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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LUIS LICEA, an individual,

Plaintiff,

v.

YOGA WITH ADRIENE, LLC, a Texas
limited liability company; and DOES 1 –
10, inclusive,

Defendants.

Case No. 5:20-cv-2379

COMPLAINT FOR:

1. VIOLATIONS OF CALIFORNIA’S
AUTOMATIC RENEWAL LAW
(BUSINESS AND PROFESSIONS
CODE §§ 17600-17604); AND
2. VIOLATIONS OF CALIFORNIA’S
UNFAIR COMPETITION LAW
(BUSINESS AND PROFESSIONS
CODE §§ 17200-17204)

1 Plaintiff Luis Licea (“Plaintiff”) complains and alleges as follows:

2 **INTRODUCTION & OVERVIEW OF CLAIMS**

3 1. Plaintiff is a blind California consumer. Earlier this year, he accepted a
4 “free” trial online Find What Feels Good yoga subscription and related
5 services/products from Yoga With Adriene, LLC (“Defendant”).

6 2. Defendant made and continues to make offers of “free” services and
7 products that **violate California law in at least two ways**. Specifically, Defendant:

8 (a) fails to present the automatic renewal offer terms or continuous service
9 offer terms, most particularly its full cancellation policy, in a **clear and**
10 **conspicuous manner** and in visual proximity to the request for consent
11 to the offer before the subscription or purchasing agreement was
12 fulfilled in violation of Cal. Bus. & Prof. Code § 17602(a)(1); and

13 (b) fails to provide an acknowledgment that includes the automatic renewal
14 or continuous service offer terms, most particularly its full cancellation
15 policy, in violation of Cal. Bus. & Prof. Code § 17602(a)(3).

16 3. As a result, the product or service provided by Defendant to Plaintiff is an
17 **unconditional gift** pursuant to Cal. Bus. & Prof. Code § 17603 and must be refunded.

18 **JURISDICTION AND VENUE**

19 4. This Court has diversity jurisdiction over all causes of action asserted
20 herein. There is complete diversity of citizenship in that Plaintiff is a citizen of the
21 State of California and Defendant is a limited liability company organized under the
22 laws of the State of Texas and has its principal place of business in the State of Texas.
23 Additionally, the amount in controversy exceeds \$75,000, exclusive of interest and
24 costs.

25 5. This Court also has personal jurisdiction over Defendant because
26 Defendant currently does business in this state and has sufficient minimum contacts
27 with this state.

1 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because
2 Plaintiff is a resident of this District, and because Defendant is subject to personal
3 jurisdiction in this District and a substantial portion of the conduct complained of herein
4 occurred in this District.

5 **PARTIES**

6 7. Plaintiff Luis Licea is a California consumer. Plaintiff is completely blind.
7 Plaintiff accepted Defendant's offer of a "free" trial online Find What Feels Good yoga
8 subscription and related services/products and is a consumer as defined under Cal. Bus.
9 & Prof. Code § 17601(d).

10 8. Plaintiff both genuinely wanted to avail himself of Defendant's services
11 and, as a consumer advocate for the blind, also wanted to determine whether Defendant
12 would abide by its obligations under California law. As such, he is a dual-motivation
13 "tester" who advances important consumer rights who should be "praised." (*Murray v.*
14 *GMAC Mortgage Corp.*, 434 F.3d 948, 954 (7th Cir. 2006).)

15 9. Plaintiff is informed and believes, and upon such information and belief
16 alleges, that Defendant Yoga With Adriene, LLC is a Texas limited liability company
17 with its principal place of business located in Austin, Texas. Defendant operates in
18 California and has done business in California at all times relevant. At all relevant
19 times, Defendant made, and continues to make, free trial service offers to consumers in
20 California. Defendant operates a website which markets online Find What Feels Good
21 yoga subscription and related services/products.

22 10. The true names and capacities of the Defendants sued herein as DOES 1
23 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such
24 Defendants by fictitious names. Each of the Defendants designated herein as a DOE is
25 legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of
26 Court to amend this Complaint to reflect the true names and capacities of the DOE
27 Defendants when such identities become known.
28

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

8 **FACTUAL BACKGROUND**

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

10 12. On December 1, 2010, sections 17600-17606 of the Cal. Bus. & Prof.
11 Code, i.e., the Automatic Renewal Law (“ARL”), came into effect. The Legislature’s
12 stated intent for this Article was to end the practice of ongoing charges to consumers’
13 payment methods without consumers’ explicit consent for ongoing shipments of a
14 product or ongoing deliveries of service. *See* Cal. Bus. & Prof. Code § 17600. Section
15 17602, operative in its current form on July 1, 2018, contains specific requirements, as
16 set forth below, concerning free trial offers made in connection with such service and
17 subscription offers.

18 13. Cal. Bus. & Prof. Code § 17602(a) makes it unlawful for any business
19 making a free gift or trial offer to a consumer in this state to do any of the following:

- 20 (1) Fail to present the automatic renewal offer terms or continuous
21 service offer terms, including the full cancellation terms, in a clear
22 and conspicuous manner before the subscription or purchasing
23 agreement is fulfilled and in visual proximity, or in the case of an
24 offer conveyed by voice, in temporal proximity, to the request for
25 consent to the offer.
26 (2) Fail to provide an acknowledgment that includes the automatic
27 renewal or continuous service offer terms, including its cancellation
28 policy, in a manner that is capable of being retained by the
consumer.

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

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

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

18 **Defendant’s Business and Violations of California Law**

19 17. Defendant offers via its website “free trials” of various products and
20 services. Defendant’s product and services plan constitutes an automatic renewal plan
21 or arrangement for the purposes of Cal. Bus. & Prof. Code § 17601.

22 18. Defendant failed to state in clear and conspicuous language Defendant’s
23 full cancellation policy as required by Section 17602(a)(1), as set forth above.

24 19. Defendant also failed to provide an acknowledgement that includes the full
25 cancellation policy in a manner that is capable of being retained by Plaintiff in violation
26 of Cal. Bus. & Prof. Code §§ 17602(a)(3).

27 20. Because California law regulating companies who offer “free trials” is
28 stringent and the consequences for violating it are severe, some companies attempt to

1 avoid their obligations by unilaterally imposing anti-consumer provisions such as
2 mandatory arbitration, waiver of class action remedies, damage limitations, and/or
3 application of foreign law upon California consumers. At the time Plaintiff accepted
4 Defendant's offer, Plaintiff was not aware of any such provisions, was never presented
5 with any such provisions, and did not agree to any such provisions. As such, if and to
6 the extent that the Defendant now tries to "ambush" Plaintiff with any such terms, they
7 cannot be imposed upon Plaintiff. *See, e.g., National Federal of the Blind v. The*
8 *Container Store, Inc.*, 904 F.3d 70, 75-77, 83-84 (1st Cir. 2018.)

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PRESENT FULL CANCELLATION POLICY IN VISUAL**
11 **PROXIMITY TO THE REQUEST FOR CONSENT OFFER (CAL. BUS. &**
12 **PROF. CODE § 17602(a)(1))**

13 **(By Plaintiff Against All Defendants)**

14 21. The foregoing paragraphs are alleged herein and are incorporated herein
15 by reference.

16 22. California's Business and Professions Code § 17602(a)(1) provides:

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

20 (1) Fail to present the automatic renewal offer terms or continuous
21 service offer terms in a **clear and conspicuous manner** before the
22 subscription or purchasing agreement is fulfilled and in visual
23 proximity, or in the case of an offer conveyed by voice, in temporal
24 proximity, to the request for consent to the offer.

25 (Cal. Bus. & Prof. Code § 17602(a)(1) (emphasis added).)

26 23. Defendant made a "free trial" and automatic renewal offer to Plaintiff in
27 violation of these requirements, most particularly regarding its full cancellation policy.
28 As a result of Defendant's violations of Cal. Bus. & Prof. Code § 17602(a)(1),
Defendant is subject under Cal. Bus. & Prof. Code § 17604 to all civil remedies that
apply to a violation of Article 9, of Chapter 1, of Part 3, of Division 7 of the Cal. Bus. &

1 Prof. Code including, but not limited to, an unconditional gift or restitution to Plaintiff
2 under Cal. Bus. & Prof. Code § 17603.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PROVIDE ACKNOWLEDGMENT WITH**
5 **AUTOMATIC RENEWAL TERMS AND INFORMATION REGARDING**
6 **CANCELLATION POLICY**

7 **(CAL. BUS. & PROF. CODE § 17602(a)(3))**

8 **(By Plaintiff Against All Defendants)**

9 24. The foregoing paragraphs are alleged herein and are incorporated herein
10 by reference.

11 25. California’s Business and Professions Code § 17602(a)(3) provides:

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

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

18 (Cal. Bus. & Prof. Code § 17602(a)(3) (emphasis added).)

19 26. Defendant violated this requirement by failing to provide Plaintiff with an
20 acknowledgement that includes the full cancellation policy in a manner that is capable
21 of being retained by Plaintiff. As a result of Defendant’s violations of Cal. Bus. & Prof.
22 Code §§ 17602(a)(3), Defendant is subject under Cal. Bus. & Prof. Code § 17604 to all
23 civil remedies that apply to a violation of Article 9, of Chapter 1, of Part 3, of Division 7
24 of the Cal. Bus. & Prof. Code including, but not limited to, an unconditional gift or
25 restitution to Plaintiff under Cal. Bus. & Prof. Code § 17603.

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THIRD CAUSE OF ACTION

VIOLATION OF THE UNFAIR COMPETITION LAW

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

(By Plaintiff Against All Defendants)

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5 27. The foregoing paragraphs are alleged herein and are incorporated herein
6 by reference.

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

13 29. Since December 1, 2010, and continuing to the present, Defendant has
14 committed unlawful business acts or practices as defined by the UCL, by violating Cal.
15 Bus. & Prof. Code §§ 17602(a)(1) and 17602(a)(3).

16 30. Plaintiff has standing to pursue this claim because he suffered injury in
17 fact and has lost money or property as a result of Defendant’s actions as set forth
18 herein. Plaintiff accepted Defendant’s free trial offer but was later charged monies in
19 violation of the law, thus causing an actual injury to Plaintiff. Plaintiff would not have
20 consented to the free trial offer if Defendant had made appropriate disclosures required
21 by the ARL.

22 31. Plaintiff is entitled to enforce all applicable penalty provisions pursuant to
23 Cal. Bus. & Prof. Code § 17202, and to obtain injunctive relief pursuant to Cal. Bus. &
24 Prof. Code § 17203. The amount in controversy with respect to all such relief is in
25 excess of \$75,000, exclusive of interest and costs.

PRAYER FOR RELIEF

26
27 WHEREFORE, Plaintiff requests the following relief:
28

1 A. That the Court find and declare that Defendant has violated Cal. Bus. &
2 Prof. Code § 17602(a)(1) by failing to present the automatic renewal offer terms, or
3 continuous service offer terms, most particularly its full cancellation policy, in a clear
4 and conspicuous manner and the visual proximity to the request for consent to the offer
5 before the subscription or purchasing agreement was fulfilled;

6 B. That the Court find and declare that Defendant has violated Cal. Bus. &
7 Prof. Code § 17602(a)(3) by failing to provide an acknowledgment that includes the
8 cancellation policy in a manner that is capable of being retained by the consumer;

9 C. That the Court find and declare that Defendant has violated the UCL and
10 committed an unlawful business practice by violating Cal. Bus. & Prof. Code § 17602;

11 D. That the Court award to Plaintiff actual damages, restitution or an
12 unconditional gift pursuant to Cal. Bus. & Prof. Code §§ 17203, 17603, together with
13 injunctive relief pursuant to Cal. Bus. & Prof. Code § 17203, with the amount in
14 controversy with respect to all such relief being in excess of \$75,000, exclusive of
15 interest and costs;

16 E. That Plaintiff be awarded attorneys' fees and costs; and

17 F. That the Court award such other and further relief as this Court may deem
18 appropriate.

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20 Dated: November 15, 2020

PACIFIC TRIAL ATTORNEYS, APC

21 By: /s/ Scott J. Ferrell

22 Scott. J. Ferrell

23 Attorneys for Plaintiff
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