

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Todd M. Friedman (216752)**  
**Adrian R. Bacon (280332)**  
**Meghan E. George (274525)**  
**Law Offices of Todd M. Friedman, P.C.**  
**21550 Oxnard St. Suite 780,**  
**Woodland Hills, CA 91367**  
**Phone: 877-206-4741**  
**Fax: 866-633-0228**  
**tfriedman@toddfllaw.com**  
**abacon@toddfllaw.com**  
**mgeorge@toddfllaw.com**

*Attorneys for Plaintiff,*  
*Erin L. Perry*

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ERIN L. PERRY, individually, and  
on behalf of other members of the  
general public similarly situated,

Plaintiff,

vs.

MLB ADVANCED MEDIA, L.P.,  
DBA MLB.COM, and DOES 1-10,  
inclusive,

Defendants.

Case No.

**CLASS ACTION COMPLAINT**

- (1) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*);
- (2) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17500 *et seq.*); and
- (3) Violation of Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750 *et seq.*).

**Jury Trial Demanded**

1 Plaintiff Erin L. Perry (“Plaintiff”), individually and on behalf of all other  
2 members of the public similarly situated, allege as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this class action Complaint against Defendant MLB  
5 Advanced Media, L.P., dba MLB.com, (hereinafter “Defendant”) to stop  
6 Defendant’s practice of falsely advertising a full year of MLB Prime (“Class  
7 Product”) for an introductory price of \$79.99 that it has no intention to provide,  
8 and in fact did not provide, and to obtain redress for a nationwide class of  
9 consumers (“Class Members”) who purchased the Class Product within the  
10 applicable statute of limitations period as a result of Defendant’s false and  
11 misleading advertisements.

12 2. Defendant is a corporation with principal place of business in New  
13 York City and state of incorporation in New York and is engaged in the sale and  
14 distribution of communication and media devices, internet and television services.

15 3. Defendant represented that for the introductory price of \$79.99,  
16 consumers would receive a full year subscription to MLP Prime, when in fact  
17 Defendant did not and had no intention to provide consumers with a full year of  
18 MLB Prime for such price.

19 4. Plaintiff and others similarly situated purchased the Class Product  
20 from Defendant.

21 5. Defendant’s misrepresentations and/or omissions to Plaintiff and  
22 others similarly situated caused them to purchase the Class Product, which  
23 Plaintiff and others similarly situated would not have purchased absent the  
24 misrepresentations and/or omissions by Defendant and its employees. In so doing,  
25 Defendant has violated California consumer protection statutes.

26 **NATURE OF THE CASE & COMMON ALLEGATIONS OF FACT**

27 6. Consumers purchased a full year subscription to MLP Prime  
28

1 advertised at the introductory rate of \$79.99.

2 7. Consumers rely on the representations and advertisements of retailers  
3 in order to know which programs and services to purchase based on availability  
4 and cost. Cost and terms of service are important and material to consumers at the  
5 time they sign up for services with a particular media provider, as consumers are  
6 sensitive to costs they pay for these programs and services, compared to what they  
7 could purchase from a competitive service provider.

8 8. Defendant is engaged in the manufacture, marketing, supplying, and  
9 distributing television and internet products and services that are accompanied by  
10 deceptive advertising and billing practices that are not disclosed at the time  
11 consumers purchase goods and/or sign up for services.

12 9. When consumers purchase goods and sign up for services with an  
13 internet and television media service provider, they reasonably believe that they  
14 will be billed in a transparent manner and will not be overbilled at the time they  
15 agree to initiate a relationship with the service provider.

16 10. Defendant profits from the sale of internet and television media  
17 products and services. With deceptive advertising and billing practices, many of  
18 the consumers would not have purchased or attempted to purchase these television  
19 or internet media services, or would have chosen to purchase goods and/or services  
20 from a competitor.

21 11. In Plaintiff's case, the billing practices that Defendant engaged were  
22 anything except for transparent, rather, they were quite deceptive.

23 12. Defendant misrepresents that consumers would only billed \$79.99,  
24 for a full year's subscription to MLB Prime, when in fact consumers were billed  
25 more than the amount represented for a single year of MLP Prime.

26 13. Defendant does not present consumers with a written copy of the  
27 correct terms of the purchase prior to purchase, in order to conceal the deception  
28

1 that is at issue in this case.

2 14. Defendant makes written and oral representations to consumers  
3 which contradict the actual billing practices of the television and internet media  
4 services that will be used by Defendant after the consumer signs up for service.

5 15. The aforementioned written and oral representations are objectively  
6 false, and constitute a false advertisement under Cal. Civ. Code §§ 1750 et. seq.,  
7 and Cal. Bus. & Prof. Code §§ 17500 et. seq., and an unlawful, unfair, or deceptive  
8 business practices under Cal. Bus. & Prof. Code §§ 17200 et. seq.

9 16. Defendant's violations of the law include, but not limited to, the false  
10 advertising, marketing, representations, and sale of the Class Product to consumers  
11 in California and nationwide.

12 17. On behalf of the class and subclass, Plaintiff seeks an injunction  
13 requiring Defendant to cease advertising and selling the Class Product and an  
14 award of damages to the Class Members, together with costs and reasonable  
15 attorneys' fees.

16 **JURISDICTION AND VENUE**

17 18. This class action is brought pursuant to Federal Rule of Civil  
18 Procedure 23. All claims in this matter arise exclusively under California law.

19 19. This matter is properly venued in the United States District Court for  
20 the Central District of California, in that Plaintiff purchased the services from  
21 Ventura County and Defendant provided the services to Plaintiff in that location.  
22 Plaintiff resides in the Central District of California and Defendant does business,  
23 inter alia, in the Central District of California.

24 20. There is original federal subject matter jurisdiction over this matter  
25 pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4 (Feb.  
26 18, 2005), by virtue of 28 U.S.C. §1332(d)(2), which explicitly provides for the  
27 original jurisdiction of federal courts in any class action in which at least 100  
28

1 members are in the proposed plaintiff class, any member of the plaintiff class is a  
2 citizen of a State different from the State of citizenship of any defendant, and the  
3 matter in controversy exceeds the sum of \$5,000,000.00, exclusive of interests and  
4 costs.

5 21. In the case at bar, there are at least 100 members in the proposed Class  
6 and Sub-classes, the total claims of the proposed Class members are in excess of  
7 \$5,000,000.00 in the aggregate, exclusive of interests and costs, and Plaintiff seeks  
8 to represent a nationwide class of consumers, establishing minimum diversity.

### 9 **THE PARTIES**

10 22. Plaintiff Erin L. Perry is a citizen and resident of the State of  
11 California, County of Ventura.

12 23. Defendant MLB Advanced Media, L.P., dba MLB.com, (hereinafter  
13 “Defendant”) is a corporation company with its principle place of business located  
14 and headquartered in New York City. Defendant’s State of Incorporation is in  
15 New York.

16 24. Plaintiff is informed and believes, and thereon alleges, that each and  
17 all of the acts and omissions alleged herein were performed by, or is attributable  
18 to, Defendant and/or its employees, agents, and/or third parties acting on its behalf,  
19 each acting as the agent for the other, with legal authority to act on the other’s  
20 behalf. The acts of any and all of Defendant’s employees, agents, and/or third  
21 parties acting on its behalf, were in accordance with, and represent, the official  
22 policy of Defendant. Plaintiff alleges, on information and belief, that Defendant’s  
23 marketing campaigns, as pertains to this matter, were created by Defendant at its  
24 principle place of business in New York City, and were disseminated from New  
25 York, nationwide.

26 25. Plaintiff is informed and believes, and thereon alleges, that said  
27 Defendant is in some manner intentionally, negligently, or otherwise responsible  
28

1 for the acts, omissions, occurrences, and transactions of each and all its employees,  
2 agents, and/or third parties acting on its behalf, in proximately causing the  
3 damages herein alleged.

4 26. Plaintiff is informed and believes, and thereon alleges, that at all time  
5 relevant, Defendant's sales of products and services are governed by the  
6 controlling law in the state in which they do business and from which the sales or  
7 products and services, and the allegedly unlawful acts originated, which is  
8 California.

9 27. At all relevant times, Defendant ratified each and every act or  
10 omission complained of herein. At all relevant times, Defendant, aided and  
11 abetted the acts and omissions as alleged herein.

#### 12 **PLAINTIFF'S FACTS**

13 28. In or around July of 2016, Plaintiff saw and/or received in the mail  
14 Defendant's advertisement, advertising a full year subscription to MLB Prime for  
15 an introductory rate of \$79.99 ("Ad"). As a result of Defendant's Ad, Plaintiff  
16 decided to take advantage of the introductory offer of \$79.99, and spoke to  
17 Defendant's agent, who assured Plaintiff that she would receive a full year of MLB  
18 Prime for the introductory rate of \$79.99.

19 29. Plaintiff enjoyed and used the Class Product until March 3, 2017,  
20 when Defendant automatically renewed Plaintiff's subscription to the Class  
21 product for \$112.99, approximately four (4) months shy on the full year Plaintiff  
22 previously purchased and paid for in July of 2016 for \$79.99.

23 30. Plaintiff called Defendant and requested that she be refunded for the  
24 four (4) months she was doubled billed when Defendant decided to renew her  
25 subscription to MLB Prime on March 3, 2017, without notice or consent.  
26 Defendant never responded.

27 31. For the service plan, Plaintiff paid more than valuable consideration.  
28

1 Plaintiff relied on the fact that the service plan was being advertised for a particular  
2 price and would be provided for a specific period of time, by express statements  
3 or material omissions, that billing would be done clearly and accurately at the time  
4 of her purchase. Plaintiff was never informed, in writing, orally, or in any  
5 conspicuous manner, that she would be charged more for the service after she paid  
6 said charges.

7 32. Plaintiff alleges that such representations were part of a common  
8 scheme to mislead consumers and incentivize them to purchase the Class Product  
9 in spite of the fact that Defendant had no intention to and did not provide the Class  
10 Product for the period represented.

11 33. Plaintiff felt ripped off and cheated by Defendant, for being charged  
12 and billed for charges that were not authorized or conspicuously disclosed.  
13 Plaintiff believes that Defendant will continue its action of duping customers in  
14 the same way unless Defendant's practices are halted by way of an injunction.

15 34. Defendant's representation, through statements and omissions, that  
16 consumers would only be billed an introductory rate of \$79.99 for a full year of  
17 MLP Prime constitute fraudulent affirmative misrepresentations of material fact  
18 that would be important to reasonable consumers when deciding between different  
19 internet and television media service providers.

20 35. That is, had consumers, including Plaintiff, known that Defendant  
21 misrepresents its billing practices, then Plaintiff would never have purchased  
22 Defendant's services.

23 36. Plaintiff alleges on information and belief that Defendant's policy and  
24 practice is to materially misrepresent the price of its services, through said  
25 fraudulent omissions and misrepresentations, to induce consumers to reasonably  
26 rely on the price of service, in order to induce their purchase of services from  
27 Defendant over law abiding competitors.  
28

1           37. Defendant has a duty to disclose the full cost of services, including  
2 the timing and amount of renewal fees, to consumers, prior to the time that they  
3 agree to purchase services from Defendant. Defendant has a duty to disclose these  
4 material terms, because such terms would be highly important to a reasonable  
5 consumer, because a failure to disclose such terms would have the effect of  
6 drastically and unexpectedly elevating the price of Defendant's services for  
7 consumers, and because Defendant binds consumers to contracts of terms, thereby  
8 preventing consumers from easily getting out of their obligations with Defendant.

9           38. Upon learning that Defendant was charging her excessively, Plaintiff  
10 felt ripped off and cheated by Defendant.

11           39. Such tactics rely on falsities and have a tendency to mislead and  
12 deceive a reasonable consumer.

13           40. Defendant expressly represented to Plaintiff, through written  
14 statements, the price of its products and services.

15           41. Plaintiff alleges that such representations were part of a common  
16 scheme to mislead consumers and incentivize them to purchase internet and  
17 television media services.

18           42. In purchasing the Class Product, Plaintiff relied upon Defendant's  
19 representations.

20           43. Such representations were clearly false because the price of the  
21 products and terms of the services offered by Defendant were at a higher rate and  
22 of a different nature than represented.

23           44. Plaintiff would not have purchased the products and services if she  
24 knew that the above-referenced statements made by Defendant were false.

25           45. Had Defendant properly marketed, advertised, and represented the  
26 Class Product, Plaintiff would not have purchased the products and services.

27           46. Plaintiff agreed to give her money, attention and time to Defendant  
28

1 because of the price that the internet and television media service was advertised.  
2 Defendant benefited from falsely advertising the prices of the service. Defendant  
3 benefited on the loss to Plaintiff and provided nothing of benefit to Plaintiff in  
4 exchange.

5 47. Had Defendant properly marketed, advertised, and represented the  
6 Class Product, no reasonable consumer who purchased or attempted to purchase  
7 the internet and television media services would have believed that it was the price  
8 and nature it actually was.

9 48. On information and belief, thousands of consumers have issued  
10 complaints online about similar experiences with Defendant charging them  
11 undisclosed rates, and attempting to bill them more than they agreed to pay for  
12 services. It is this practice that Plaintiff seeks to put an end to, and recover  
13 compensation for class members.

14 49. Defendant's conduct is inherently deceptive and misleads the least-  
15 sophisticated consumer, as it is it is plausible that an unsophisticated consumer  
16 would believe that they owed debts for renewal, and other related charges, even  
17 though such amounts were never conspicuously disclosed at the point of sale, and  
18 even though Defendant makes representations to consumers that would lead a  
19 consumer to believe that such amounts were not owed.

20 50. Defendant's acts and omissions were intentional, and resulted from  
21 Defendant's desire to mislead consumers into making payments that are not owed.

22 **CLASS ACTION ALLEGATIONS**

23 51. Plaintiff brings this action, on behalf of herself and all others similarly  
24 situated, and thus, seeks class certification under Federal Rule of Civil Procedure  
25 23.

26 52. The class Plaintiff seeks to represent the Class and Subclass as  
27 defined as follows:  
28

1                   Class

2                   All consumers nationwide, who, between the applicable  
3                   statute of limitations and the present, purchased the Class  
4                   Product, and were charged renewal fees for terms of  
5                   service other than what was advertised or represented by  
6                   Defendant.

7                   Subclass

8                   All California consumers, who, between the applicable  
9                   statute of limitations and the present, purchased the Class  
10                  Product, and were charged renewal fees for terms of  
11                  service other than what was advertised or represented by  
12                  Defendant.

13                  53. As used herein, the term “Class Members” shall mean and refer to the  
14                  members of the Class and Subclass described above.

15                  54. Excluded from the Class and Subclass are Defendant, its affiliates,  
16                  employees, agents, and attorneys, and the Court.

17                  55. Plaintiff reserves the right to amend the Class and Subclass, and to  
18                  add additional subclasses, if discovery and further investigation reveals such  
19                  action is warranted.

20                  56. Upon information and belief, the proposed Class and Subclass is  
21                  composed of thousands of persons. The members of the Class and Subclass are  
22                  so numerous that joinder of all members would be unfeasible and impractical.

23                  57. No violations alleged in this complaint are contingent on any  
24                  individualized interaction of any kind between Class Members and Defendant.

25                  58. Rather, all claims in this matter arise from the identical, false,  
26                  affirmative written statements that the services would be provided for Class  
27                  Members’, when in fact, such representations were false.

28                  59. There are common questions of law and fact as to the Class Members  
                    that predominate over questions affecting only individual members, including but  
                    not limited to:

                    (a) Whether Defendant engaged in unlawful, unfair, or deceptive

- 1 business practices in selling the Class Product to Plaintiff and  
2 other Class Members;
- 3 (b) Whether Defendant made misrepresentations with respect to  
4 the cost, or quality of Class Product to consumers;
- 5 (c) Whether Defendant profited from the sale of the goods and  
6 services;
- 7 (d) Whether Defendant violated California Bus. & Prof. Code §  
8 17200, *et seq.*, California Bus. & Prof. Code § 17500, *et seq.*,  
9 and California Civ. Code § 1750, *et seq.*;
- 10 (e) Whether Plaintiff and Class Members are entitled to equitable  
11 and/or injunctive relief;
- 12 (f) Whether Defendant's unlawful, unfair, and/or deceptive  
13 practices harmed Plaintiff and Class Members; and
- 14 (g) The method of calculation and extent of damages for Plaintiff  
15 and Class Members.

16 60. Plaintiff is a member of the class and subclass she seeks to represent

17 61. The claims of Plaintiff are not only typical of all class members, they  
18 are identical.

19 62. All claims of Plaintiff and the class and subclass are based on the  
20 exact same legal theories.

21 63. Plaintiff has no interest antagonistic to, or in conflict with, the class  
22 or subclass.

23 64. Plaintiff is qualified to, and will, fairly and adequately protect the  
24 interests of each Class Member, because Plaintiff relied upon Defendant's  
25 advertisements and representations and purchased the Class Products from  
26 Defendant during the Class Period. Defendant's unlawful, unfair and/or  
27 fraudulent actions concerns the same business practices described herein  
28

1 irrespective of where they occurred or were experiences. Plaintiff’s claims are  
2 typical of all Class Members as demonstrated herein.

3 65. Plaintiff will thoroughly and adequately protect the interests of the  
4 class and subclass, having retained qualified and competent legal counsel to  
5 represent himself and the class.

6 66. Common questions will predominate, and there will be no unusual  
7 manageability issues.

8 **FIRST CAUSE OF ACTION**

9 **Violation of the California False Advertising Act**

10 **(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)**

11 67. Plaintiff incorporates by reference each allegation set forth above.

12 68. Pursuant to California Business and Professions Code section 17500,  
13 *et seq.*, it is unlawful to engage in advertising “which is untrue or misleading, and  
14 which is known, or which by the exercise of reasonable care should be known, to  
15 be untrue or misleading . . . [or] to so make or disseminate or cause to be so made  
16 or disseminated any such statement as part of a plan or scheme with the intent not  
17 to sell that personal property or those services, professional or otherwise, so  
18 advertised at the price stated therein, or as so advertised.”

19 69. California Business and Professions Code section 17500, *et seq.*’s  
20 prohibition against false advertising extends to the use of false or misleading  
21 written statements.

22 70. Defendant misled consumers by making misrepresentations and  
23 untrue statements about the Class Product, namely, Defendant A full year of MLB  
24 Prime services at a higher rate than advertised and charged them for more than  
25 what they owed and billed in a deceptive manner, and made false representations  
26 to Plaintiff and other putative class members in order to solicit these transactions.

27 71. Defendant knew that its representations and omissions were untrue  
28

1 and misleading, and deliberately made the aforementioned representations and  
2 omissions in order to deceive reasonable consumers like Plaintiff and other Class  
3 Members.

4 72. As a direct and proximate result of Defendant's misleading and false  
5 advertising, Plaintiff and the other Class Members have suffered injury in fact and  
6 have lost money or property, time, and attention. Plaintiff reasonably relied upon  
7 Defendant's representations regarding the Class Product. In reasonable reliance  
8 on Defendant's false advertisements, Plaintiff and other Class Members purchased  
9 the Class Product. In turn, Plaintiff and other Class Members ended up with  
10 services that turned out to actually be more expensive than advertised and for  
11 which they were billed in an unreasonable and deceptive manner, and therefore  
12 Plaintiff and other Class Members have suffered injury in fact.

13 73. Plaintiff alleges that these false and misleading representations made  
14 by Defendant constitute a "scheme with the intent not to sell that personal property  
15 or those services, professional or otherwise, so advertised at the price stated  
16 therein, or as so advertised."

17 74. Defendant advertised to Plaintiff and other putative class members,  
18 through written representations and omissions made by Defendant and its  
19 employees that the Class Product would be of a particular price.

20 75. Thus, Defendant knowingly sold the Class Product to Plaintiff and  
21 other putative class members.

22 76. The misleading and false advertising described herein presents a  
23 continuing threat to Plaintiff and the Class Members in that Defendant persists and  
24 continues to engage in these practices, and will not cease doing so unless and until  
25 forced to do so by this Court. Defendant's conduct will continue to cause  
26 irreparable injury to consumers unless enjoined or restrained. Plaintiff is entitled  
27 to preliminary and permanent injunctive relief ordering Defendant to cease its  
28

1 false advertising, as well as disgorgement and restitution to Plaintiff and all Class  
2 Members Defendant's revenues associated with their false advertising, or such  
3 portion of those revenues as the Court may find equitable.

4 **SECOND CAUSE OF ACTION**

5 **Violation of Unfair Business Practices Act**

6 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

7 77. Plaintiff incorporates by reference each allegation set forth above.

8 78. Actions for relief under the unfair competition law may be based on  
9 any business act or practice that is within the broad definition of the UCL. Such  
10 violations of the UCL occur as a result of unlawful, unfair or fraudulent business  
11 acts and practices. A plaintiff is required to provide evidence of a causal  
12 connection between a defendant's business practices and the alleged harm--that is,  
13 evidence that the defendant's conduct caused or was likely to cause substantial  
14 injury. It is insufficient for a plaintiff to show merely that the defendant's conduct  
15 created a risk of harm. Furthermore, the "act or practice" aspect of the statutory  
16 definition of unfair competition covers any single act of misconduct, as well as  
17 ongoing misconduct.

18 **UNFAIR**

19 79. California Business & Professions Code § 17200 prohibits any  
20 "unfair ... business act or practice." Defendant's acts, omissions,  
21 misrepresentations, and practices as alleged herein also constitute "unfair"  
22 business acts and practices within the meaning of the UCL in that its conduct is  
23 substantially injurious to consumers, offends public policy, and is immoral,  
24 unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs  
25 any alleged benefits attributable to such conduct. There were reasonably available  
26 alternatives to further Defendant's legitimate business interests, other than the  
27 conduct described herein. Plaintiff reserves the right to allege further conduct  
28

1 which constitutes other unfair business acts or practices. Such conduct is ongoing  
2 and continues to this date.

3 80. In order to satisfy the “unfair” prong of the UCL, a consumer must  
4 show that the injury: (1) is substantial; (2) is not outweighed by any countervailing  
5 benefits to consumers or competition; and, (3) is not one that consumers  
6 themselves could reasonably have avoided.

7 81. Here, Defendant’s conduct has caused and continues to cause  
8 substantial injury to Plaintiff and members of the Class and Subclass. Plaintiff  
9 and members of the Class have suffered injury in fact due to Defendant’s decision  
10 to sell them internet and television media services falsely advertised at a particular  
11 price and for a particular term. Thus, Defendant’s conduct has caused substantial  
12 injury to Plaintiff and the members of the Class and Subclass.

13 82. Moreover, Defendant’s conduct as alleged herein solely benefits  
14 Defendant while providing no benefit of any kind to any consumer. Such  
15 deception utilized by Defendant convinced Plaintiff and members of the Class and  
16 Subclass that Defendant a full year of the Class Product for an introductory price  
17 of \$79.99. In fact, knowing that the above was false, Defendant unfairly profited  
18 in that Defendant knew that the Class Product was not of cost or quality it  
19 represented. Thus, the injury suffered by Plaintiff and the members of the Class  
20 and Subclass is not outweighed by any countervailing benefits to consumers.

21 83. Finally, the injury suffered by Plaintiff and members of the Class and  
22 Subclass is not an injury that these consumers could reasonably have avoided.  
23 After Defendant, falsely represented the cost and quality of the Class Product,  
24 these consumers suffered injury in fact due to Defendant’s sale of the Class  
25 Product to them, including charging renewal fees at a time and for an amount that  
26 Defendant misrepresented and/or omitted. Defendant failed to take reasonable  
27 steps to inform Plaintiff and Class Members of actual cost and terms of the service  
28

1 provided. As such, Defendant took advantage of Defendant's position of  
2 perceived power in order to deceive Plaintiff and the Class members to purchase  
3 the Class Product for a price and terms higher to and different from what  
4 Defendant advertised and/or represented. Therefore, the injury suffered by  
5 Plaintiff and members of the Class and Subclass is not an injury which these  
6 consumers could reasonably have avoided.

7 84. Thus, Defendant's conduct has violated the "unfair" prong of  
8 California Business & Professions Code § 17200.

### 9 **FRAUDULENT**

10 85. California Business & Professions Code § 17200 prohibits any  
11 "fraudulent ... business act or practice." In order to prevail under the "fraudulent"  
12 prong of the UCL, a consumer must allege that the fraudulent business practice  
13 was likely to deceive members of the public.

14 86. The test for "fraud" as contemplated by California Business and  
15 Professions Code § 17200 is whether the public is likely to be deceived. Unlike  
16 common law fraud, a § 17200 violation can be established even if no one was  
17 actually deceived, relied upon the fraudulent practice, or sustained any damage.

18 87. Here, not only were Plaintiff and the Class members likely to be  
19 deceived, but these consumers were actually deceived by Defendant. Such  
20 deception is evidenced by the fact that Plaintiff paid higher prices for lower quality  
21 goods and services other than what was advertised and/or represented. Plaintiff's  
22 reliance upon Defendant's deceptive statements is reasonable due to the unequal  
23 bargaining powers of Defendant and Plaintiff. For the same reason, it is likely that  
24 Defendant's fraudulent business practice would deceive other members of the  
25 public.

26 88. As explained above, Defendant deceived Plaintiff and other Class  
27 Members by representing falsely represented the availability, cost, and quality of  
28

1 the goods and services sold.

2 89. Thus, Defendant’s conduct has violated the “fraudulent” prong of  
3 California Business & Professions Code § 17200.

4 **UNLAWFUL**

5 90. California Business and Professions Code Section 17200, *et seq.*  
6 prohibits “any unlawful...business act or practice.”

7 91. As explained above, Defendant deceived Plaintiff and other Class  
8 Members by representing the consumers would receive a full year of MLB Prime  
9 for an introductory rate of \$79.99.

10 92. Defendant used false advertising, marketing, and misrepresentations  
11 to induce Plaintiff and Class Members to pay higher prices for goods and services  
12 of a lower quality than what was advertised and represented, in violation of  
13 California Business and Professions Code Section 17500, *et seq.*, and California  
14 Civil Code Section 1750, *et seq.* Had Defendant not falsely advertised, marketed  
15 or misrepresented the cost and quality of the Class Product, Plaintiff and Class  
16 Members would not have purchased the Class Product from Defendant and/or paid  
17 the higher price for the lower quality goods and services. Defendant’s conduct  
18 therefore caused and continues to cause economic harm to Plaintiff and Class  
19 Members.

20 93. These representations by Defendant are therefore an “unlawful”  
21 business practice or act under Business and Professions Code Section 17200 *et*  
22 *seq.*

23 94. Defendant has thus engaged in unlawful, unfair, and fraudulent  
24 business acts entitling Plaintiff and Class Members to judgment and equitable  
25 relief against Defendant, as set forth in the Prayer for Relief. Additionally,  
26 pursuant to Business and Professions Code section 17203, Plaintiff and Class  
27 Members seek an order requiring Defendant to immediately cease such acts of  
28

1 unlawful, unfair, and fraudulent business practices and requiring Defendant to  
2 correct its actions.

3 **THIRD CAUSE OF ACTION**

4 **Violation of Consumer Legal Remedies Act**

5 **(Cal. Civ. Code § 1750 *et seq.*)**

6 95. Plaintiffs incorporate by reference each allegation set forth above  
7 herein.

8 96. Defendant's actions as detailed above constitute a violation of the  
9 Consumer Legal Remedies Act, Cal. Civ. Code §1770 to the extent that Defendant  
10 violated the following provisions of the CLRA:

- 11 a. Representing that goods or services have sponsorship, approval,  
12 characteristics, ingredients, uses, benefits, or quantities which they do  
13 not have or that a person has a sponsorship, approval, status, affiliation,  
14 or connection which he or he does not have. Cal. Civ. Code § 1770(5);
- 15 b. Advertising goods or services with intent not to sell them as advertised;  
16 Cal. Civ. Code §1770(9);
- 17 c. Advertising goods or services with intent not to supply reasonably  
18 expectable demand, unless the advertisement discloses a limitation of  
19 quantity; Cal. Civ. Code §1770(10); and
- 20 d. Representing that the consumer will receive a rebate, discount, or other  
21 economic benefit, if the earning of the benefit is contingent on an event  
22 to occur subsequent to the consummation of the transaction.; Cal. Civ.  
Code §1770(17).

23 97. Currently, pursuant to California Civil Code 1782(d), with respect  
24 only to Plaintiff's CLRA claim, Plaintiff only seeks equitable and injunctive relief  
25 through the CLRA and not actual damages via the CLRA. Upon Defendant's  
26 failure to rectify or agree to adequately rectify the problems associated with the  
27 actions detailed above, Plaintiff will amend her complaint to additionally seek  
28

1 damages, restitutionary relief, punitive damages, attorneys' fees and costs, and any  
2 other relief available under section 1780(a) of the CRLA.

3 **MISCELLANEOUS**

4 98. Plaintiff and Class Members allege that they have fully complied with  
5 all contractual and other legal obligations and fully complied with all conditions  
6 precedent to bringing this action or all such obligations or conditions are excused.

7 **REQUEST FOR JURY TRIAL**

8 99. Plaintiff requests a trial by jury as to all claims so triable.

9 **PRAYER FOR RELIEF**

10 100. Plaintiff, on behalf of himself and the Class, requests the following  
11 relief:

- 12 (a) An order certifying the Class and appointing Plaintiff as  
13 Representative of the Class;
- 14 (b) An order certifying the undersigned counsel as Class Counsel;
- 15 (c) An order requiring Defendant, at its own cost, to notify all  
16 Class Members of the unlawful and deceptive conduct herein;
- 17 (d) An order requiring Defendant to engage in corrective  
18 advertising regarding the conduct discussed above;
- 19 (e) Actual damages suffered by Plaintiff and Class Members as  
20 applicable or full restitution of all funds acquired from Plaintiff  
21 and Class Members from purchase of the Class Products and  
22 the charging fees and taxes thereto, during the relevant class  
23 period;
- 24 (f) Punitive damages, as allowable, in an amount determined by  
25 the Court or jury;
- 26 (g) Any and all statutory enhanced damages;
- 27 (h) All reasonable and necessary attorneys' fees and costs provided  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- by statute, common law or the Court’s inherent power;
- (i) Pre- and post-judgment interest; and
  - (j) All other relief, general or special, legal and equitable, to which Plaintiff and Class Members may be justly entitled as deemed by the Court.

Dated: February 26, 2018      Respectfully submitted,

LAW OFFICES OF TODD M. FRIEDMAN , PC

By: /s Todd. M. Friedman  
\_\_\_\_\_  
TODD M. FRIEDMAN, ESQ.  
Attorney for Plaintiff ERIN L. PERRY