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10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**

12 JOHN MURRIN, individually and on)	Case No. 3:24-cv-1259
13 behalf of all others similarly situated,)	
14 Plaintiff,)	<u>CLASS ACTION COMPLAINT</u>
15)	
16 vs.)	1. Violations of Electronic
17 NEUTRON HOLDINGS, INC. d/b/a)	Funds Transfer Act, 15
18 LIME, and DOES 1-10,)	U.S.C. §1693 <i>et seq.</i> ;
19 Defendant(s).)	2. Violations of California
20)	Business and Professions
21)	Code § 17200, <i>et seq.</i> ;
22)	3. Violations of California
23)	Business and Professions
24)	code § 17600, <i>et seq.</i>

25 Plaintiff JOHN MURRIN (“Plaintiff”), on behalf of himself and all others
 26 similarly situated, allege the following against Defendant NEUTRON
 27 HOLDINGS, INC. upon information and belief based upon personal knowledge:
 28

1 **INTRODUCTION**

2 1. Plaintiff’s Class Action Complaint is brought pursuant to the
3 Electronic Funds Transfer Act, 15 U.S.C. 1693 et seq. (“EFTA”) and the California
4 Automatic Purchase Renewal Statute Cal. Bus. & Prof. Code § 17600, et seq.
5 (“CAPRS”).

6 2. Plaintiff, individually, and on behalf of all others similarly situated,
7 bring this Complaint for damages, injunctive relief, and any other available legal
8 or equitable remedies, resulting from the illegal actions of Defendant debiting
9 Plaintiff’s and also the putative Class members’ bank accounts on a recurring basis
10 without obtaining a written authorization signed or similarly authenticated for
11 preauthorized electronic fund transfers from Plaintiffs’ and also the putative Class
12 members’ accounts, thereby violating Section 907(a) of the EFTA, 15 U.S.C. §
13 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).
14 Additionally, Defendant failed to properly inform consumers of its autorenewal
15 terms, thereby violating Cal. Bus. & Prof. Code § 17600 *et. seq.* Defendant fails
16 to clearly and conspicuously disclose the terms of its autorenewal and additionally
17 conditions its purchase on an illegal “negative option” as defined by 15 U.S.C. §
18 8403.
19

20 3. Plaintiff alleges as follows upon personal knowledge as to themselves
21 and their own acts and experiences, and, as to all other matters, upon information
22 and belief, including investigation conducted by their attorneys.

23 **JURISDICTION AND VENUE**

24 4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§
25 1331 and 1367 in that this matter arises under a federal statute, namely the
26 Electronic Funds Transfer Act, 15 U.S.C. § 1693, *et seq.* Moreover, Plaintiff’s
27 claims under California state law are so related to his claims under the Electronic
28 Funds Transfer Act that they are part of the same case or controversy.

FACTUAL ALLEGATIONS

1
2 10. In or around 2017, Plaintiff downloaded Defendant’s app and rented
3 a scooter.

4 11. After that time, Plaintiff never again used Defendant’s app and never
5 rented another scooter or bike from Defendant.

6 12. Despite this, beginning in or around June of 2023, Defendant began
7 debiting Plaintiff’s checking account for various charges, including, but not limited
8 to, a \$6.60 monthly membership fee.

9 13. At no time did Defendant disclose to Plaintiff that it would debit
10 Plaintiff’s account for these amounts. Moreover, at no time did Plaintiff authorize
11 Defendant to debit his checking account.

12 14. Plaintiff has contacted Defendant on numerous occasions to ask
13 Defendant to stop charging him without his permission.

14 15. Defendant, however, continues to debit Plaintiff’s account.

15 16. Plaintiff cancelled his debit card with his bank in hopes that doing so
16 would stop Defendant from charging him.

17 17. However, Defendant continued to directly debit Plaintiff’s checking
18 account.

19 18. Plaintiff has changed his account information in Defendant’s app, yet
20 Defendant continues to charge Plaintiff these recurring monthly charges, among
21 other charges.

22 19. When Plaintiff tried to cancel the recurring payments, he called
23 Defendant multiple times for multiple charges and was told each time that he called
24 that Plaintiff should submit the evidence of the erroneous charges via email to
25 Defendant, and the response back from Defendant to Plaintiff was that Plaintiff did
26 not have an active account thus Plaintiff could not receive a refund.

27 20. Defendant did not send any additional correspondence to Plaintiff
28

1 confirming the written terms of any auto-withdrawal or further explanation.

2 21. Pursuant to 15 U.S. Code § 8403, it is unlawful to charge or attempt
3 to charge any consumer for any goods or services sold in a transaction effected on
4 the Internet through a negative option feature unless the “text that clearly and
5 conspicuously discloses all material terms of the transaction before obtaining the
6 consumer’s billing information,” “obtains a consumer’s express informed consent
7 before charging the consumer’s credit card, debit card, bank account, or other
8 financial account for products or services through such transaction;” and “provides
9 simple mechanisms for a consumer to stop recurring charges from being placed on
10 the consumer’s credit card, debit card, bank account, or other financial account.”

11 22. Defendant’s billing scheme as described herein failed to satisfy all
12 three prongs, any of which is fatal and unlawful. At no time did Defendant inform
13 Plaintiff and those similarly situated that it would assess recurring monthly charges
14 to their checking accounts. Accordingly, Defendant failed to obtain a consumer’s
15 express informed consent to make such charges. Further, while Defendant
16 accepted transactions through the Internet, Defendant has not honored requests to
17 cancel such recurring charges in any form.
18

19 23. Because Defendant failed to conspicuously disclose all material terms,
20 it also failed to obtain Plaintiff’s express informed consent for the recurring
21 electronic fund transfers it thereafter made.

22 24. Further, Defendant did not provide to Plaintiff, nor did Plaintiff
23 execute, any written or electronic writing memorializing or authorizing these
24 recurring or automatic payments.

25 25. Plaintiff alleges such activity to be in violation of the Electronic Funds
26 Transfer Act, 15 U.S.C. 1693 et seq. (“EFTA”), and its surrounding regulations,
27 including, but not limited to, 12 C.F.R. §§1005.7, 1005.8, and 1005.9.

28 26. Plaintiff alleges such activity to be in violation of California’s

1 Automatic Purchase Renewal Statute Cal. Bus. & Prof. Code § 17600, et seq.
2 (“CAPRS”), and its surrounding regulations.

3 27. At all times relevant, Defendant made and continues to make
4 automatic renewal offers and continuous service offers, as those terms are defined
5 by Cal. Bus. & Prof. Code § 17600, et seq. (“California’s Automatic Purchase
6 Renewal Statute”) to Plaintiff and other consumers similarly situated.

7 28. Defendant failed to present Defendant’s automatic renewal offer terms
8 or continuous service offer terms in a clear and conspicuous manner, as defined by
9 California’s Automatic Purchase Renewal Statute, before the subscription or
10 purchasing agreement was fulfilled, and in visual or temporal proximity to
11 Defendant’s request for consent to the offer.

12 29. Defendant charged Plaintiff for an automatic renewal offer without
13 first obtaining Plaintiff’s affirmative consent to the agreement containing the
14 automatic renewal offer terms or continuous service offer terms.

15 30. Further, Defendant never provided Plaintiff with information
16 regarding how to cancel in a manner that was capable of being retained by Plaintiff.
17 Defendant has refused to honor Plaintiff’s requests that it stop charging him.

18 31. On information and belief, Plaintiff alleges that Defendant’s policy
19 and practice is to engage in illegal and deceptive billing practices to unfairly
20 surprise consumers with numerous recurring transactions.

21 32. The material circumstances surrounding this experience by Plaintiff
22 were the same, or nearly the same, as the other class members Plaintiff proposes to
23 represent, and Plaintiff and all putative class members were required to pay, and
24 did pay, money for the services marketed and sold by Defendant.
25

26 **CLASS ACTION ALLEGATIONS**

27 33. Plaintiff brings this action on behalf of himself and all others similarly
28 situated, as members of two proposed classes (jointly “The Classes”). The first

1 Class (hereafter “The EFTA Class”) defined as follows:

2 All persons in the United States whose bank accounts
3 were debited on a reoccurring basis by Defendant
4 without obtaining a written authorization signed or
5 similarly authenticated for preauthorized electronic fund
6 transfers within the one year prior to the filing of this
7 Complaint.

8 34. The second Class (hereafter “the CAPRS Class”) is defined as
9 follows:

10 All persons in California who were charged on a
11 reoccurring basis by Defendant without Defendant
12 providing clear and conspicuous notice of the recurring
13 charges, including information on how to cancel
14 Defendant’s services within the four years prior to the
15 filing of this Complaint.

16 35. Plaintiff represents, and is a member of The EFTA Class, consisting
17 of all persons within the United States whose bank account was debited on a
18 recurring basis by Defendant without Defendant obtaining a written authorization
19 signed or similarly authenticated for preauthorized electronic fund transfers within
20 the one year prior to the filing of this Complaint.

21 36. Plaintiff represents, and is a member of The CAPRS Class, consisting
22 of all persons in California whose bank accounts were debited on a reoccurring
23 basis by Defendant without Defendant providing clear and conspicuous notice of
24 the charges, including information on how to cancel Defendant’s services within
25 the four years prior to the filing of this Complaint.

26 37. Defendant, its employees and agents are excluded from The Classes.
27 Plaintiff does not know the number of members in The Classes, but believe the
28 Classes members number in the thousands, if not more. Thus, this matter should
be certified as a Class Action to assist in the expeditious litigation of the matter.

38. The Classes are so numerous that the individual joinder of all of their

1 members is impractical. While the exact number and identities of The Classes
2 members are unknown to Plaintiff at this time and can only be ascertained through
3 appropriate discovery, Plaintiff is informed and believe and thereon allege that The
4 Classes includes thousands of members. Plaintiff alleges that The Classes
5 members may be ascertained by the records maintained by Defendant.

6 39. This suit is properly maintainable as a class action because the Classes
7 are so numerous that joinder of the Classes members is impractical and the
8 disposition of their claims in the class action will provide substantial benefits both
9 to the parties and to the Court.

10 40. There are questions of law and fact common to the EFTA Class
11 affecting the parties to be represented. The questions of law and fact to the EFTA
12 Class predominate over questions which may affect individual EFTA Class
13 members and include, but are not necessarily limited to, the following:

- 14 a. The members of the Class were not provided with, nor did
15 they execute, written agreements memorializing the
16 automatic or recurring electronic payments.
- 17 b. Defendant did not request, nor did it provide, Class members
18 with written agreements memorializing the automatic or
19 recurring electronic payments.
- 20 c. The members of the Class did not provide either a written
21 (“wet”) or otherwise electronic signature authorizing the
22 automatic or recurring electronic payments.
- 23 d. Despite not providing written or electronic authorization for
24 payments to be drawn from their accounts, Defendant took
25 unauthorized payments from Class members’ accounts.
- 26

27 41. There are questions of law and fact common to the CAPRS Class
28 affecting the parties to be represented. The questions of law and fact to the CAPRS

1 Class predominate over questions which may affect individual CAPRS Class
2 members and include, but are not necessarily limited to, the following:

- 3 a. Whether Defendant failed to clearly and conspicuously disclose
4 the terms of its auto-renewal charges prior to making such charges
5 to Class members' cards;
- 6 b. Whether Defendant failed to obtain informed express consent for
7 such charges;
- 8 c. Whether Defendant failed to provide a simple method by which
9 Class members could cancel their auto-withdrawals; and
- 10 d. Whether Defendant failed to provide information to Plaintiff and
11 Class Members regarding how to cancel in a manner that is
12 capable of being retained by the consumer.

13
14 42. As a person whose bank account was debited on a reoccurring basis
15 by Defendant without Defendant obtaining a written authorization signed or
16 similarly authenticated for preauthorized electronic fund transfers, Plaintiff is
17 asserting claims that are typical of The Classes.

18 43. Plaintiff will fairly and adequately protect the interests of the members
19 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
20 class actions.

21 44. A class action is superior to other available methods of fair and
22 efficient adjudication of this controversy, since individual litigation of the claims
23 of all Classes members is impracticable. Even if every Classes member could
24 afford individual litigation, the court system could not. It would be unduly
25 burdensome to the courts in which individual litigation of numerous issues would
26 proceed. Individualized litigation would also present the potential for varying,
27 inconsistent, or contradictory judgments and would magnify the delay and expense
28 to all parties and to the court system resulting from multiple trials of the same

1 complex factual issues. By contrast, the conduct of this action as a class action
2 presents fewer management difficulties, conserves the resources of the parties and
3 of the court system, and protects the rights of each Class member.

4 45. The prosecution of separate actions by individual Classes members
5 would create a risk of adjudications with respect to them that would, as a practical
6 matter, be dispositive of the interests of the other Classes members not parties to
7 such adjudications or that would substantially impair or impede the ability of such
8 non-party Classes members to protect their interests.

9 46. Defendant has acted or refused to act in respects generally applicable
10 to The Classes, thereby making appropriate final and injunctive relief with regard
11 to the members of the Class as a whole.

12 **COUNT I:**
13 **VIOLATION OF ELECTRONIC FUNDS TRANSFER ACT**
14 **ON BEHALF OF THE EFTA CLASS**

15 47. Plaintiff reincorporates by reference all of the preceding paragraphs.

16 48. Section 907(a) of the EFTA, 15 U.S.C. §1693e(a), provides that a
17 “preauthorized electronic fund transfer from a consumer’s account may be
18 authorized by the consumer only in writing, and a copy of such authorization shall
19 be provided to the consumer when made.”

20 49. Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the
21 term “preauthorized electronic fund transfer” means “an electronic fund transfer
22 authorized in advance to recur at substantially regular intervals.”

23 50. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides that
24 “[p]reauthorized electronic fund transfers from a consumer’s account may be
25 authorized only by a writing signed or similarly authenticated by the consumer.
26 The person that obtains the authorization shall provide a copy to the consumer.”

27 51. Section 205.10(b) of the Federal Reserve Board's Official Staff
28

1 Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that “[t]he
2 authorization process should evidence the consumer’s identity and assent to the
3 authorization.” *Id.* at ¶10(b), comment 5. The Official Staff Commentary further
4 provides that “[a]n authorization is valid if it is readily identifiable as such and the
5 terms of the preauthorized transfer are clear and readily understandable.” *Id.* at
6 ¶10(b), comment 6.

7 52. Defendant debited Plaintiff’s and also the putative Class members’
8 bank accounts on a recurring basis without obtaining a written authorization signed
9 or similarly authenticated for preauthorized electronic fund transfers for the rates
10 charged from Plaintiff’s and also the putative Class members’ accounts, thereby
11 violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b)
12 of Regulation E, 12 C.F.R. § 205.10(b).

13 53. Defendant has debited Plaintiff’s and also the putative Class
14 members’ bank accounts on a recurring basis without providing a copy of a written
15 authorization signed or similarly authenticated by Plaintiff or the putative Class
16 members for preauthorized electronic fund transfers, thereby violating Section
17 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E,
18 12 C.F.R. § 205.10(b).

19
20 **COUNT II:**

21 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17600**
22 **INDIVIDUALLY AND ON BEHALF OF THE CARPS CLASS**

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

25 55. California Business & Professions Code § 17602 prohibits a defendant
26 from failing to present “the automatic renewal offer terms or continuous service
27 offer terms in a clear and conspicuous manner before the subscription or purchasing
28 agreement is fulfilled.”

1 injurious to consumers, offends public policy, and is immoral, unethical,
2 oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged
3 benefits attributable to such conduct. There were reasonably available alternatives
4 to further Defendant's legitimate business interests, other than the conduct
5 described herein. Plaintiff reserves the right to allege further conduct which
6 constitutes other unfair business acts or practices. Such conduct is ongoing and
7 continues to this date.

8 61. In order to satisfy the "unfair" prong of the UCL, a consumer must
9 show that the injury: (1) is substantial; (2) is not outweighed by any countervailing
10 benefits to consumers or competition; and, (3) is not one that consumers themselves
11 could reasonably have avoided.

12 62. Here, Defendant's conduct has caused and continues to cause
13 substantial injury to Plaintiff and members of the CAPRS Class. Plaintiff and
14 members of the CAPRS Class have suffered injury in fact due to Defendant's
15 charging auto-renewal charges without clearly and conspicuously disclosing such
16 charges or obtaining consent. Thus, Defendant's conduct has caused substantial
17 injury to Plaintiff and the members of the CAPRS Class.

18 63. Moreover, Defendant's conduct as alleged herein solely benefits
19 Defendant while providing no benefit of any kind to any consumer. Such deception
20 utilized by Defendant converted large sums of money from Plaintiff and CAPRS
21 Class members without clear and conspicuous notice or obtaining express informed
22 consent. This systematic scheme is tantamount to theft. Thus, the injury suffered
23 by Plaintiff and the members of the CAPRS Class is not outweighed by any
24 countervailing benefits to consumers.

25 64. Finally, the injury suffered by Plaintiff and members of the CAPRS
26 Class is not an injury that these consumers could reasonably have avoided.
27 Defendant misappropriated funds from Plaintiff and other consumers, and these
28

1 consumers suffered injury in fact due to Defendant’s unexpected autowithdrawals.
2 As such, Defendant took advantage of Defendant’s position of perceived power in
3 order to deceive Plaintiff and the CAPRS Class members. Therefore, the injury
4 suffered by Plaintiff and members of the CAPRS Class is not an injury which these
5 consumers could reasonably have avoided.

6 65. Thus, Defendant’s conduct has violated the “unfair” prong of
7 California Business & Professions Code § 17200.

8 **FRAUDULENT**

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

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

17 68. Here, not only were Plaintiff and the Class members likely to be
18 deceived, but these consumers were actually deceived by Defendant. Such
19 deception is evidenced by the fact that Defendant had a duty to clearly and
20 conspicuously disclose its automatic renewal terms, failed to do so, and
21 misappropriated significant sums of money from Plaintiff and CAPRS Class
22 members, who reasonably relied on Defendant’s advertising practices which
23 emphasized the “free trial” nature of the transaction, causing considerable actual
24 damages.
25

26 69. Plaintiff’s reliance is reasonable due to the unequal bargaining powers
27 of Defendant and Plaintiff. For the same reason, it is likely that Defendant’s
28 fraudulent business practice would deceive other members of the public.

1 pursuant to the Electronic Fund Transfer Act, §916(a)(2)(A);

2 g. Actual damages;

3 h. Restitution of the funds improperly obtained by Defendant;

4 i. Any and all statutory enhanced damages;

5 j. All reasonable and necessary attorneys' fees and costs provided by
6 statute, common law or the Court's inherent power;

7 k. For equitable and injunctive and pursuant to California Business
8 and Professions Code § 17203 and Cal. Civ. C. § 1780 et. al.;

9 l. For prejudgment interest at the legal rate; and

10 m. Any other relief this Honorable Court deems appropriate.
11

12 Respectfully submitted this 1st Day of March, 2024.

13 LAW OFFICES OF TODD M. FRIEDMAN, P.C.
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15 By: /s/ Todd M. Friedman

16 Todd M. Friedman

17 Law Offices of Todd M. Friedman

18 Attorney for Plaintiff
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