
 3 elements that manipulate consumers into making, or not making, choices they otherwise would
 4 not have made.¹⁸ Although dark patterns can take many, often evolving forms,¹⁹ their core purpose
 5 is to manipulate consumers.

6 30. Indeed, as the Consumer Financial Protection Bureau recently reported, consumers
 7 across the country have submitted complaints “about being repeatedly charged for services they
 8 did not intend to buy or no longer want[ed] to continue purchasing” and “about the difficulty of
 9 cancelling subscription-based services and about charges made to their credit card or bank account
 10 after they requested cancellation.”²⁰ More recently, the FTC has made clear that vendors that make
 11 subscriptions that auto-renew difficult or burdensome to cancel is an unfair business practice.²¹

12 **B. Online Consumer Complaints About the Fight Pass Autorenewal**

13 28. UFC’s recent growth in subscriber count and revenues with respect to its Fight Pass
 14 Autorenewal coincides with a sharp decline in member satisfaction. Consumers have complained
 15 on social media outlets about Defendants’ unclear cancellation process. As one subscriber shared
 16 on X, “For those that cancelled UFC 9.99 Fight Pass, and decided to do annual sub instead, check
 17 credit card statements. UFC. Tv billed me twice.”²² In fact, Defendant’s conduct has drawn the
 18 attention and ire of customers across the country. By way of example, TrustPilot – which hosts
 19
 20
 21

22
 23 ¹⁷ *Id.*

24 ¹⁸ *Bringing Dark Patterns to Light*, FEDERAL TRADE COMMISSION, 2, 21 (Sept. 2022),
 25 https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf.



26 ¹⁹ *Id.* at 21–26.

27 ²⁰ Consumer Financial Protection Circular 2023-01, *Unlawful Negative Option Marketing Practices*, 2 (Jan. 19, 2023), [Circular 2023-01 Unlawful negative option marketing practices \(consumerfinance.gov\)](https://www.consumerfinance.gov/circulars/2023-01-unlawful-negative-option-marketing-practices).


28 ²¹ *Supra* note 18 generally.

²² https://twitter.com/fight_ghost/status/493882761669656577.

1 online reviews of businesses worldwide – is riddled with one-star reviews (one star being the
2 minimum rating) for Defendant’s Fight Pass Autorenewal offering as shown below:²³

3  **Marc Carroll**
1 review  AU




4



5  Oct 25, 2020

6 **As bad as it gets**


7 As bad as it gets! I just cancelled my subscription through apple tv after 4 years, \$169
8 for an annual subscription plus \$54.99 x 2 for the last 2 pay per views that the app
9 would not let me watch. There is absolutely no help or customer service from the ufc
10 or app provider...nowhere to complain or ask for help...just give them all your money
11 then bang your head against the wall! Just lost alot of revenue from a (formal) loyal
12 customer.

13 **Date of experience:** October 25, 2020

14  Useful  Share 

11  **Travis Worlock**
1 review  US



12

13  Oct 19, 2020


14 **I purchased the year plan to watch a...**

15 I purchased the year plan to watch a pay per view fight last year and was not able
16 to...money wasted. I thought there would be events to watch...NOT. I am trying to
17 cancel again because they charged me again for the full year. We use to be fans BUT
18 NOT ANYMORE. I have sent several emails. When I log into my account to cancel my
19 subscription there are no subscriptions to cancel. I hope someone answers my email.
20 Next step reporting them to BBB!!!

21 **Date of experience:** October 19, 2020

18  **Kyle Longsdorf**
1 review  US




19



20  Mar 25, 2021

21 **If I could give a zero I would**


22 If I could give a zero I would, so I canceled my subscription and they hacked my card
23 and auto renewed my subscription. And to top it off they blocked me from canceling
24 my subscription on their site. Total scam. If I could send the photo of the site blocking
25 me I'd show everyone.

26 **Date of experience:** March 25, 2021

27  Useful 3  Share 

26  **Maickel R Sanchez Leger**
1 review  PR

27


28  Oct 26, 2020

You cant cancel


You cant cancel. They still taking your money

Date of experience: October 26, 2020


29. A number of subscribers have left scathing reviews on the Better Business Bureau website, complaining of the unclear billing practices and confusing cancellation policy associated with Defendant’s Fight Pass Autorenewal.²⁴




Initial Complaint
07/21/2020

Complaint Type: Advertising/Sales Issues
Status: Resolved 


I have tried to cancel UFC Fight Pass through the website, by phone, and by email. However, I continue to be charged by UFC. I have tried to cancel UFC Fight Pass to no avail. My username is my email, *****. I've called, emailed, and tried to cancel over the website, UFC Fight Pass. UFC has fraudulently charged my credit card company for past 3 months while I have never used the product.



Initial Complaint
09/19/2021


Complaint Type: Advertising/Sales Issues
Status: Answered 

I have been trying to solve this problem for over 1 year. I have been charged \$10.44 every month for services I did not sign up for. *** charges to my account \$10.44 for unknown services. I did enroll in *** fight pass but I have canceled my subscription a few years ago. I kept calling *** ***** but keeps getting the run around. I finally got this number ***** associated with my charges. I have no other information. First, I am asking these charges to stop. Secondly, I am asking for reimbursement.




Business response
05/06/2022

Business Response /* (1000, 8, 2021/10/15) */ Communication was made with the consumer on 10/1/2021 via email address: ***** Refund was issued and consumer accepted.



Initial Complaint
01/16/2020

Complaint Type: Advertising/Sales Issues
Status: Unanswered 

They have been charging me a monthly subscription without my knowledge. Their UI is misleading and it's not clear how to even stop the subscription. I stumbled across a monthly charge from them since July 2019 that I was unaware of. They said I had signed up to a monthly subscription but I did not do that and I've never used their service. It's possible I did this unwittingly due to their confusing UI for a one-time event purchase (or so I thought). They refused to refund me and their UI is nearly impossible to figure out how to cancel the subscription. This is bad to make the UI such that you don't know you're getting a subscription and their response was "you had to accept the terms and conditions" which is thousands of words of legalese. I've never watched any of their stuff and I want my \$70 back.

²³ UFC Fight Pass, TRUST PILOT, <https://www.trustpilot.com/review/www.ufc.tv>, one-star reviews make up 83% of all reviews for UFC Fight Pass on TrustPilot (last accessed Nov. 27, 2023).

²⁴ Complaints: Zuffa, LLC, BETTER BUSINESS BUREAU, <https://www.bbb.org/us/nv/las-vegas/profile/sports-and-recreation/zuffa-llc-1086-67430/complaints> (last accessed Nov. 27, 2023).

1 30. The above reviews are just a sampling of the widespread pattern of uniform
2 unlawful conduct by Defendants, underscoring the artifice devised and employed by Defendants
3 to lure and deceive millions of consumers into enrolling, and remaining enrolled, in its paid Fight
4 Pass Autorenewal.

5 **C. California’s Automatic Renewal Law**

6 31. In 2010, the California Legislature enacted the ARL with the express intent to “end
7 the practice of ongoing charging of consumer credit or debit cards or third party payment accounts
8 without the consumers’ explicit consent for ongoing shipments of a product or ongoing deliveries
9 of service.” Cal. Bus. & Prof. Code § 17600. The legislative history of the ARL notes that
10 “[c]urrent consumer protection statutes do not address automatic renewal clauses or provisions in
11 subscriptions or purchasing agreements” and that the ARL “is intended to close this gap in the
12 law.”²⁵ The ARL thus provides legal protections to Californian consumers that the laws of other
13 jurisdictions do not have.

14 32. The ARL makes it “unlawful for any business that makes an automatic renewal or
15 continuous service offer to a consumer in this state to do any of the following:”

16 (1) Fail to present the automatic renewal offer terms or continuous service
17 offer terms in a clear and conspicuous manner before the subscription or
18 purchasing agreement is fulfilled and in visual proximity, or, in the case of
19 an offer conveyed by voice, in temporal proximity, to the request for
20 consent to the offer. If the offer also includes a free gift or trial, the offer
shall include a clear and conspicuous explanation of the price that will be
charged after the trial ends or the manner in which the subscription or
purchasing agreement pricing will change upon conclusion of the trial.

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

25 (3) Fail to provide an acknowledgement that includes the automatic renewal
26 offer terms or continuous service offer terms, cancellation policy, and
information regarding how to cancel in a manner that is capable of being
retained by the consumer. If the automatic renewal offer or continuous

27 _____
28 ²⁵ *Supra* note 1 at 1.

1 service offer includes a free gift or trial, the business shall also disclose in
2 the acknowledgment how to cancel, and allow the consumer to cancel, the
automatic renewal or continuous service before the consumer pays for the
goods or services.

3 Cal. Bus. & Prof. Code §§ 17602(a)(1)–(3).

4 33. An “automatic renewal” means any “plan or arrangement in which a paid
5 subscription or purchasing agreement is automatically renewed at the end of a definite term for a
6 subsequent term.” *Id.* § 17601(a). Additionally, the phrase “automatic renewal offer terms” is
7 defined as “the following clear and conspicuous disclosures: (1) That the subscription or
8 purchasing agreement will continue until the consumer cancels. (2) The description of the
9 cancellation policy that applies to the offer. (3) The recurring charges that will be charged to the
10 consumer’s credit or debit card or payment account with a third party as part of the automatic
11 renewal plan or arrangement, and that the amount of the charge may change, if that is the case, and
12 the amount to which the charge will change, if known. (4) The length of the automatic renewal
13 term or that the service is continuous, unless the length of the term is chosen by the consumer. (5)
14 the minimum purchase obligation, if any.” *Id.* § 17601(b)(1)–(5).

15 34. The ARL defines “clear and conspicuous” or “clearly and conspicuously” to mean
16 “in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding
17 text of the same size, or set off from the surrounding text of the same size by symbols or other
18 marks, in a manner that clearly calls attention to the language.” *Id.* § 17601(c).

19 35. Finally, where a “business sends any goods, wares, merchandise, or products to a
20 consumer, under a continuous service agreement or automatic renewal of a purchase, without first
21 obtaining the consumer’s affirmative consent[,]” the product is “deemed an unconditional gift to
22 the consumer[.]” *Id.* § 17603.

23 36. As alleged below, Defendants’ Fight Pass Autorenewals systematically violate
24 Sections 17602(a)(1), 17602(a)(2), and 17602(a)(3) of the ARL.

25 **D. The Electronic Funds Transfer Act**

26 37. An “electronic fund transfer” means “any transfer of funds, other than a transaction
27 originated by check, draft, or similar paper instrument, which is initiated through an electronic
28 terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize

1 a financial institution to debit or credit an account.” 15 U.S.C. § 1693a(7). The term is expressly
2 defined to include “[t]ransfers resulting from debit card transactions, whether or not initiated
3 through an electronic terminal.” 12 C.F.R. § 205.3(b)(v).

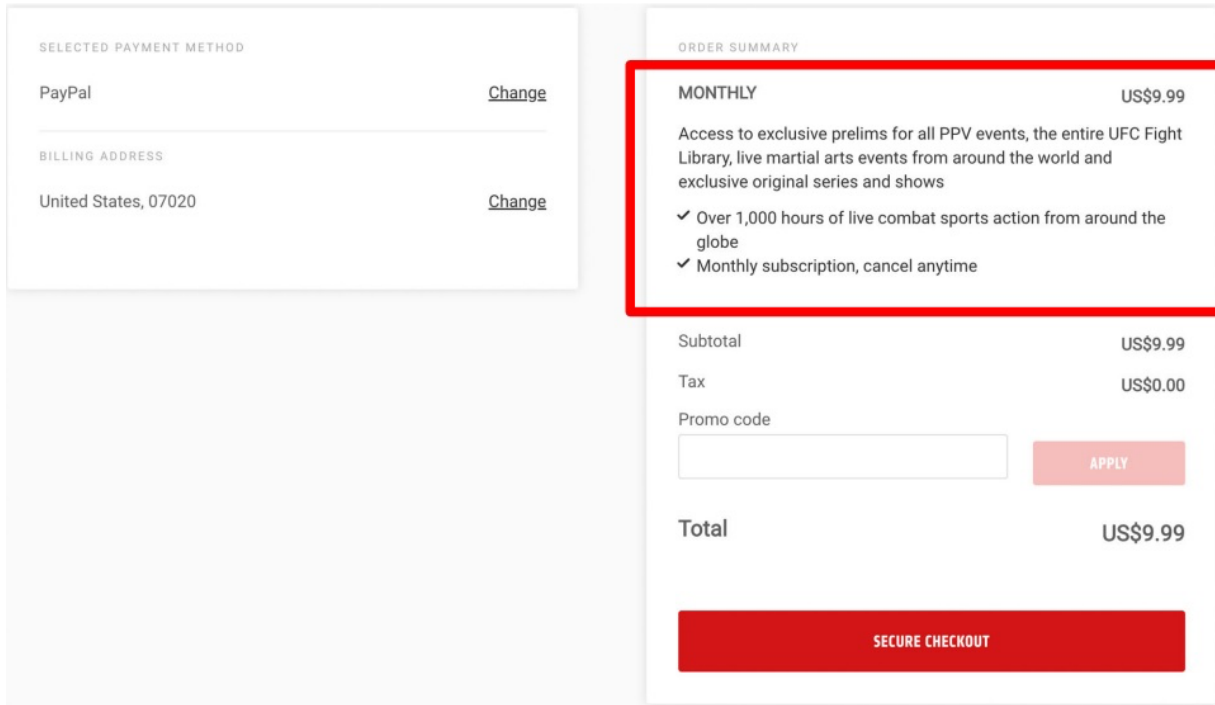
4 38. The EFTA defines the term “preauthorized electronic transfer” as “an electronic
5 fund transfer authorized in advance to recur at substantially regular intervals.” 15 U.S.C. §
6 1693a(9). The Official Staff Interpretation of Regulation E describes a “preauthorized electronic
7 transfer” as “one authorized by the consumer in advance of a transfer that will take place on a
8 recurring basis, at substantially regular intervals, and will require no further action by the consumer
9 to initiate the transfer.” 12 C.F.R. Part 205, Supp. I, § 205.2(k), cmt. 1.

10 39. The EFTA prohibits preauthorized electronic transfers without written
11 authorization: “A preauthorized electronic fund transfer from a consumer’s account may be
12 authorized by the consumer only in writing, and a copy of such authorization shall be provided to
13 the consumer when made.” 15 U.S.C. § 1693e(a). Similarly, Regulation E provides:
14 “Preauthorized electronic fund transfers from a consumer’s account may be authorized only by a
15 writing signed or similarly authenticated by the consumer. The person that obtains the
16 authorization shall provide a copy to the consumer.” 12 C.F.R. § 205.10(b).

17 **E. Defendants’ Fight Pass Autorenewal Enrollment Process**

18 40. At all relevant times, Defendants offered, via the Fight Pass Platform, their Fight
19 Pass Autorenewals for Fight Pass Products online. Defendants’ Fight Pass Autorenewal are offered
20 on a recurring monthly or yearly basis and automatically renew at the end of the renewal period
21 unless and until the consumer cancels. For example, customers who sign up for a monthly Fight
22 Pass Autorenewal are automatically renewed and typically charged the full amount for the next
23 month and every month thereafter if they do not cancel. Defendants’ Fight Pass Autorenewals
24 constitute an automatic renewal agreement under the ARL. *See* Cal. Bus. & Prof. Code § 17601(a).

41. Before finalizing their initial purchase of Fight Pass Products, consumers must enter their Billing Information to complete the transaction. Under the ARL, the complete Fight Pass Autorenewal offer terms must appear clearly and conspicuously, and within visual proximity to, the “request for consent to the offer,” which for the Fight Pass Autorenewal pertains to the “CHECKOUT” webpage shown below:



42. Defendants’ “CHECKOUT” webpage is the point at which Defendants request consumer consent to the automatically renewing Fight Pass Autorenewal and where Defendants must provide the complete Fight Pass Autorenewal offer terms in the manner required under the ARL. Defendants’ “CHECKOUT” webpage, as shown above, provides the initial purchase price but, as alleged in greater detail below, there is no suggestion that the consumer’s purchase will, in fact, automatically renew and continue to renew unless and until the consumer cancels their Fight Pass Autorenewal. Additionally, as alleged in greater detail below, the other automatic renewal offer terms, as defined by the ARL, are also absent from Defendants’ “CHECKOUT” webpage.

43. Upon making payment, the consumer may receive an email confirming the charge (the “Confirmation Email”). That Confirmation Email suffers from the same deficiencies as

1 Defendants’ “CHECKOUT” webpage in that does not provide the complete Fight Pass
2 Autorenewal offer terms, as defined under the ARL, and does not provide the Defendants’
3 cancellation policy and a description of how to cancel a Fight Pass Autorenewal as is required
4 under ARL section 17602(a)(3).

5 44. Regardless of how the consumer is enrolled into a Fight Pass Autorenewal,
6 Defendants’ Fight Pass Autorenewal enrollment process, including the aesthetic of and
7 information provided in the Fight Pass Platform, is substantially and materially the same for every
8 consumer. As such, Defendants’ Fight Pass Autorenewal enrollment process uniformly violates
9 the core mandates of the ARL.

10 **F. Defendants Violate the California Automatic Renewal Law**

11 45. At all relevant times, Defendants failed, and continue to fail, to comply with the
12 ARL by: (i) failing to present all material Fight Pass Autorenewal offer terms in a clear and
13 conspicuous manner and in visual proximity to the request for consent to the offer before the
14 purchase is fulfilled, in violation of ARL section 17602(a)(1); (ii) charging consumers’ Billing
15 Information without first obtaining their affirmative consent to the Fight Pass Autorenewal, in
16 violation of ARL section 17602(a)(2); and (iii) failing to provide an acknowledgement that
17 includes the automatic renewal offer terms, cancellation policy, and information explaining how
18 consumers can cancel the Fight Pass Autorenewal in a manner that is capable of being retained by
19 the consumer, in direct violation of ARL sections 17602(a)(3).

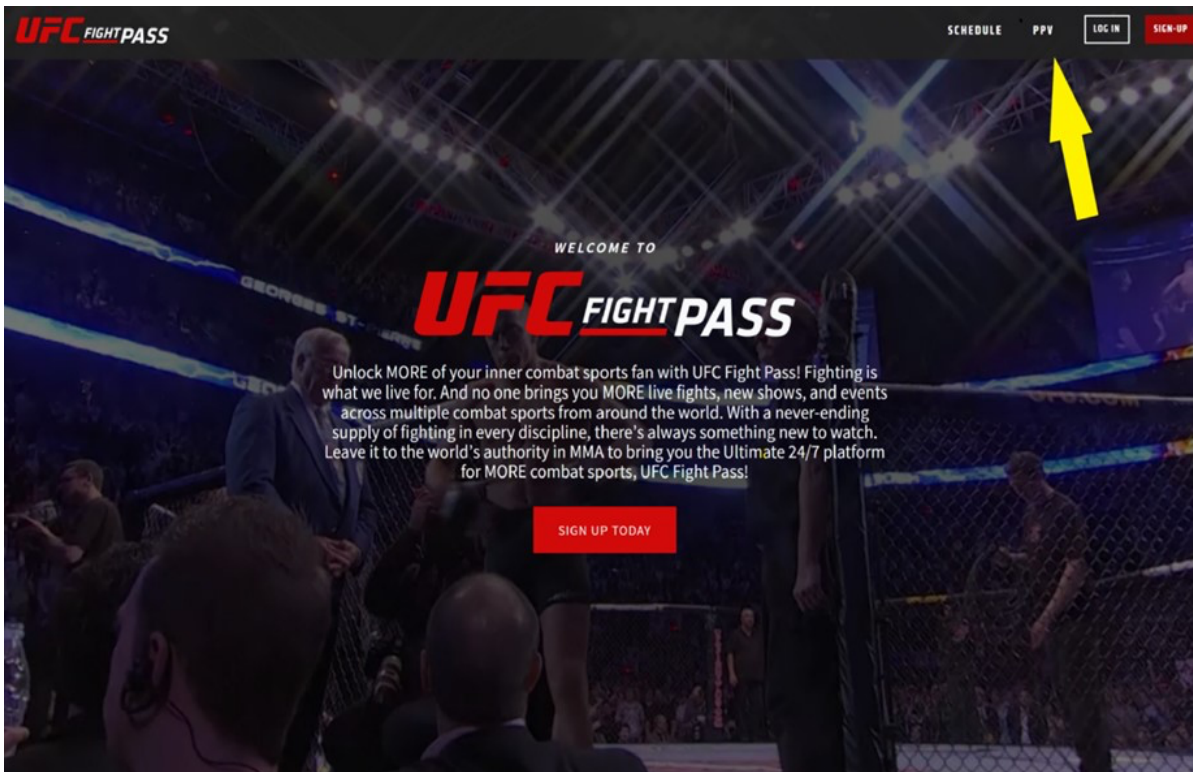
20 **i. Defendants’ “CHECKOUT” webpage does not present the complete Fight Pass**
21 **Autorenewal offer terms “clearly and conspicuously” and “in visual proximity”**
22 **before the purchase of a Fight Pass Autorenewal is fulfilled.**

23 46. In violation of ARL section 17602(a)(1), Defendants’ “CHECKOUT” webpage,
24 the point at which Defendants request consumer affirmative consent, does not present the
25 “automatic renewal offer terms,” as defined by ARL section 17601(b) in the manner prescribed by
26 the ARL.

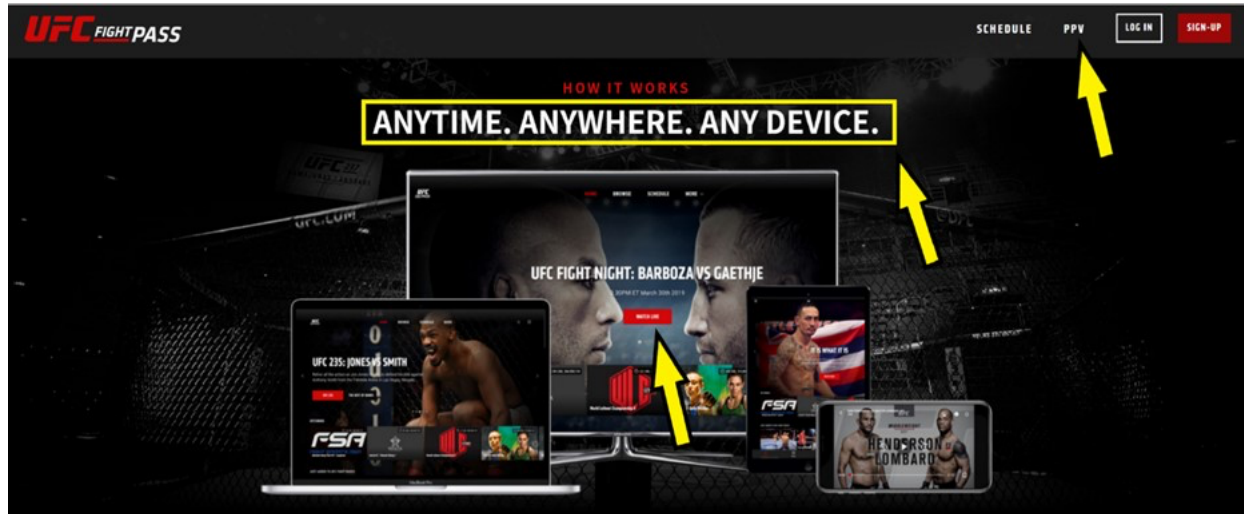
27 47. First, as shown above, although the “CHECKOUT” webpage mentions that
28 “Monthly subscription, cancel anytime” this disclosure is entirely overshadowed by the large
“Secure Checkout” button that simply states “Total US\$9.99.” This call to action does not inform

1 consumers that their purchase of a Fight Pass Products will, in fact, automatically renew resulting
2 in continuously recurring charges to their Billing Information unless and until the consumer
3 cancels but rather leaves the impression that consumers are engaging in a single transaction on the
4 given day of purchase for \$9.99. Defendants thus fail to place its consumers on notice, in the
5 manner required under the statute, of the most fundamental requirement of the ARL. *See* Cal. Bus.
6 & Prof. Code. §§ 17601(b)(1) (defining the phrase “Automatic renewal offer terms” to include,
7 *inter alia*, “[t]hat the subscription or purchasing agreement will continue until the consumer
8 cancels.”); 17602(a)(1) (requiring that the automatic renewal offer terms be presented clearly and
9 conspicuously and in visual proximity to the request for consent). *See id.* § 17600 (noting that the
10 in enacting the ARL the legislature intended to put an end to the practice of automatic renewal
11 agreements without explicit consent from the consumer).

12 48. This impression is further bolstered by the web-flow of the Fight Pass Platform,
13 which gives consumers the impression that they are purchasing a single pay-per-view fight, as
14 depicted below:



1 49. Clicking on the “PPV” symbol leads consumers to the bottom of the Fight Pass
 2 Platform home page, where a title bout (e.g., “BARBOZA vs GAETHJE”) accompanied by a red
 3 button which reads “WATCH LIVE”, as depicted below:



13

14 50. This, along with the tagline “ANYTIME. ANYWHERE. ANY DEVICE.” further
 15 bolsters consumers’ impressions that the Fight Pass Autorenewal is tied to a specific live event.

16 51. Second, in further violation of ARL section 17602(a)(1), Defendants do not present
 17 a complete “description of the cancellation policy that applies to the offer.” *Id.* § 17601(b)(2).
 18 Defendants’ “CHECKOUT” webpage does not describe how or when consumers must cancel to
 19 avoid further charges nor do Defendants describe its Fight Pass Autorenewal refund policy. For
 20 example, UFC’s Terms of Use provide that cancellation of a Fight Pass Autorenewal will become
 21 effective as of the next billing cycle following receipt of the request. Additionally, UFC’s Terms
 22 of Use states that consumers who cancel after five days of their initial enrollment into a Fight Pass
 23 Autorenewal will not be provided with a refund. Moreover, the “CHECKOUT” webpage, nor the
 24 terms, disclosure what time zone applies to cancellation requests and thus fails to identify when
 25 cancellation must occur.²⁶ But none of this information is displayed on Defendants’
 26 “CHECKOUT” webpage. Furthermore, although Defendants’ “CHECKOUT” webpage provides

27

28 ²⁶ UFC Terms of Use, <https://www.ufc.com/terms> (last accessed Nov. 29, 2023).

1 that consumers can “cancel anytime,” Defendants do not explain how consumers can effectuate
2 their Fight Pass Cancellation request. That all this information, as with the other Fight Pass
3 Autorenewal offer terms, may be provided in elsewhere on the Fight Pass Platform or in UFC’s
4 Terms of Use does not satisfy the ARL. *See Turnier v. Bed Bath & Beyond Inc.*, 517 F. Supp. 3d
5 1132, 1140 (S.D. Cal. 2021) (“But the [automatic renewal] terms themselves—not the access point
6 to them—need to be in visual proximity to the request.”).

7 52. Finally, Defendants fail to disclose that the “recurring charges that will be charged
8 to the consumer’s credit or debit card or payment account with a third party as part of the automatic
9 renewal plan or arrangement, and that the amount of the charge may change, if that is the case, and
10 the amount to which the charge will change, if known” as defined by Cal. Bus. & Prof. Code §
11 17601(b)(3). Specifically, although the “CHECKOUT” webpage provides, if unclearly and
12 inconspicuously, the language “Monthly subscription” and that they will be charged a “total” of
13 “US\$9.99,” the “CHECKOUT” webpage does not indicate how much money consumers will be
14 charged for each subsequent month. To make matters worse, the “CHECKOUT” webpage also
15 fails to disclose that Defendants “may make changes to any products or services offered on the
16 Site, or to the applicable prices for any such products or services, at any time, without notice.”²⁷

17 53. Defendants’ “CHECKOUT” webpage, the place at which it requests consumer
18 consent to the automatically recurring Fight Pass Autorenewals, uniformly violates ARL section
19 17602(a)(1) because Defendants failed to present all material “automatic renewal offer terms,” as
20 defined by ARL section 17601(b), associated with the Fight Pass Autorenewal on its
21 “CHECKOUT” webpage. As such, Defendants failed to present the material Fight Pass
22 Autorenewal offer terms before the agreement was fulfilled in violation of ARL section
23 17602(a)(1). As alleged above, to the extent that any of Defendants’ Fight Pass Autorenewal offer
24 terms appear in the Terms of Use, or elsewhere on the Fight Pass Platform, that does not satisfy
25 the ARL’s mandate. *See Turnier*, 517 F. Supp. 3d at 1140 (“But the [automatic renewal] terms
26 themselves—not the access point to them—need to be in visual proximity to the request.”).

27 _____
28 ²⁷ *Id.*

1 54. Further, even if Defendants presented all material “automatic renewal offer terms”
2 associated with the Fight Pass Autorenewal—it did not—those terms were not presented in a “clear
3 and conspicuous manner . . . and in visual proximity . . . to the request for consent to the offer” in
4 violation of ARL section 17602(a)(1). The ARL defines “clear and conspicuous” or “clearly and
5 conspicuously” to mean “in larger type than the surrounding text, or in contrasting type, font, or
6 color to the surrounding text of the same size, or set off from the surrounding text of the same size
7 by symbols or other marks, in a manner that clearly calls attention to the language.” Cal. Bus. &
8 Prof. Code § 17601(c). Defendants’ inadequate “automatic renewal offer terms” fall well short of
9 that statutory requirement because they are smaller than the bold text featured in and under the
10 “Monthly” and “US\$9.99” headers above. Additionally, Defendants’ terms appear in 11-point
11 font, without emphasis, are illegible to the naked eye without increasing the zoom level and are
12 much less obvious or noticeable than the preceding text, in paragraph form, and are found after an
13 indistinguishable checkmark located directed on top with no paragraph or spacing in between.
14 Finally, the terms are overshadowed by the large call-to-action “Secure Checkout” button that
15 immediately turns red after a consumer enters their Billing Information drawing attention away
16 from the faint text at issue. The “Secure Checkout” is also found at the very bottom of the
17 “CHECKOUT” webpage and is thus not within “visual proximity” to the inadequate Fight Pass
18 Autorenewal offer terms found at the top of the webpage. As such, and in further violation of ARL
19 section 17602(a)(1), Defendants’ “CHECKOUT” webpage does not “clearly call attention” to its
20 otherwise deficient automatic renewal disclosures.

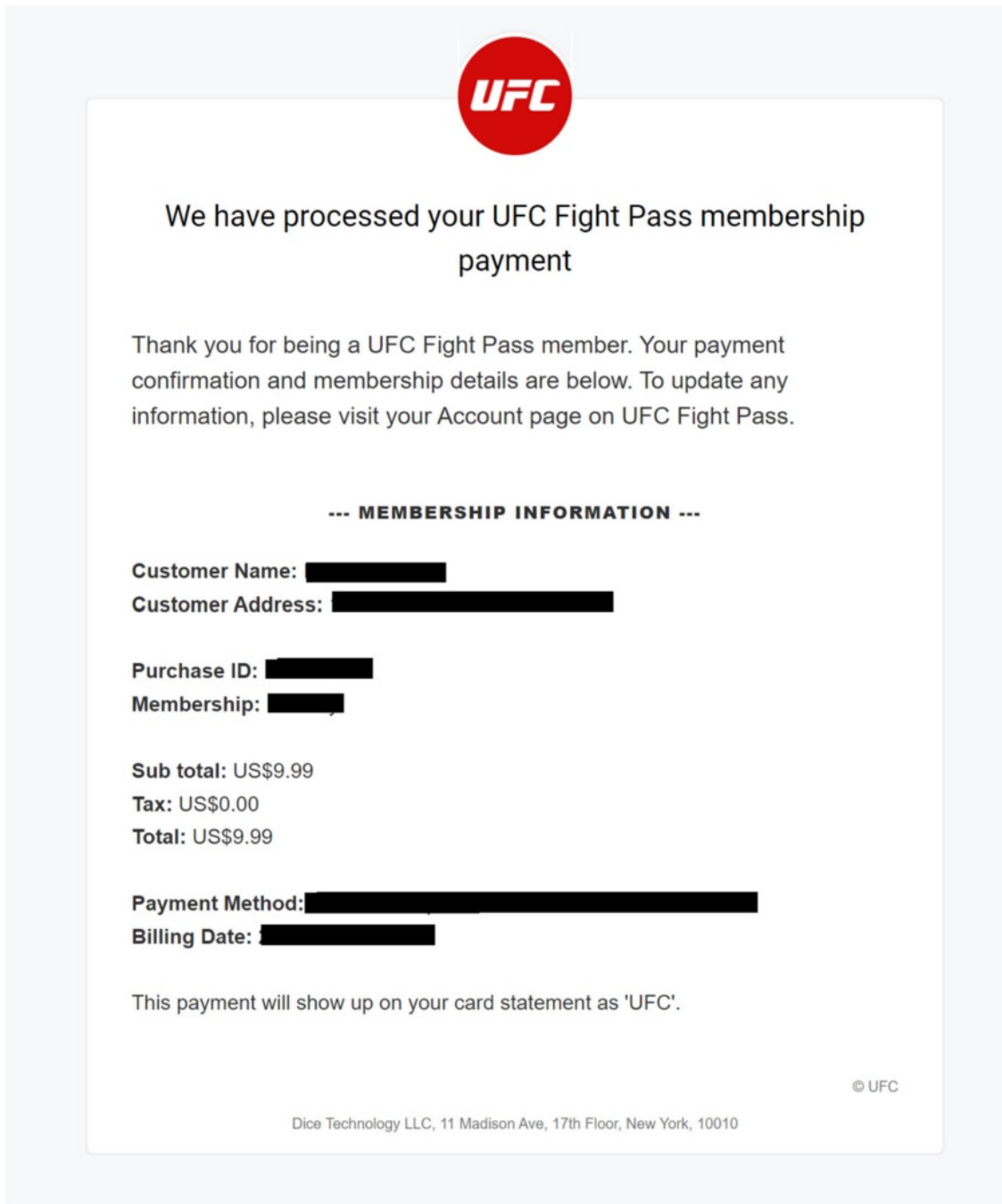
21 **ii. Defendants charge consumers for Fight Pass Autorenewals without their**
22 **affirmative consent.**

23 55. The ARL itself provides a checklist that sellers, such as Defendants, must follow to
24 obtain consumer consent. Cal. Bus. & Prof. Code § 17602(a)(1). Defendants do not follow that
25 checklist by disclosing the complete Fight Pass Autorenewal offer terms in the manner required
26 by statute and have thus failed to obtain consumers’ affirmative consent to the automatically
27 renewing Fight Pass Autorenewal before charging them. Further, consumers are never required to
28

1 affirmatively agree, *e.g.*, by selecting or clicking a “checkbox,” to the Fight Pass Autorenewal
2 offer terms on Defendants’ “CHECKOUT” webpage.

3 **iii. Defendants do not provide a post-purchase acknowledgement that includes the**
4 **Fight Pass Autorenewal offer terms, cancellation policy, and how consumers can**
5 **cancel their Fight Pass Autorenewal.**

6 56. After enrolling into a Fight Pass Autorenewal, Defendants fail to provide an
7 acknowledgement, as shown by the below confirmation email, that includes all material Fight Pass



1 Autorenewal offer terms, cancellation policy, as defined by ARL section 17601(b) and information
2 explaining how consumers can cancel their Fight Pass Autorenewal, in violation of ARL section
3 17602(a)(3).

4 57. In fact, Defendants’ bare bones confirmation email contains even less of the
5 required information than Defendants unclearly and inconspicuously disclose on the
6 “CHECKOUT” webpage, as described above.

7 58. In sum, Defendants’ pre-purchase and post-purchase disclosures fail to comply
8 with the ARL. Nowhere in the foregoing enrollment process do Defendants present the complete
9 terms of the Fight Pass Autorenewal in a clear and conspicuous manner and in visual proximity to
10 the offer before the purchase is completed in violation of ARL section 17602(a)(1). Defendants
11 fail to obtain affirmative consent from consumers to the Fight Pass Autorenewal before completing
12 the purchase in violation of ARL section 17602(a)(2). Defendants do not provide a post-purchase
13 acknowledgment in the manner mandated by the ARL in violation of section 17602(a)(3).

14 59. Regardless of the consumers’ experience with the Fight Pass Platform or the e-
15 commerce marketplace, it is Defendants’ burden to put all consumers on notice of the Fight Pass
16 Autorenewal offer terms in the manner prescribed by the ARL and obtain consumer affirmative
17 consent *before* charging their Billing Information. Defendants’ violations of the ARL
18 systematically occur every time a prospective consumer creates an account and is enrolled into a
19 Fight Pass Autorenewal. Every Fight Pass consumer receives the exact same legally inadequate
20 disclosures on the front and back end of their transaction.

21 **VI. CLASS ALLEGATIONS**

22 57. Plaintiffs’ experience with Defendants’ unlawful Fight Pass Autorenewal scheme
23 is far from unique. Indeed, every Class Member who subscribed to any Fight Pass Products within
24 the relevant statute of limitations period was subject to the same common sales and enrollment
25 procedures and, in turn, failed to receive the requisite disclosures prior to their purchase and failed
26 to receive the required post-purchase acknowledgments. As explained herein, Defendants;
27 misconduct violates California as well as federal law. Because all of the automatic renewal fees
28 that Defendants assessed against Plaintiffs and the Class were without their affirmative consent,

1 and thus unlawful, Plaintiffs and all members of the class they seek to represent are entitled to
2 restitution from Defendant of the fees they paid, in every successive billing period for which they
3 were assessed. In addition, due to Defendants' unlawful conduct in violation of the ARL, the
4 subscriptions for which Defendants charged class members should also be considered
5 unconditional gifts without having to bear the cost. Cal. Bus. & Prof. Code § 17603. Pursuant to
6 15 U.S.C. § 1983m(a)(2)(B), Plaintiffs and Class Members are also entitled to Plaintiffs and Class
7 Members are entitled to recover statutory damages in the amount of "the lesser of \$500,000 or 1
8 per centum of the net worth of the defendant."

9 58. **Class Definition:** Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23 on
10 behalf of a class of similarly situated individuals, defined as follows (the "Class"):

11 All individuals in California, District of Columbia, Florida, Hawaii, Illinois,
12 New York, North Carolina, North Dakota, Oregon, Virginia, and Vermont
13 who were enrolled in a Fight Pass Autorenewal within the applicable statute
 of limitations period, and who were subsequently assessed an automatic
 renewal fee(s) associated with those subscription(s).

14 59. Excluded from the Class are the undersigned Plaintiffs' counsel and all employees
15 of their law firms; and the judicial officers and staff overseeing this action.

16 60. Plaintiffs include all individuals in California who were enrolled in a Fight Pass
17 Autorenewal within the applicable statute of limitations period, and who were subsequently
18 assessed an automatic renewal fee(s) associated with those subscription(s).

19 61. Plaintiffs reserve the right to amend the definition of the Class if discovery or
20 further investigation reveals that the Class should be expanded or otherwise modified.

21 62. **Numerosity:** The proposed class is so numerous that joinder of all class members
22 would be impracticable. Upon information and belief, *see supra* ¶ 19, Plaintiffs allege that the
23 class includes at least 70,000 members. The class members are all ascertainable from records in
24 possession of Defendants, specifically Defendants' customer and billing records. Furthermore,
25 Defendants' actions against class members are generally applicable to every member of the
26 proposed class, thereby making appropriate restitution and further injunctive relief appropriate as
27 to the entire proposed class.

1 63. **Commonality and Predominance:** Common questions of law and fact exist as to
2 all Class members and predominate over questions affecting only individual Class members.
3 Common legal and factual questions include, but are not limited to: (1) whether Defendants
4 presented all statutorily-required automatic renewal offer terms and cancellation policy in a
5 manner that is clear and conspicuous and in visual proximity to a request for consent to the offer
6 within the meaning of the ARL; (2) whether Defendants provided the post-transaction
7 acknowledgment disclosures required by section 17602(a)(3) of the ARL; (3) Defendants'
8 policies, practices and procedures for obtaining affirmative consent from their California
9 consumers before charging their Billing Information; and (4) the appropriate remedies for
10 Defendants' unlawful conduct.

11 64. **Typicality:** Plaintiffs' claims are typical of the claims of the class members in that
12 they were enrolled into a Fight Pass Autorenewal using a common online process, received the
13 exact same inadequate pre-transaction disclosures as received by all members of the class, and
14 similarly received inadequate post-transaction acknowledgements that failed to include the
15 information required under section 17602(a)(3). Plaintiffs' claims are further typical in that they
16 were charged for automatic renewal fees without Defendants having first obtaining their
17 affirmative consent to an agreement containing clear and conspicuous disclosures of all Fight Pass
18 Autorenewal offer terms.

19 65. **Adequacy:** Plaintiffs will fairly and adequately protect Class Members' interests.
20 Plaintiffs have no interest antagonistic to Class Members' interest, and Plaintiffs have retained
21 counsel having considerable experience and success in prosecuting complex class-action and
22 consumer-protection cases.

23 66. **Superiority:** A class action is superior to all other available methods for the fair
24 and efficient adjudication of this controversy for, *inter alia*, the following reasons: prosecution of
25 individual actions are economically impractical for members of the Class; the Class is readily
26 definable; prosecution as a class action avoids repetitious litigation and duplicative litigation costs,
27 conserves judicial resources, and ensures uniformity of decisions; and prosecutions as a class
28 action permits claims to be handled in an orderly and expeditious manner.

1 67. Defendants have acted or failed to act on grounds generally applicable to the Class,
2 thereby making appropriate final injunctive relief with respect to the Class as a whole.

3 68. Without a class action, Defendants will continue a course of action that will result
4 in further injury to Plaintiffs and members of the Class and will likely retain the benefits of their
5 wrongdoing.

6 69. As noted above, apart from relief for the Class, Plaintiffs separately seek public
7 injunctive relief on behalf of the general public of California to stop the ongoing and continuing
8 violations of California law described above. Members of the general public in California who
9 have not transacted with Defendants but may in the future are at risk of new harms, injuries and
10 financial losses from the ongoing and continuing conduct complained of unless enjoined and
11 corrected. Such claims for public injunctive relief are not required to be certified as class actions
12 and the above elements are not required to be satisfied for such relief.

13 70. Based on the foregoing, Plaintiffs' claims for relief include those set forth below.

14 **VII. CAUSES OF ACTION**

15 **FIRST CAUSE OF ACTION**

16 **Violation of the California Unfair Competition Law: Unlawful Conduct**
17 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***

18 71. Plaintiffs incorporate all preceding and succeeding allegations by reference as if
19 fully set forth herein.

20 72. Plaintiffs bring this cause of action on behalf of California class members.

21 73. The UCL prohibits unfair competition in the form of "any unlawful, unfair or
22 fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any
23 act." Cal. Bus. & Prof. Code § 17200. The UCL allows "a person who has suffered injury in fact
24 and has lost money or property" to prosecute a civil action for violation of the UCL. *Id.* § 17204.
25 Such a person may bring such action on behalf of her- or himself and others similarly situated who
26 are affected by the unlawful business practice or act.

27 74. The predicate unlawful acts described above as violating the ARL do not require
28 any showing of fraud or deception to establish a violation. The violations of the ARL are

1 established through objective facts and criteria. As a result, a showing of individual reliance is not
2 a required element of this claim.

3 75. In the course of conducting business in California within the applicable limitations
4 period, Defendants committed unlawful business practices by, *inter alia* and without limitation:
5 (a) failing to provide all material Fight Pass Autorenewal offer terms and cancellation policy “in a
6 clear and conspicuous manner before the subscription or purchasing agreement is fulfilled and in
7 visual proximity . . . to the request for consent to the offer,” in violation of Cal. Bus. & Prof. Code
8 § 17602(a)(1); (b) failing to obtain the affirmative consent of consumers to those terms before
9 charging for the Fight Pass Autorenewal, in violation of *id.* § 17602(a)(2); and (c) failing to provide
10 an acknowledgment that includes the Fight Pass Autorenewal offer terms, Defendant’s
11 cancellation policy, and information regarding how to cancel in a manner that is capable of being
12 retained by Fight Pass consumers, in violation of *id.* § 17602(a)(3).

13 76. Each of these acts and practices constitutes an independent violation of the ARL,
14 and thus an independent violation of the UCL.

15 77. Plaintiffs have lost money as a result of Defendants’ unlawful acts of unfair
16 competition, in that Plaintiffs would not have incurred the automatic renewal fees associated with
17 their initial purchase of Fight Pass Products associated with the Fight Pass Autorenewal had
18 Defendants fully, clearly, and conspicuously apprised him of the terms of the automatic renewal
19 offer described herein.

20 78. As a result of their violations of the ARL, Defendants never obtained Plaintiffs’, or
21 the Class’s, affirmative consent to the automatically renewing charges, *see id.* § 17602(a)(2), and
22 all Fight Pass Products associated with the Fight Pass Autorenewals were unconditional gifts, *see*
23 *id.* § 17603, for which Defendants could not lawfully charge Plaintiffs and the Class.

24 79. Further, as alleged below, Defendants have committed additional unlawful business
25 practices under the UCL by: (a) representing that Defendants’ goods and services have certain
26 characteristics that they do not have, in violation of Cal. Civ. Code § 1770(a)(5); (b) advertising
27 goods and services with the intent not to sell them as advertised, in violation of Cal. Civ. Code §
28 1770(a)(9); and (c) Defendants represented that a transaction in question conferred or involved

1 rights, remedies, or obligations that it did not have or involve, or were otherwise prohibited by
2 law, in violation of *id.* § 1770(a)(14).

3 80. Each of these acts and practices constitutes an independent violation of the CLRA,
4 and thus an independent violation of the UCL.

5 81. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiffs and the members of the class
6 are entitled to restitution of all amounts paid to Defendants in connection with an automatic
7 renewal Fight Pass Autorenewal in the four years preceding the filing of this Complaint and
8 continuing until Defendants' acts of unfair competition cease.

9 82. Unless enjoined and restrained by this Court, Defendants will continue to commit
10 the violations alleged herein. Plaintiffs remain at risk of future harm and injury unless the
11 challenged practices, described above, are modified and enjoined. Pursuant to Cal. Bus. & Prof.
12 Code § 17203, on behalf of the class, and for the benefit of the general public of the State of
13 California, Plaintiffs seek an injunction prohibiting Defendants from continuing their unlawful
14 practices as alleged herein.

15 83. Plaintiffs, on behalf of the general public of the State of California, seek a court
16 order for public injunctive relief, declaratory relief and all other relief deemed appropriate in the
17 circumstances including that enjoining Defendants from such future misconduct, and any other
18 such orders that may be necessary to rectify Defendants' unlawful business practices and conduct.
19 Such relief is appropriate and necessary to protect members of the general public who have not yet
20 transacted with Defendants but are likely to and therefore remain at risk of future harm and thus,
21 need protection from ongoing and continuing violations of the ARL and UCL, as described above.
22 Such relief will create a public benefit.

23 84. Plaintiffs bring this action as private attorneys general and to vindicate and enforce
24 an important right affecting the public interest. Plaintiffs and the Class are therefore entitled to an
25 award of attorneys' fees and costs under Cal. Code of Civ. P. § 1021.5 and other applicable law
26 for bringing this action.

SECOND CAUSE OF ACTION
For Violation of the California Consumers Legal Remedies Act
Cal. Civ. Code §§ 1750, *et seq.*

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85. Plaintiffs incorporate all preceding and succeeding allegations by reference as if fully set forth herein.

86. Plaintiffs bring this cause of action on behalf of California class members.

87. Plaintiffs and the Class are “consumers” within the meaning of the CLRA, *see* Cal. Civ. Code § 1761(d), in that Plaintiffs and the Class sought or acquired Defendants’ good and/or services for personal, family, or household purposes.

88. Defendants’ Fight Pass Autorenewal offers and the products and services pertaining to the Fight Pass Autorenewal are “goods” and/or “services” within the meaning of Cal. Civ. Code § 1761(a) and (b). The purchases made by Plaintiffs and the Class are “transactions” within the meaning of Cal. Civ. Code § 1761(e).

89. The acts and practices of Defendants as described herein were intended to deceive Plaintiffs and the Class and have resulted, and will continue to result, in injury to Plaintiffs and the Class. The actions violated, and continue to violate, the CLRA in at least the following respects: (a) Defendants’ acts and practices constitute representations or omissions deceiving that their automatically renewing Fight Pass Autorenewal has characteristics, uses, and/or benefits, which they do not, in violation of Cal. Civ. Code § 1770(a)(5); (b) Defendants’ acts and practices constitute the advertisement of the goods in question without the intent to sell them as advertised, in violation of *id.* § 1770(a)(9); (c) Defendants represented that a transaction in question conferred or involved rights, remedies, or obligations that it did not have or involve, or were otherwise prohibited by law, in violation of *id.* § 1770(a)(14).

90. As shown above, Defendants’ “CHECKOUT” webpage and “Secure Checkout” button omit material terms of the Fight Pass Autorenewal agreement, namely, that by selecting the “Secure Checkout” button consumers will be charged on an ongoing and automatic basis unless and until they undertake formal and affirmative action to cancel. The omission of that material term, and the omission of the other material automatic renewal offer terms and cancellation policies, as alleged above, from Defendants’ “CHECKOUT” webpage deceived Plaintiffs, and

1 deceives the general public, because they believed that by selecting the “CHECKOUT” button
2 they were only making a one-time, single purchase of a “Total” of “US\$9.99” and not engaging in
3 an automatic renewal. Reasonable consumers would equally rely on and be deceived by
4 Defendants’ omissions on the “CHECKOUT” webpage because the information contained does
5 not convey that by selecting the ambiguous “Secure Checkout” button they are engaging in an
6 automatic renewal for which formal cancellation is required to avoid future and ongoing charges.

7 91. Plaintiffs and the Class suffered economic injury as a direct result of Defendants’
8 misrepresentations and/or omissions because they were unlawfully charged for Fight Pass Products
9 associated with the Fight Pass Autorenewal that were unconditional free gifts by operation of law.
10 Had Defendants fully and clearly disclosed the terms associated with its Fight Pass Autorenewal,
11 Plaintiffs and the Class would not have been enrolled into the Fight Pass Autorenewal.

12 92. As a direct and proximate cause of Defendant’s conduct, as alleged herein,
13 Plaintiffs and the Class have been damaged, injured and suffered ascertainable loss, thereby
14 entitling them to, *inter alia*, injunctive and equitable relief, reasonable attorneys’ fees, filing fees,
15 and the costs of prosecuting this action, as well as any and all other relief that may be available at
16 law or equity.

17 93. Plaintiffs have complied with Cal. Civ. Code § 1782(a) by notifying Defendants in
18 writing, by certified mail, of the violations alleged herein and demanded that Defendants remedy
19 those violations. Defendants have not remedied or agreed to remedy the violations alleged herein
20 within 30 days of receipt of Plaintiffs’ CLRA pre-suit notice. Accordingly, Plaintiffs seek actual,
21 punitive, and statutory damages pursuant to the CLRA.

22 94. Plaintiffs, on behalf of the general public of the State of California, seek a court
23 order for public injunctive relief, declaratory relief and all other relief deemed appropriate in the
24 circumstances including that enjoining Defendants from such future misconduct, and any other
25 such orders that may be necessary to rectify Defendants’ unlawful business practices and conduct.
26 Such relief is appropriate and necessary to protect members of the general public who have not yet
27 transacted with Defendants but are likely to and therefore remain at risk of future harm and thus,
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1 need protection from ongoing and continuing violations of the ARL and UCL, as described above.
2 Such relief will create a public benefit.

3 95. Plaintiffs bring this action as private attorneys general and to vindicate and enforce
4 an important right affecting the public interest. Plaintiffs and the Class are therefore entitled to an
5 award of attorneys' fees and costs under Cal. Code of Civ. P. § 1021.5, Cal. Civ. Code § 1780(e),
6 and other applicable law for bringing this action.

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8 **THIRD CAUSE OF ACTION**
For Conversion

9 96. Plaintiffs incorporate all preceding and succeeding allegations by reference as if
10 fully set forth herein.

11 97. Plaintiffs bring this cause of action on behalf of the Class.

12 98. As a result of charges made by Defendants to Plaintiffs' and the Class members'
13 Payment Methods without proper authorization and in violation of California law, Defendants have
14 taken money that belongs to Plaintiffs and the Class.

15 99. The amount of money wrongfully taken by Defendants can be identified.

16 100. Defendants engaged in this conduct knowingly, willfully, and with oppression,
17 and/or malice.

18 101. As a result of Defendants' actions, Plaintiffs and the Class have suffered damages.

19 **FOURTH CAUSE OF ACTION**
20 **For Violations of California's False Advertising Law ("FAL")**
Cal. Bus. & Prof. Code §§ 17500, *et seq.*

21 102. Plaintiffs incorporate all preceding and succeeding allegations by reference as if
22 fully set forth herein.

23 103. Plaintiffs bring this cause of action on behalf of California class members.

24 104. California's False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*,
25 makes it "unlawful for any person to make or disseminate or cause to be made or disseminated
26 before the public in this state,... in any advertising device... or in any other manner or means
27 whatever, including over the Internet, any statement, concerning... personal property or services,
28 professional or otherwise, or performance or disposition thereof, which is untrue or misleading

1 and which is known, or which by the exercise of reasonable care should be known, to be untrue or
2 misleading.”

3 105. Defendants committed acts of false advertising, as defined by § 17500, by
4 intentionally making and disseminating statement to consumers in California and the general
5 public concerning Defendants’ products and services, as well as circumstances and facts connected
6 to such products and services, which are untrue and misleading on their face and by omission, and
7 which are known (or which by the exercise of reasonable care should be known) by Defendants to
8 be untrue or misleading. Defendants have also intentionally made or disseminated such untrue or
9 misleading statements and material missions to consumers in California and to the public as part
10 of a plan or scheme with intent not to sell those services as advertised.

11 106. Defendants’ statements include but are not limited to representations and omissions
12 made to consumers before and after enrollment in Defendants’ Fight Pass Autorenewal regarding
13 the terms of payment for and cancellation of a consumer’s automatic payments. For instance,
14 Defendants’ representation on the “CHECKOUT” webpage of the Fight Pass Platform that
15 members can “cancel” their Fight Pass Autorenewal “anytime” is contradicted by its policy set
16 forth elsewhere on the Fight Pass Platform that a customer’s cancellation of their Fight Pass
17 Autorenewal would become effective “as of the next monthly billing cycle following receipt.” In
18 light of Defendants’ disclosure of the former and silence as to the latter on the “CHECKOUT”
19 webpage for the Fight Pass Autorenewal, the representations and omissions on the “CHECKOUT”
20 webpage constitute false and deceptive advertisements. Similarly, Defendants willfully induced
21 Plaintiffs and the Class members into believing that by purchasing its Fight Pass Autorenewal they
22 would be able to access to view the “PPV” they were interested in viewing; without clarifying that
23 their purchase did not include the main match of the event—the most sought out and advertised
24 fight.

25 107. Defendants’ actions in violation of Cal. Bus. & Prof. Code § 17500, as described
26 herein, were false and misleading such that the general public is and was likely to be deceived.

1 108. Defendants knew that their actions were misleading based on the sheer number of
2 complaints that they have received from consumers who were unwillingly enrolled in its Fight
3 Pass Autorenewal under false pretenses.

4 109. Plaintiffs and the members of the Class were deceived by Defendants' statements
5 and omissions made online when they signed up and started paying for their Fight Pass
6 Autorenewals, and other California consumers and members of the public were also or are likely
7 to be deceived as well. Any reasonable consumer would be misled by Defendants' false and
8 misleading statements and material omissions. Plaintiffs and other members of the Class did not
9 learn of Defendants' Fight Pass Autorenewal price, cancellation, and automatic payment policies
10 until after they had already signed up and started paying for Defendants' Fight Pass Autorenewal.
11 Thus, they relief on Defendants' statements and omissions to their detriment.

12 110. Plaintiffs and the Class lost money or property as a result of Defendants' FAL
13 violations because they would not have purchased the Fight Pass Autorenewal on the same terms
14 if the true facts were known about the product, and the Fight Pass Autorenewal do not have the
15 characteristics or the purchase price as promised by Defendants.

16 111. Plaintiffs, individually and on behalf of all similarly situated California consumers,
17 seeks individual, representative, and public injunctive relief and any other necessary orders or
18 judgments that will prevent Defendants from continuing with its false and deceptive
19 advertisements and omissions; restitution that will restore the full amount of their money or
20 property; disgorgement of Defendants' relevant profits and proceeds; and an award of costs and
21 reasonable attorneys' fees.

22 **FIFTH CAUSE OF ACTION**
23 **Unjust Enrichment / Restitution**

24 112. Plaintiffs incorporate all preceding and succeeding allegations by reference as if
25 fully set forth herein.

26 113. Plaintiffs bring this claim on behalf of the Class under the laws of California,
27 District of Columbia, Florida, Hawaii, Illinois, New York, North Carolina, North Dakota, Oregon,
28 Virginia, and Vermont.

1 114. Plaintiffs and the Class conferred benefits on Defendants by purchasing the Fight
2 Pass Autorenewal.

3 115. Defendants have been unjustly enriched in retaining the revenues derived from
4 Plaintiffs' and the Class's purchases of the Fight Pass Autorenewals. Retention of those moneys
5 under these circumstances is unjust and inequitable because Defendants' failure to disclose
6 material terms of the purchase agreement, in violation of California law, induced Plaintiffs and the
7 Class to purchase the Fight Pass Autorenewals. These omissions caused injuries to Plaintiffs and
8 the Class because they would not have purchased the Fight Pass Autorenewal at all, or on the same
9 terms if the true facts were known.

10 116. Because Defendants' retention of the non-gratuitous benefits conferred on them by
11 Plaintiffs and Class members is unjust and inequitable, Defendant has been unjustly enriched in
12 an amount to be determined at trial.

13 **SIXTH CAUSE OF ACTION**

14 **Violation of the Electronic Funds Transfer Act**
15 **15 U.S.C. §§ 1693, *et seq.***

16 117. Plaintiffs incorporate all preceding and succeeding allegations by reference as if
17 fully set forth herein.

18 118. Plaintiffs bring this claim individually and on behalf of the Members of the Class.

19 119. The EFTA provides a basic framework establishing the rights, liabilities, and
20 responsibilities of participants in an electronic fund transfer system. 15 U.S.C. §§ 1693 *et seq.*

21 120. The "primary objective" of the EFTA "is the provision of individual consumer
22 rights." *Id.* § 1693(b).

23 121. Any waiver of EFTA rights is void. "No writing or other agreement between a
24 consumer and any other person may contain any provision which constitutes a waiver of any right
25 conferred or cause of action created by this subchapter." 15 U.S.C. § 1693l.

26 122. Defendants' transfer of monies via debit card from the bank accounts of Plaintiffs
27 and Class Members are "electronic fund transfers" within the meaning of the EFTA and the
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1 EFTA’s implementing regulations, known as Regulation E and codified at 12 C.F.R. §§ 205, et
2 seq.

3 123. An “electronic fund transfer” means “any transfer of funds, other than a transaction
4 originated by check, draft, or similar paper instrument, which is initiated through an electronic
5 terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize
6 a financial institution to debit or credit an account.” 15 U.S.C. § 1693a(7). The term is expressly
7 defined to include “[t]ransfers resulting from debit card transactions, whether or not initiated
8 through an electronic terminal.” 12 C.F.R. § 205.3(b)(v).

9 124. The EFTA defines the term “preauthorized electronic transfer” as “an electronic
10 fund transfer authorized in advance to recur at substantially regular intervals.” 15 U.S.C. §
11 1693a(9). The Official Staff Interpretation of Regulation E describes a “preauthorized electronic
12 transfer” as “one authorized by the consumer in advance of a transfer that will take place on a
13 recurring basis, at substantially regular intervals, and will require no further action by the consumer
14 to initiate the transfer.” 12 C.F.R. Part 205, Supp. I, § 205.2(k), cmt. 1.

15 125. Section 1693e(a) of the EFTA prohibits preauthorized electronic transfers without
16 written authorization: “A preauthorized electronic fund transfer from a consumer’s account may
17 be authorized by the consumer only in writing, and a copy of such authorization shall be provided
18 to the consumer when made.” 15 U.S.C. § 1693e(a). Similarly, Regulation E provides:
19 “Preauthorized electronic fund transfers from a consumer’s account may be authorized only by a
20 writing signed or similarly authenticated by the consumer. The person that obtains the
21 authorization shall provide a copy to the consumer.” 12 C.F.R. § 205.10(b).

22 126. Plaintiffs and members of the Class each maintained an “account” as that term is
23 defined in 15 U.S.C § 1693a(2) and are “consumers” within the meaning of 15 U.S.C. § 1693a(5).

24 127. Defendants uniformly and routinely initiated preauthorized electronic fund
25 transfers and took money from the bank accounts of the Plaintiffs and Class Members without
26 obtaining their written authorization for the transfers, as required by the EFTA and Regulation E.
27 Defendants also uniformly and routinely failed to provide a copy of any such written authorization
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1 to Plaintiffs and the Class Members from whose bank accounts Defendants took preauthorized
2 electronic fund transfers for monthly membership fees.

3 128. Defendants took funds from bank accounts managed by Plaintiffs via debit card. In
4 none of these instances did Defendants obtain Plaintiffs' written authorizations, nor did Defendants
5 provide Plaintiffs with copies of any such written authorizations.

6 129. The Official Staff Interpretation of Regulation E explains, "when a third-party
7 payee," such as Defendants, "fails to obtain the authorization in writing or fails to give a copy to
8 the consumer ... it is the third-party payee that is in violation of the regulation." 12 C.F.R. Part
9 205, Supp. I, § 205.10(b), cmt. 2.

10 130. As a direct and proximate result of Defendants' violations of the EFTA and
11 Regulation E, Plaintiffs and Class Members have suffered damages in the amount of the
12 unauthorized debits taken by Defendants. 15 U.S.C. § 1693m. As a further direct and proximate
13 result of Defendants' violations of the EFTA and Regulation E, Plaintiffs and Class Members are
14 entitled to recover statutory damages in the amount of "the lesser of \$500,000 or 1 per centum of
15 the net worth of the defendant." *Id.* § 1983m(a)(2)(B).

16 131. Pursuant to 15 U.S.C. § 1693m, Plaintiffs and Class Members are also entitled to
17 recover costs of suit and attorneys' fees from Defendants.

18 **SEVENTH CAUSE OF ACTION**
19 **Nevada Deceptive Trade Practices Act ("NDTPA"),**
20 **Nev. Rev. Stat. §§ 598.0903, *et seq.***

21 132. Plaintiffs incorporate all preceding and succeeding allegations by reference as if
22 fully set forth herein.

23 133. Alternatively, if Nevada law applies to the claims of Plaintiffs and the putative
24 Class, the allegations in Paragraphs 40-44, 46-54 *supra*, amount to a violation under the Nevada
25 Deceptive Trade Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.*

26 134. Plaintiffs, each of the members of the Class, and each of the Defendants are
27 "persons," within the meaning of sections 598.0915 and 598.0923 of the NDTPA.

28 135. Plaintiffs and the members of the Class are "victim[s] of consumer fraud" within
the meaning of Nev. Rev. Stat. § 41.600(1).

1 136. Fight Pass Autorenewal offers and the products and services pertaining to the Fight
2 Pass Autorenewal are goods, commodities, and/or services within the meaning of NDTPA.
3 Federal and state statutes classify paid cable broadcasts as a “programming service.” *See, e.g.*,
4 47 U.S.C.A. § 522; 47 C.F.R. § 76.5(ff).

5 137. The conduct of Defendants, as alleged herein, constitutes unlawful practices that
6 occurred in connection with the sale and or advertisement of goods and services, within the
7 meaning of the NDTPA.

8 138. Defendants’ deceptive omissions, concealment, and suppression of material fact, as
9 described within, violated the NDTPA by:

- 10 a. Representing that goods or services for sale or lease were of a particular standard,
11 quality, or grade, or that such goods were of a particular style or model, despite
12 knowing that such goods or services were of another standard, quality, grade, style,
13 or model, Nev. Rev. Stat. § 598.0915(7);
- 14 b. Advertising goods or services for sale or lease with intent not to supply reasonably
15 expectable public demand, unless the advertisement discloses a limitation of
16 quantity, Nev. Rev. Stat. § 598.0915(10);
- 17 c. Failing to make delivery of goods or services for sale or lease within a reasonable
18 time or to make a refund for the goods or services, if he or she allows refunds, Nev.
19 Rev. Stat. § 598.092(4); and
- 20 d. Knowingly failing to disclose a material fact in connection with the sale or lease of
21 goods or services, Nev. Rev. Stat. § 598.0923(2).

22 139. As described herein, Defendants violated these provisions of NDTPA by engaging
23 in unfair or deceptive acts or practices in the conduct of any trade or commerce.

24 140. As shown above, Defendants’ “CHECKOUT” webpage and “Secure Checkout”
25 button omit material terms of the Fight Pass Autorenewal agreement, namely, that by selecting the
26 “Secure Checkout” button consumers will be charged on an ongoing and automatic basis unless
27 and until they undertake formal and affirmative action to cancel. The omission of that material
28 term, and the omission of the other material automatic renewal offer terms and cancellation

1 policies, as alleged above, from Defendants’ “CHECKOUT” webpage deceived Plaintiffs, and
2 deceives the general public, because they believed that by selecting the “CHECKOUT” button
3 they were only making a one-time, single purchase of a “Total” of “US\$9.99” and not engaging in
4 an automatic renewal. Reasonable consumers would equally rely on and be deceived by
5 Defendants’ omissions on the “CHECKOUT” webpage because the information contained does
6 not convey that by selecting the ambiguous “Secure Checkout” button they are engaging in an
7 automatic renewal for which formal cancellation is required to avoid future and ongoing charges.

8 141. Defendants knew, or should have known, that its omissions of facts about auto-
9 renewals and the checkout process were material to reasonable consumers like those in the Class.
10 Had Defendants fully and clearly disclosed the terms associated with its Fight Pass Autorenewal,
11 Plaintiffs and the Class would not have been enrolled into the Fight Pass Autorenewal.

12 142. By way of the foregoing, Defendants deprived Plaintiffs and members of the Class
13 the benefit of their bargain.

14 143. Defendants’ acts and practices alleged herein were intended to and did result in
15 Fight Pass Autorenewals in violation of the NDTPA, which Defendants’ benefitted financially
16 from.

17 144. At all relevant times herein, Defendants had a duty to disclose material facts to the
18 Class, including a full and clear disclosure of the terms associated with Fight Pass Autorenewal.

19 145. Plaintiffs and members of the Class relied on Defendants’ conduct and omissions,
20 to the extent one can reasonable rely on statements omitted, concealed, and not otherwise made.

21 146. Defendants were in a position to communicate the concealed facts to Plaintiffs and
22 the Class, through their various platforms, social media and the like, but failed to do so prior to
23 initiating Autorenewals.

24 147. As a direct result of Defendants’ actions and omissions of material facts, Plaintiffs
25 and Class members did not obtain the value of the goods, merchandise, and/or services for which
26 they paid; were induced to make purchases that they otherwise would not have made; and lost their
27 ability to make an informed and reasoned purchasing decision and/or to demand and receive a
28 refund before the Autorenewals.

1 148. By way of the foregoing, Defendants have engaged in the knowing concealment,
2 suppression, and omission of material facts with intent that others act upon such concealment,
3 suppression, and omission, in connection with the sale or advertisement of any merchandise.
4 Through their uniform concealment and suppression of material facts, Defendants engaged in
5 deceptive conduct which created a likelihood of confusion or misunderstanding on the part of the
6 Plaintiffs and Class members.

7 149. The NDTPA is, by its express terms, a cumulative remedy, such that remedies
8 under its provisions can be awarded in addition to those provided under separate statutory schemes
9 and/or common law remedies, such as those alleged in the other Counts of this Amended
10 Complaint.

11 150. Under the NDPTA and Nev. Rev. Stat. § 41.600(1), Plaintiffs and members of the
12 Class have standing to pursue this claim because they suffered an ascertainable loss resulting from
13 Defendants' conduct and are victims of consumer fraud.

14 151. As a direct and proximate cause of Defendants' omissions, which constitute
15 deceptive trade practices and/or consumer fraud, as herein alleged, Plaintiffs and Class members
16 have been damaged and suffered ascertainable losses measured by the cost of the Fight Pass
17 Autorenewals and other out-of-pocket expenses, thereby entitling them to recover compensatory
18 damages, restitution, disgorgement, refunds of moneys, interest, treble damages, punitive
19 damages, reasonable attorneys' fees, filing fees, and the costs of prosecuting this class action, as
20 well as any and all other relief that may be available at law or equity.

21 152. Based on the foregoing, Plaintiffs and all Class members are entitled to damages,
22 declaratory and injunctive relief, and well as all other relief deemed just and equitable in the
23 circumstances and as allowable by law.

24 **VIII. JURY TRIAL DEMANDED**

25 Plaintiffs demand a trial by jury as to all issues triable to a jury.

26 **IX. PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, request
28 relief as follows on all counts:

1. For restitution of the amounts unlawfully charged Plaintiffs and members of the Class and California class members;
2. For public injunctive relief against further violations of the ARL and EFTA by Defendant;
3. For private injunctive relief and declaratory relief;
4. For reasonable attorneys' fees and costs;
5. For prejudgment interest; and
6. For such other relief as the Court deems just and proper.

DATED this 23th day of December 2024.

Respectfully submitted by:

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