

1 James R. Patterson, State Bar No. 211102
2 Allison H. Goddard, State Bar No. 211098
3 PATTERSON LAW GROUP
4 1350 Columbia Street, Suite 603
5 San Diego, CA 92101
6 Telephone: (619) 756-6990
7 Facsimile: (619) 756-6991
8 jim@pattersonlawgroup.com
9 ali@pattersonlawgroup.com

7 Alisa A. Martin, State Bar No. 224037
8 AMARTIN LAW
9 600 West Broadway, Suite 700
10 San Diego, CA 92101
11 Telephone: (619) 308-6880
12 Facsimile: (619) 308-6881
13 alisa@amartinlaw.com

12 *Attorneys for Plaintiff and the Class*

13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

16 **KEVIN PARK, on behalf of himself**
17 **and all others similarly situated,**

18 **Plaintiff,**

19 **vs.**

21 **WEBLOYALTY.COM, INC., a**
22 **Delaware corporation; DOES 1**
23 **through 50, inclusive,**

24 **Defendants.**

CASE NO. 12CV01380 LAB (JMA)

THIRD AMENDED CLASS ACTION
COMPLAINT FOR:

- 1. **ELEC. FUNDS TRANS. ACT VIOL.**
- 2. **CIVIL THEFT**
- 3. **UNJUST ENRICHMENT**
- 4. **MONEY HAD AND RECEIVED**
- 5. **CONVERSION**
- 6. **UNFAIR BUSINESS PRAC. ACT VIOL**
- 7. **UNFAIR BUSINESS PRAC. ACT VIOL**
- 8. **CONN. UNFAIR TRADE PRAC. ACT VIOL**
- 9. **CONN. UNFAIR TRADE PRAC. ACT VIOL**

[JURY TRIAL DEMANDED]

1 Plaintiff Kevin Park, on behalf of himself and all others similarly situated,
2 alleges upon personal knowledge, information and belief as follows:

3 **I. SUMMARY**

4 1. Plaintiff brings this class action against Defendant Webloyalty.com
5 for unlawfully charging customers' credit and debit cards to generate remarkable
6 monthly profits. Webloyalty operates an online marketing scam that preys on
7 unsuspecting consumers. While consumers are attempting to complete purchase
8 transactions from established online retailers, Webloyalty tricks them into
9 enrolling in its fee-based membership reward programs. Thereafter, Webloyalty
10 will — without any authorization — charge monthly membership fees to
11 consumers' credit and debit cards. The key to the scam is that consumers *never*
12 provide their debit or credit card numbers, or billing information directly to
13 Webloyalty. Webloyalty gets this information from its numerous online retailer
14 partners, through a deceptive practice that is commonly referred to as "data pass."
15 Webloyalty uses the information to steal \$10 to \$12 per month in purported
16 membership fees from consumers and then splits the proceeds with its online retail
17 partners. Webloyalty has charged class members tens, and likely hundreds, of
18 millions of dollars in unauthorized charges during the class period.

19 **II. JURISDICTION AND VENUE**

20 2. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1332(d),
21 1453, and 1711-1715, the Class Action Fairness Act of 2005, because the amount
22 in controversy exceeds \$5 million and because minimum diversity is met since
23 Plaintiff is diverse from Defendant Webloyalty. Plaintiff Park is a California
24 citizen, and Webloyalty is a Connecticut citizen because its principal place of
25 business is in Connecticut. Webloyalty has done business throughout the country
26 and the thousands of putative class members are citizens of all fifty states.

27 3. This Court also has jurisdiction under 28 U.S.C. § 1331 (federal
28 question), and 15 U.S.C. § 1693(m)(g) (Electronic Funds Transfer Act).

1 4. This Court further has supplemental jurisdiction over state-law claims
2 pursuant to 28 U.S.C. § 1367.

3 5. Pursuant to 28 U.S.C. § 1391(b), this Court is the proper venue for
4 this action. Plaintiff Park resides in this District, this Court has personal
5 jurisdiction over Webloyalty under 28 U.S.C. § 1391(c), and a substantial amount
6 of the events giving rise to the claim occurred in this District.

7 **III. THE PARTIES**

8 6. Plaintiff Kevin Park is an individual who resides in San Diego,
9 California. Webloyalty enrolled Plaintiff Park in its membership program and
10 charged his credit card without authorization for membership fees.

11 7. Webloyalty.com, Inc. is a Delaware corporation with its principal
12 executive offices located at 101 Merritt 7, 7th Floor, Norwalk, Connecticut 06851.
13 According to the Connecticut Better Business Bureau, Webloyalty also maintains
14 offices at 530 Lytton Avenue, Suite 300, Palo Alto, California 94301-1541, and
15 595 Market Street, Suite 1300, San Francisco, California 94105-2820.
16 Webloyalty describes itself as the leading provider of online membership
17 subscription programs, which purportedly provide easy access to dining, shopping,
18 travel discounts and additional travel protection benefits. Webloyalty claims to
19 provide savings and offers to consumers who have already established
20 relationships with an online commerce site through various membership programs,
21 including Reservation Rewards, Shoppers Discounts & Rewards, Travel Values
22 Plus, WalletShield, Buyer Assurance, and Complete Savings.

23 8. Plaintiff and the classes are ignorant about the true names of
24 defendants sued as DOES 1 through 50, inclusive, and their wrongful conduct, and
25 therefore sue these defendants by fictitious names. Plaintiff and the classes will
26 seek court leave to amend this complaint to allege their true names and capacities
27 when ascertained. Plaintiff and the classes allege on information and belief that at
28 all relevant times, DOES 1-50, inclusive, were agents, servants, employees,

1 representatives, partners, and related or affiliated entities of defendants, and in
2 doing the things hereinafter mentioned, were acting in the course and scope of their
3 agency, employment, or retention with Webloyalty's permission, consent,
4 authority, and ratification.

5
6 **IV. WEBLOYALTY CHARGES CONSUMERS' CREDIT AND DEBIT**
ACCOUNTS WITHOUT AUTHORIZATION

7 **The "Enrollment" Process**

8 9. Webloyalty pairs up with online retailers ("e-tailers"), to gain access
9 to consumers' credit and debit accounts and then charge the accounts. E-tailers
10 allow Webloyalty to place coupon offers on their websites. After customers
11 provide their billing information to e-tailers during the checkout phase of their
12 online purchase, the coupon offer appears. Customers are directed to click on the
13 coupon to obtain it.

14 10. Once customers click on the coupon, a new pop-up window appears
15 and directs customers to enter their email address and click on a confirmation
16 button. Customers naturally assume that they are providing their email address to
17 receive the coupon via email and perhaps future advertisements. The pop-up also
18 includes voluminous language in relatively small text that is not visible without
19 scrolling and maximizing the window. Webloyalty provides voluminous
20 information to discourage consumers from reading the small print and to enroll
21 those unsuspecting consumers who do not see the "terms and conditions" and
22 disclosures provided.

23 11. Customers who provide their email address are unknowingly
24 "enrolled" in Webloyalty's membership program. E-tailers then provide or allow
25 Webloyalty to intercept the customers' billing information without any permission,
26 knowledge, or legal consent by the customers. Customers are not asked to provide
27 their account numbers, billing addresses, contact information, or anything else that
28 would put them on notice that they are authorizing charges to their accounts by

1 someone other than the e-tailer. Webloyalty then charges customers \$10.00 to
2 \$12.00 per month until they discover and stop the charges. Because the monthly
3 charges are for a small amount, consumers often overlook the charges for months
4 and even years. It took Plaintiff Park almost two years to discover the charges.

5 12. Webloyalty gives e-tailers a bounty for each “subscriber” that is
6 ensnared by this deceptive business practice. This business model is lucrative.
7 Webloyalty has generated tens if not hundreds of millions of dollars in revenue.

8 13. Webloyalty’s business practices are designed to exploit consumers’
9 ingrained online shopping habits and widely shared assumptions about the usual
10 steps involved in completing an online purchase. The key is the so called “data
11 pass” method of passing customers' billing information directly from an e-tailer to
12 Webloyalty without requiring the customers to re-enter their credit or debit card
13 information. Requiring consumers to re-enter their billing information will alert
14 them that they could be charged for something. Consumers rely on the request of
15 billing information as notice that they may incur financial obligations. Consumers
16 reasonably believe and rely on the fact that they cannot incur financial obligations
17 without directly providing their credit or debit card numbers.

18 14. Webloyalty also exploits consumers’ reasonable expectation that they
19 are transacting business with the e-tailer because: (1) the original coupon appears
20 on the e-tailer’s check out page and offers savings on future purchases with that e-
21 tailer; and (2) the second pop-up page appears on top of the e-tailers check out
22 page, which is still visible, and again promises savings with that e-tailer.

23 15. Upon information and belief, Webloyalty violated the rules the credit
24 card companies had established for “card-not-present” transactions, which apply to
25 credit card transactions over the Internet.

26 **V. PLAINTIFF’S PERSONAL EXPERIENCE**

27 16. Around May 2009, Plaintiff Park purchased a gift certificate from
28 Gamestop.com for his son. Park recalls seeing a coupon to save money on his next

1 purchase. Park clicked on the coupon and recalls a pop-up window that directed
2 him to enter his email address and click on an acceptance button. Believing that he
3 was providing his email address to receive the promised coupon by email and
4 return to the Gamestop.com confirmation page, Park was not looking for
5 disclosures regarding a recurrent financial obligation to a third party. Park recalls
6 entering his email address and clicking on the acceptance button. By providing an
7 email address and clicking on the acceptance button, Park purportedly joined a fee-
8 based membership program, known as Complete Savings. Park, however, never
9 intended and did not want to join any membership program. Park did not even
10 realize that he had been redirected away from Gamestop's website to Webloyalty's
11 website due to the deceptive nature of the entire marketing scheme.

12 17. Upon information and belief, Park was misled by the language and
13 appearance of the "enrollment" webpage. The webpage contained many prominent
14 statements that Park was receiving a thank you gift from Gamestop, not an offer to
15 enroll in a membership program. For example, the webpage prominently displayed
16 a large \$10.00 coupon that states "Good for your next Gamestop purchase!" and
17 the following messages in colored font:

- 18 • Congratulations... here's your Special Reward to thank you for being
19 a valued Gamestop customer!
- 20 • Click yes below to claim your rewards and activate your \$10.00 off
21 your next purchase!
- 22 • Thank You...Sign up to claim your rewards!
- 23 • Buy anything you like at Gamestop -- get a \$10.00 Coupon Code
24 courtesy of Complete Savings!

25 Further, upon information and belief, Plaintiff was misled by the "enrollment"
26 webpage's "Yes! Click here now" button because it again indicated that a
27 consumer is only requesting a coupon. The button should have stated "Enroll" or
28 "Sign Up" to communicate that he was agreeing to an enrollment.

1 18. Park had no idea that he joined Complete Savings and authorized
2 Webloyalty to charge his debit card for monthly membership fees in May 2009
3 because, among other things: Park thought he was still transacting business with
4 Gamestop, a company that he had used in the past and trusted; Park thought he was
5 being asked for his email address to receive the promised coupon; Park did not see
6 any statements to alert him that his debit card would be charged monthly
7 membership fees; and Park was never asked to enter any billing information, such
8 as a credit or debit card number or billing address, to alert him that he was entering
9 a separate financial transaction with a third party.

10 19. Around April 2011, Park discovered unauthorized charges to his bank
11 account. After investigating the charges, he contacted his bank, Wells Fargo, and
12 then Webloyalty, to stop the charges and cancel his Complete Savings
13 membership. When he spoke with Webloyalty, he discovered that the company
14 did not even have his name or contact information, but instead had his minor son's
15 name and contact information. During this conversation, Webloyalty agreed to
16 refund Park \$48. Webloyalty did not inform Park how it decided to refund him
17 \$48, or whether the \$48 was attributable to specific monthly charges. Webloyalty
18 never provided Park with documents confirming the terms of the refund. Park
19 believed the refund represented a small partial refund attributable to the entire
20 period.

21 20. Webloyalty charged Park's Wells Fargo bank account \$12 per month
22 for almost two years (or approximately \$264). Park has suffered monetary
23 damages in approximately \$216, plus lost interest, as money that was wrongfully
24 taken and never refunded. Park has also suffered monetary damages because he
25 lost use of the \$48 that was wrongfully taken from him, though later refunded. The
26 checking account to which Park's debit card was tied was an interest-bearing
27 account, so he lost interest on the \$48. In addition, Park could have used the \$48
28 to pay off other outstanding debt, but was instead required to incur higher interest

1 rates on other loans.

2 21. Park could not have discovered the first unauthorized charge until
3 after June 25, 2009. The bank statement containing the first unauthorized charged
4 covered the period of May 23, 2009 through June 22, 2009. Upon information and
5 belief, Wells Fargo did not mail him that bank statement until two weeks after the
6 end of the bank statement period, or no sooner than July 6, 2009.

7 **VI. THE UNITED STATES SENATE INVESTIGATED**
8 **WEBLOYALTY'S PRACTICES**

9 22. Plaintiff's experience is not unique. Thousands of consumers and
10 putative class members across the country have complained about Webloyalty's
11 practices. Many of these complaints can be found on consumer protection
12 websites and blogs such as www.ripoffreport.com, www.investorial.com,
13 www.complaints.com, www.consumerwebwatch.org, www.webbetrayal.com (a
14 website dedicated solely to confronting the Webloyalty business model),
15 http://adam.rosikessel.org/weblog/the_man/webloyalty_aka_wli_reservations_is_a
16 [_scam.html](http://adam.rosikessel.org/weblog/the_man/webloyalty_aka_wli_reservations_is_a), and www.complaintsboard.com.

17 23. The pervasive complaints caused Webloyalty to be the direct target of
18 a lengthy investigation by the United States Senate. The findings were
19 astounding.¹

20 24. As part of this investigation, Webloyalty produced approximately
21 104,000 pages of documents to the Senate, including consumer complaints,
22 screenshots of the enrollment offers, employee handbooks, correspondence
23 between Webloyalty and its e-commerce company partners, and internal e-mails
24 and correspondence. The documents demonstrate that Webloyalty knew that
25 consumers were deceived by its business practices:

26
27
28 ¹ The complete Reports are attached as Exhibits 1 and 2 and the findings of facts
and conclusions reached are incorporated herein by reference and alleged on
information and belief to be true.

- 1 • A “Disposition Report” run in September 1, 2003, shows that, of the
2 66,922 members who canceled their membership in August 2003,
3 51,560 – 77% -- had indicated “Did Not Authorize/Was Not Aware”
4 as their reason for cancellation. “Disposition Reports” run in the
5 following years showed similar trends.
- 6 • A July 2004 telephone poll commissioned by Webloyalty and
7 conducted at the request of its partner Redcats USA, which owns
8 brands such as Brylane and Jessica London, showed that few of
9 Redcats’ customers knew they were paying members of Reservation
10 Rewards, a Webloyalty membership program. As part of the survey,
11 308 past or current members of Reservation Rewards – half of whom
12 were described as —active members – were asked a series of
13 questions. Among the findings of the survey were the following:
- 14 ▪ 234 of these members (76%) either did not recall being offered
15 a Reservation Rewards membership or said they had declined a
16 membership offer;
 - 17 ▪ Only 62 of the members (20%) remembered receiving an e-mail
18 notifying them of their Reservation Rewards membership;
 - 19 ▪ Only 5 of the members (1.6%) said they had received a \$10
20 cash back offer; and
 - 21 ▪ Only 4 of the members (1.3%) said they had used Reservation
22 Rewards discounts
- 23 • Customer surveys conducted for Choice Hotels International, Inc. and
24 Classmates.com, both Webloyalty partners, produced similar results
25 [as the Redcats survey discussed above]. For Choice Hotels, a
26 marketing research firm found that —[o]ne-half of guests reached on
27 the member list did not know for sure if they are members of
28 Reservation Rewards and, based upon the survey of members who
 enrolled through Classmates.com, Webloyalty concluded that
 —[a]wareness of WL services is low among respondents.
- A February 28, 2005, Webloyalty document titled, —Product Usage
 Statistics appears to show that the rate of benefit usage for members
 enrolled through the data pass process ranged between .2% and 11.4%
 for a six month period between 2004 and 2005.
- A —Site Usage table presented to the Webloyalty Board of Directors
 in March 2006 reported that between 70% and 80% of Reservation
 Rewards club —members enrolled through data pass had either never
 visited the Reservation Rewards site at all or viewed only the club’s
 home page without ever accessing additional pages.
- 25 25. On November 16, 2009, the Senate released a preliminary report,
26 indicating that Webloyalty used “highly aggressive sales tactics to charge *millions*
27 *of American consumers* for services the consumers do not want and *do not*
28 *understand they have purchased.*”

1 These tactics involve selling unfamiliar membership programs to
2 consumers who are in the process of purchasing familiar
3 products offered by trusted websites.... In exchange for
4 'bounties' and other payments, reputable on-line retailers agree
5 to let [Webloyalty] sell club memberships to consumers as they
6 are in the process of buying movie tickets, plane tickets, or other
7 online goods and services. The sales tactics used by
8 [Webloyalty] exploit consumers' expectations about the online
9 'checkout' process.

10 With the cooperation of their online 'partners,' [Webloyalty]
11 insert[s] sales offers into the 'post-transaction' phase of an online
12 purchase, after consumers have made a purchase but before they
13 have completed the sale confirmation process. These offers
14 generally promise cash back rewards and appear to be related to
15 the transaction the consumer is in the process of completing.
16 *Misleading 'Yes' and 'Continue' buttons cause consumers to*
17 *reasonably think they are completing the original transaction,*
18 *rather than entering into a new, ongoing financial relationship*
19 *with a membership club operated by [an unrelated third party].*

20 Even more misleading and confusing is the 'data pass' process
21 [Webloyalty] and their partners use to automatically transfer
22 consumers' credit or debit card information from the familiar
23 web seller to the third-party membership club. *Passing*
24 *consumers' billing information directly to [Webloyalty], without*
25 *requiring consumers to re-enter it, deprives consumers of notice*
26 *that they are entering a new, ongoing financial relationship with*
27 *an unfamiliar company.* Preliminary Report at i-ii (emphasis
28 added).

26. A hallmark of the Committee's findings is that Webloyalty's practice
is misleading because "[p]assing consumers' billing information directly to
Webloyalty, without requiring consumers to re-enter it, deprives consumers of
notice that they are entering into a new, ongoing financial relationship with an
unfamiliar company." *Id.* at ii. The Committee reasoned that "whenever
preacquired account information enables a seller or telemarketer to cause charges
to be billed to a consumer's account without the necessity of persuading the
consumer to demonstrate his or her consent by divulging his or her account
number, the customary dynamic of offer and acceptance is inverted." *Id.* at 4.

27. Webloyalty strongly discouraged its e-tailer partners, like Gamestop,
from requiring customers to re-enter their debit or credit card numbers as part of

1 the enrollment process because Webloyalty did not want customers to realize that
2 they were entering into a separate payment obligation. *Id.* at 5.

3 28. Webloyalty’s partners understood that their customers were being
4 intentionally exposed to deceptive practices. In fact, “Webloyalty ... agreements
5 typically give partners a financial incentive to expose their shoppers to aggressive
6 third-party offers. Generally, the more aggressively an e-commerce company is
7 willing to market Webloyalty’s membership clubs to its customers, the more
8 money it will earn.” *Id.* at 14. But “[d]espite having clear evidence showing
9 consumers were being misled, the companies continued to use a combination of
10 three aggressive sales tactics – post-transaction marketing, the “data pass” process,
11 and negative options – to enroll online consumers in their membership programs or
12 discount clubs.” Suppl. Report, at 2.

13 29. “American Express, MasterCard, and Visa have long-established rules
14 for merchants who accept their credit cards. They have even more specific rules for
15 merchants who charge consumers’ credit cards through ‘card-not-present’
16 transactions, which are transactions, like online transactions, where the merchant
17 does not physically handle the credit card. In response to the Senate’s requests for
18 information about these rules, MasterCard and Visa acknowledged that the
19 practices of...Webloyalty violated a number of their general rules for merchants or
20 their specific rules for card-not-present transactions.” Suppl. Report, at 17-18.

21 **VII. THE RESTORE ONLINE SHOPPERS’ CONFIDENCE ACT**
22 **(“ROSCA”) PROTECTS CONSUMERS FROM WEBLOYALTY’S**
23 **DATA PASS PRACTICES**

24 30. On December 29, 2010, and in direct response to the Senate
25 investigation on Webloyalty’s use of “data pass” to obtain consumers’ credit and
26 debit card information, President Obama signed the Restore Online Shoppers’
27 Confidence Act (“ROSCA”). ROSCA plainly outlaws the “data pass” scam
28 employed by Webloyalty and requires full disclosure of the goods and services
offered and their costs. Most significantly, ROSCA specifically forbids online

1 merchants, like Webloyalty, from charging consumers' credit or debit cards *unless*
2 the merchant obtained *directly from the consumer* "the full account number of the
3 account to be charged; and the consumer's name and address and a means to
4 contact the consumer."

5 31. Congress made the following declarations of policy when passing
6 ROSCA:

7 (4) The Committee showed that, in exchange for
8 "bounties" and other payments, hundreds of reputable
9 online retailers and websites shared their customers'
10 billing information, including credit card and debit card
11 numbers, with third party sellers through a process
12 known as "data pass". These third party sellers in turn
13 used aggressive, misleading sales tactics to charge
14 millions of American consumers for membership clubs
15 the consumers did not want.

16 (5) Third party sellers offered membership clubs to
17 consumers as they were in the process of completing
18 their initial transactions on hundreds of websites. These
19 third party "post transaction" offers were designed to
20 make consumers think the offers were part of the initial
21 purchase, rather than a new transaction with a new seller.

22 (6) Third party sellers charged millions of consumers
23 for membership clubs without ever obtaining consumers'
24 billing information, including their credit or debit card
25 information, directly from the consumers. Because third
26 party sellers acquired consumers' billing information
27 from the initial merchant through "data pass," millions of
28 consumers were unaware they had been enrolled in
membership clubs.

(7) The use of a "data pass" process defied consumers'
expectations that they could only be charged for a good
or a service if they submitted their billing information,
including their complete credit or debit card numbers.

1 **VIII. WEBLOYALTY'S DATA PASS PRACTICE DIRECTLY VIOLATES**
2 **ROSCA**

3 32. Despite being the direct target of the United States Senate
4 investigation, and in the face of express legislative findings that its “customers” did
5 not authorize the charges, Webloyalty charged, and continues to charge,
6 consumers’ debit and credit cards without express authorization. Before ROSCA
7 passed, Webloyalty made no attempt to obtain consumers full account numbers,
8 billing addresses, and contact information before charging their credit and debit
9 accounts. After ROSCA passed, Webloyalty continued to use information
10 obtained via data pass to charge consumers’ credit and debit accounts.

11 **IX. EQUITABLE TOLLING**

12 33. In *Berry v. Webloyalty.com, Inc., et al.*, Case No. 10cv1358-H-CAB,
13 filed on June 25, 2010, in the United States District Court for the Southern District
14 of California, the plaintiff alleged multiple violations stemming from the same
15 practices alleged in this complaint. After being removed to federal court, the *Berry*
16 action was dismissed without prejudice on June 26, 2013. Thus, the liability
17 period begins four years before the *Berry* action.

18 34. In class actions, the doctrine of equitable tolling serves to (1) protect
19 unnamed putative class members’ individual claims during the pendency of the
20 class claim, and (2) encourage putative class members to rely on the class
21 representative to promote judicial efficiency and discourage multiple duplicative
22 actions. The filing of a class action tolls the running of any applicable limitation
23 period for all putative class members (often referred to as class tolling or *American*
24 *Pipe* tolling rule). “Class members who do not pursue legal redress while a class
25 action is pending cannot be accused of sleeping on their rights since class actions
26 permit and encourage class members to rely on the named plaintiffs to press their
27 claims.” *Crown, Cork & Seal Co., Inc. v. Parker*, 462 U.S. 345, 352-3 (1983); *see*
28 *also American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974).

1 35. As recognized by the United States Supreme Court, equitable tolling
2 is not inconsistent with the statute of limitations. *American Pipe*, 414 U.S. at 554.
3 The statute of limitations is “designed to promote justice by preventing surprises
4 through the revival of claims that have been allowed to slumber until evidence has
5 been lost, memories have faded, and witnesses have disappeared.” *Id.* The theory
6 is that “even if one has a just claim it is unjust not to put the adversary on notice to
7 defend within the period of limitation and that the right to be free of stale claims in
8 time comes to prevail over the right to prosecute them.” *Id.* (internal citations
9 omitted). The policies of ensuring essential fairness to defendants and barring a
10 plaintiff who has slept on his or her rights are satisfied when a class representative
11 commences a suit and thereby notifies defendants not only of the substantive
12 claims being brought against them, but also of the number and generic identities of
13 the potential plaintiffs who may participate in the judgment. *Id.* at 554-555.
14 Webloyalty just needs to have the essential information necessary to determine
15 both the subject matter and size of the prospective litigation. *Id.* at 554-555.
16 Therefore, tolling should be permitted when a class action suit commences and
17 “thereby notifies the defendants not only of the substantive claims being brought
18 against them, but also of the number and generic identities of the potential
19 plaintiffs who may participate in the judgment.” *Id.* This well-established rule of
20 law remains readily applicable in California so long as the defendant is provided
21 adequate notice. *Jolly v. Eli Lilly & Co.*, 44 Cal.3d 1103, 1122-23 (1988); *see also*
22 *Becker v. McMillian*, 226 Cal.App.3d 1493, 1498 (1991).

23 36. When equitable tolling is applied, the statute of limitations “stops
24 running during the tolling event...” *California Restaurant Management Systems v.*
25 *City of San Diego*, 195 Cal.App.4th 1581, 1593 (2011).

26 **X. CLASS ACTION ALLEGATIONS**

27 37. **Classes:** This lawsuit is brought on behalf of an ascertainable
28 nationwide class consisting of:

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a. Class A (“Nationwide Class”):

All persons residing in the United States who (1) did not directly provide their credit card or debit card account number, address, or contact information to Webloyalty, and (2) had their credit or debit card charged, or bank account debited, by Webloyalty for a Complete Savings membership, or any other club membership program maintained by Webloyalty, including Reservation Rewards, Travel Values Plus, WalletShield, Buyer Assurance, and Shopper Discounts & Rewards, at any time since October 1, 2008.

b. Class B (“California Class”):

All persons residing in California who (1) did not directly provide their credit card or debit card account number, address, or contact information to Webloyalty, and (2) had their credit or debit card charged, or bank account debited, by Webloyalty for a Complete Savings membership, or any other club membership program maintained by Webloyalty, including Reservation Rewards, Travel Values Plus, WalletShield, Buyer Assurance, and Shopper Discounts & Rewards, at any time since October 1, 2008.

c. Class C (“Nationwide Post-ROSCA Class”):

All persons residing in the United States who (1) did not directly provide their credit card or debit card account number, address, or contact information to Webloyalty, and (2) had their credit or debit card charged, or bank account debited, by Webloyalty for a Complete Savings membership, or any other club membership program maintained by Webloyalty, including Reservation Rewards, Travel Values Plus, WalletShield, Buyer Assurance, and Shopper Discounts & Rewards, at any time since December 29, 2010.

d. Class D (“California Post-ROSCA Class”):

All persons residing in California who (1) did not directly provide their credit card or debit card account number, address, or contact information to Webloyalty, and (2) had their credit or debit card charged, or bank account debited, by Webloyalty for a Complete Savings membership, or any other club membership program maintained by Webloyalty, including Reservation Rewards, Travel Values Plus, WalletShield, Buyer Assurance, and Shopper Discounts & Rewards, at any time since December 29, 2010.

e. Class E (“Debit Card Class”):

All persons residing in the United States who had their debit card charged, or bank account debited, by Webloyalty for a Complete Savings membership, or any other club membership

1 program maintained by Webloyalty, including Reservation
2 Rewards, Travel Values Plus, WalletShield, Buyer Assurance,
3 and Shopper Discounts & Rewards, at any time since October
4 1, 2008.

5 38. **Excluded from Classes:** Excluded from the classes are Webloyalty,
6 its corporate parents, subsidiaries and affiliates, officers and directors, any entity in
7 which Webloyalty has a controlling interest, and the legal representatives,
8 successors, or assigns of any such excluded persons or entities, and Plaintiff's
9 attorneys. Also excluded from the classes are any judges presiding over these
10 proceedings and their immediate family.

11 39. **Numerosity:** The class members are so numerous that joinder of all
12 members is impracticable. While the exact numbers are unknown to Plaintiff at
13 this time, Plaintiff is informed and believes that the classes consist of hundreds of
14 thousands of individuals. Members are readily ascertainable through appropriate
15 discovery from records maintained by Webloyalty and its agents.

16 40. **Superiority:** A class action is superior to other available methods for
17 the fair and efficient adjudication of this controversy because joinder of all
18 members is impracticable, the likelihood of individual class members prosecuting
19 separate claims is remote and individual members do not have a significant interest
20 in individually controlling the prosecution of separate actions. No difficulty will
21 be encountered in this case's management to preclude maintenance as a class
22 action.

23 41. **Common Questions of Law and Fact Predominate:** Questions of
24 law and fact common to the class predominate over questions affecting only
25 individuals. Among the common questions are:

26 a. whether Webloyalty lawfully obtained class members' credit or debit
27 card information;

28 b. whether an email address constitutes valid authorization for charges to
debit and credit cards;

- 1 c. whether class members can lawfully authorize Webloyalty to charge
- 2 or bill their credit or debit cards merely by providing their email and zip code;
- 3 d. whether Webloyalty violated ROSCA;
- 4 e. whether Webloyalty violated the Electronic Funds Transfer Act;
- 5 f. whether Webloyalty violated the Electronic Communications Privacy
- 6 Act;
- 7 g. whether Webloyalty engaged in unfair or unlawful business practices;
- 8 h. whether Plaintiff and the classes are entitled to declaratory relief;
- 9 i. whether Plaintiff and the classes are entitled to injunctive relief; and
- 10 j. whether Plaintiff and the classes are entitled to restitution, actual
- 11 damages and punitive damages.

12 42. **Typicality:** Plaintiff’s claims are typical of other class members’
13 claims because he, like every other class member, was exposed to virtually
14 identical conduct.

15 43. **Adequacy:** Plaintiff can fairly and adequately represent the classes’
16 interests; he has no conflicts of interest with other class members, and he retained
17 counsel competent and experienced in class action and complex civil litigation.

18 **XI. CLAIMS FOR RELIEF**

19 **FIRST CLAIM**

20 **For Violation of the Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et seq.***
21 **Brought by Plaintiff Park and the Debit Card Class**
22 **Against All Defendants**

23 44. Plaintiff refers to and incorporates by reference the above paragraphs.

24 45. The Electronic Funds Transfer Act (“EFTA”) provides a basic
25 framework establishing the rights, liabilities, and responsibilities of participants in
26 an electronic fund transfer system. 15 U.S.C. § 1693. The primary objective of
27 the EFTA “is the provision of individual consumer rights.” *Id.*

28 46. Plaintiff Park and each member of the Debit Card Class maintained an
“account” as that term is defined in 15 U.S.C. § 1693a(2), and are “consumers” as

1 that term is defined in 15 U.S.C. § 1693a(5).

2 47. Webloyalty engaged in “unauthorized electronic funds transfers,” as
3 that term is defined in 15 U.S.C. § 1693a(11), by debiting the bank accounts of
4 Plaintiff Park and the Debit Card Class without their permission.

5 48. The EFTA provides that “[a] preauthorized electronic fund transfer
6 from a consumer’s account may be authorized by the consumer only in writing,
7 and a copy of such authorization shall be provided to the consumer when made.”
8 15 U.S.C. § 1693e(a). “In case of preauthorized transfers from a consumer’s
9 account to the same person which may vary in amount...the designated payee
10 shall, prior to each transfer, provide reasonable advance notice to the consumer, in
11 accordance with the regulations of the Board, of the amount to be transferred and
12 the scheduled date of the transfer.” 15 U.S.C. § 1693e(b).

13 49. The EFTA’s implementing regulations, known as Regulation E and
14 codified at 12 C.F.R. §§ 205 et seq., provide: “Preauthorization electronic fund
15 transfers from a consumer’s account may be authorized only by a writing signed or
16 similarly authenticated by the consumer. The person that obtains the authorization
17 shall provide a copy to the consumer.” 12 C.F.R. § 205.1(d). According to the
18 Official Staff Interpretations (“OSI”) of Regulation E, the EFTA’s requirement that
19 electronic fund transfers “be authorized by the consumer ‘only in writing’ cannot
20 be met by a payee’s signing a written authorization on the consumer’s behalf with
21 only an oral authorization from the consumer.” Regulation E, Supp. I, Part 10(b), ¶
22 3. When “a third-party payee fails to obtain the authorization in writing or fails to
23 give a copy to the consumer...it is the third-party payee that is in violation of the
24 regulation.” Id. at ¶ 2.

25 50. Webloyalty violated the EFTA because Webloyalty initiated
26 electronic fund transfers from consumers’ accounts without proper authorization.
27 Consumers only provided their email addresses, which does not constitute a
28 "written signature or similar authentication" sufficient to authorize the charges. As

1 recognized by the Senate, “[p]assing consumers' billing information directly to
 2 Webloyalty, without requiring consumers to re-enter it, deprives consumers of
 3 notice that they are entering into a new, ongoing financial relationship with an
 4 unfamiliar company.” Further, the Restore Online Shoppers’ Confidence Act
 5 (“ROSCA”), 15 U.S.C. §§ 8401 *et seq.*, demonstrates that the input of an email
 6 address is not a valid authorization under the EFTA. ROSCA prohibits the
 7 practice of authorizing financial transactions by email address alone. ROSCA also
 8 states that it does not “supersede, modify, or otherwise affect the requirements of
 9 the [EFTA].” 15 U.S.C. § 8402(c). If the entry of an email address constituted
 10 valid authorization under the EFTA, then ROSCA would necessarily “supersede,
 11 modify, or otherwise affect” the EFTA by prohibiting authorization of a financial
 12 transaction by email alone.

13 51. Webloyalty also did not provide consumers with copies of their
 14 purported authorizations. Webloyalty contends that the pop-up form that directs
 15 consumers to enter their email addresses contains terms and conditions, and that
 16 this form constitutes the written authorization. But Webloyalty failed to provide
 17 consumers with true and correct copies of their authorizations.

18 52. Webloyalty also failed to provide reasonable advance notice of the
 19 amount to be transferred and the scheduled date of the transfer.

20 53. Accordingly, under 15 U.S.C. § 1693m, Plaintiff Park and the Debit
 21 Card Class seek damages, statutory damages, costs of suit, including reasonable
 22 attorneys’ fees, and such other further relief as the Court deems appropriate.

SECOND CLAIM

For Civil Theft – Treble Damages

Brought by Plaintiff Park and the Nationwide Class

Against All Defendants

26 54. Plaintiff refers to and incorporates by reference the above paragraphs.

27 55. Pursuant to Connecticut General Statutes §52-564, which provides
 28 that: “Any person who steals any property of another, or knowingly receives and

1 conceals stolen property, shall pay the owner treble his damages.”

2 56. Pursuant to Connecticut General Statutes §53a-119(2): “Any person
3 who obtains property by false pretenses when, by any false token, pretense, or
4 device, he obtains from another any property, with intent to defraud him or any
5 other person.”

6 57. Webloyalty falsely obtained and charged consumers’ credit and debit
7 accounts via data pass. With a coupon offer Webloyalty enticed consumers to
8 unknowingly consent to allow e-tailers to disclose their billing information to
9 Webloyalty. Webloyalty designed the coupon offer to lead consumers to believe
10 that they were providing their email address as a means to receive the coupon.
11 Consumers had no idea that they actually were consenting to Webloyalty obtaining
12 and charging their credit and debit accounts on a monthly basis. Simply put,
13 Webloyalty stole money from consumers via the coupon offer and data pass
14 practice.

15 58. Webloyalty’s use of false pretenses to obtain and charge consumers’
16 credit and debit accounts was not innocent or inadvertent, but done intentionally to
17 obtain money.

18 59. Webloyalty’s actions were material because it allowed Webloyalty to
19 charge consumers \$10.00 to \$12.00 in monthly membership fees.

20 60. Webloyalty knew it was stealing money from consumers and that
21 thousands of consumers were complaining to e-tailers on the internet and to local,
22 state, and federal authorities about its practices. The U.S. Senate Committee
23 investigated Webloyalty’s practices, and found that it used highly aggressive sales
24 tactics to charge millions of American consumers for services the consumers did
25 not want or knowingly purchase, and that Webloyalty’s enrollment process via
26 data pass was inherently deceptive and misleading because it, among other things,
27 exploits consumer expectations about purchasing items through the internet.
28 Webloyalty knew that consumers rely on the process of providing their billing

1 information as a barrier to unexpected charges, that consumers believe they cannot
2 incur financial obligations to anyone other than e-tailers, absent re-typing all of
3 their billing information, and that consumers expect to be able to cancel any
4 unwanted transaction if a site requests billing information that consumers do not
5 want to provide. Webloyalty intentionally took Plaintiff's and the Nationwide
6 Class' money via false pretenses, and Plaintiff's and the Nationwide Class have not
7 been compensated for the taken monies.

8
9 **THIRD CLAIM**
10 **For Unjust Enrichment**
11 **Brought by Plaintiff Park and the Nationwide Class**
12 **Against All Defendants**

13 61. Plaintiff refers to and incorporates by reference the above paragraphs.

14 62. Webloyalty accessed and took money from consumers' credit and
15 debit card accounts without authorization and thus knowingly received a benefit.

16 63. Webloyalty had no valid or legal basis to access and charge
17 consumers' credit and debit cards.

18 64. Webloyalty received substantial fees by charging consumers' credit
19 and debit card accounts and otherwise using their billing information to earn
20 money.

21 65. These monies and fees constitute unjust enrichment for Webloyalty
22 and must be disgorged.

23 66. Consumers are entitled to recover all amounts wrongfully collected
24 and retained by Webloyalty, plus interest thereon.

25 67. Webloyalty's unjust enrichment caused consumers to suffer injury.
26 Consumers are entitled to reimbursement, restitution and disgorgement of the
27 benefit conferred on Webloyalty.

28 68. Consumers have no adequate remedy at law.

69. By billing consumers' credit and debit accounts without their
knowledge or authorization, Webloyalty received and retained unearned financial

1 gains at consumers' expense.

2 70. It is inequitable for Webloyalty to retain the profits, benefits, and
3 other compensation obtained from its wrongful conduct.

4 71. As a result of this unjust enrichment, Plaintiff and the Nationwide
5 Class seek damages in an amount sufficient to fully compensate their losses.
6 These losses include the amount Webloyalty received from the unauthorized
7 charges, plus interest, in amount to be proven at trial. Plaintiff and the Nationwide
8 Class further seek an order by this Court to disgorge all profits, benefits, and other
9 compensation obtained by Webloyalty from its wrongful conduct.

10 **FOURTH CLAIM**
11 **Money Had & Received**
12 **Brought by Plaintiff Park and the Nationwide Class**
13 **Against All Defendants**

14 72. Plaintiff refers to and incorporates by reference the above paragraphs.

15 73. Webloyalty received monies from consumers to which it was not
16 legally entitled.

17 74. Consumers have a claim for the monies Webloyalty collected in credit
18 and debit card charges via its data pass practices.

19 75. Equity and good conscience requires that Webloyalty pay back those
20 monies.

21 76. Webloyalty's practices caused Plaintiff and the Nationwide Class to
22 suffer injury. They are entitled to reimbursement, restitution, and disgorgement in
23 the amount necessary to restore them to the position they would have been in if
24 Webloyalty had not improperly collected and retained the abovementioned monies.

25 **FIFTH CLAIM**
26 **For Conversion**
27 **Brought by Plaintiff Park and the California Class**
28 **Against All Defendants**

77. Plaintiff refers to and incorporates by reference the above paragraphs.

78. Consumers have a right to retain the money Webloyalty took from

1 their credit and debit accounts. They also have a right to own and possess their
2 billing information.

3 79. Webloyalty wrongfully converted the monies obtained from
4 consumers' credit and debit accounts and the billing information, which consumers
5 provided for a limited purpose — to purchase items and services from e-tailers —
6 and used beyond the scope of what was authorized.

7 80. Webloyalty touted the coupon offer as legitimate and then used the
8 offer as a means to charge consumers' credit and debit accounts without
9 authorization. Webloyalty converted the monies for its own use. The conversion
10 caused consumers to suffer damages because they lost money due to the
11 unauthorized charges.

12 81. Consumers are entitled to damages in an amount sufficient to
13 compensate them for their losses, including the amount Webloyalty was unjustly
14 enriched from the unauthorized charges and interest in amount to be proven at trial.
15 Thus, Plaintiff Park and the California Class demand judgment against Webloyalty
16 for damages arising from its misconduct, along with pre-judgment interest, costs of
17 suit, and other relief this Court deems appropriate. Because Webloyalty's acts
18 were willful, wanton, malicious, and oppressive, Plaintiff Park and the California
19 Class further demand an award of exemplary and punitive damages.

20 **SIXTH CLAIM**

21 **Unlawful Business Practices Cal. Bus. & Prof. Code § 17200, *et seq.***
22 **Brought by Plaintiff Park and the California Class**
23 **Against All Defendants**

24 82. Plaintiff refers to and incorporates by reference the above paragraphs.

25 83. Before ROSCA's enactment, Webloyalty's acts and practices were
26 unfair because, among other things, Webloyalty charged consumers' credit and
27 debit cards without obtaining express informed consent and by using information
28 obtained through the data pass process. The Senate expressly condemned these
acts and practices, finding them to be deceptive, unfair and fraudulent.

1 84. Webloyalty’s acts were also unlawful in that they violated the state
2 and federal laws alleged in the complaint.

3 85. Webloyalty engages in unfair and unlawful business practices by
4 charging consumers’ payment cards using information obtained via data pass,
5 violating credit card companies’ rules for “card-not-present” transactions, and
6 being unjustly enriched from the charges.

7 86. As a direct and proximate cause of Webloyalty’s conduct, Plaintiff
8 Park and the California Class suffered unauthorized charges to their credit and
9 debit cards.

10 87. Plaintiff Park and the California Class seek equitable relief because
11 they have no other adequate remedy at law. Absent equitable relief, Webloyalty
12 will continue to injure consumers, reap unjust enrichment, and harm the public’s
13 interest, thus engendering a multiplicity of judicial proceedings. Additionally,
14 Plaintiff Park and the California Class seek judgment against Webloyalty for
15 preliminary and permanent injunctive relief, restitution, and/or proportional
16 disgorgement of profits earned as a result of the conduct alleged herein, along with
17 interest, attorneys’ fees and costs under Cal. Code Civ. Proc. § 1021.5, the
18 substantial benefit doctrine, the common-fund doctrine, or other authority requiring
19 Webloyalty to pay attorneys’ fees and litigation expenses.

20 **SEVENTH CLAIM**

21 **Unlawful Business Practices Cal. Bus. & Prof. Code § 17200, *et seq.***
22 **Brought by Plaintiff Park and the California Post-ROSCA Class**
23 **Against All Defendants**

24 88. Plaintiff refers to and incorporates by reference the above paragraphs.

25 89. ROSCA bans the “data pass” process by prohibiting initial merchants
26 from disclosing a credit card, debit card, bank account, or other financial account
27 number, or other billing information that is used to charge a customer, to any post-
28 transaction third party seller for use in an Internet-based sale of any goods or
services.

1 90. ROSCA also requires post-transaction third-party sellers to fully
2 disclose the goods and services being offered and their costs, and severely restricts
3 use of the “negative option” feature. Most significantly, before post-transaction
4 third-party sellers can charge consumers’ debit and credit cards, ROSCA requires
5 them to receive express informed consent. Post-transaction third party sellers are
6 required to obtain from consumers their full account numbers, names, addresses,
7 and contact information. They also must require consumers to perform an
8 additional affirmative action that shows consent.

9 91. Webloyalty is a post-transaction third-party seller as defined under
10 ROSCA because it sells access to membership clubs on the internet and it solicits
11 this service on the internet via online retail websites, like Gamestop, after Plaintiff
12 Park and the California Post-ROSCA Class initiate a transaction on the retail
13 website. Webloyalty is not the initial merchant, a subsidiary or corporate affiliate
14 of the initial merchant or a successor of those entities.

15 92. After ROSCA’s enactment, Webloyalty’s acts and practices became
16 unlawful under that federal statute. Webloyalty continues to charge consumers’
17 credit and debit cards using information obtained through the data pass process and
18 without obtaining directly from consumers their full account number, name,
19 address, and contact information as required under ROSCA.

20 93. Webloyalty engages in unfair and unlawful business practices by
21 charging consumers’ payment cards using information obtained via data pass and
22 being unjustly enriched from the charges.

23 94. As a direct and proximate cause of Webloyalty’s conduct, Plaintiff
24 Park and the California Post-ROSCA Class suffered unauthorized charges to their
25 credit and debit cards.

26 95. Plaintiff Park and the California Post-ROSCA Class seek equitable
27 relief because they have no other adequate remedy at law. Absent equitable relief,
28 Webloyalty will continue to injure consumers, reap unjust enrichment, and harm

1 the public’s interest, thus engendering a multiplicity of judicial proceedings.
2 Additionally, Plaintiff Park and the California Post-ROSCA Class seek judgment
3 against Webloyalty for preliminary and permanent injunctive relief, restitution,
4 and/or proportional disgorgement of profits earned as a result of the conduct
5 alleged herein, along with interest, attorneys’ fees and costs under Cal. Code Civ.
6 Proc. § 1021.5, the substantial benefit doctrine, the common-fund doctrine, or
7 other authority requiring Webloyalty to pay attorneys’ fees and litigation expenses.

8 **EIGHTH CLAIM**

9 **Violation of Connecticut Unfair Trade Practices Act**
10 **Brought by Plaintiff Park and the Nationwide Class**
11 **Against All Defendants**

12 96. Plaintiff refers to and incorporates by reference the above paragraphs.

13 97. The Connecticut Unfair Trade Practices Act (“CUTPA”) was enacted
14 to prohibit, and protect persons from deceptive, fraudulent, and unfair conduct. A
15 cause of action accrues when one suffers “an ascertainable loss of money or
16 property, real or personal, as a result of the use of employment of a method, act or
17 practice” that is deceptive, fraudulent or unfair. *See* Connecticut General Statutes
18 §§ 42-110(b), 42-110g.

19 98. Webloyalty’s principal place of business is in Connecticut and it is
20 obligated to comply with CUTPA with respect to its business operations in
21 Connecticut. Webloyalty engaged in unfair or deceptive acts or practices in the
22 conduct of trade or commerce in Connecticut. On information and belief, and as
23 appears to be shown on Plaintiff’s bank account records, Webloyalty processed
24 unauthorized charges to the Nationwide Class members’ credit and debit card
25 accounts from the state of Connecticut.

26 99. Before the enactment of ROSCA, Webloyalty’s acts and practices
27 were unfair because, among other things, Webloyalty charged consumers’ credit
28 and debit cards without obtaining express informed consent, violating credit card
companies’ rules for “card-not-present” transactions, and by using information

1 obtained through the data pass process. The Senate expressly condemned these acts
2 and practices, finding them to be deceptive, unfair and fraudulent.

3 100. Webloyalty's acts and practices were also unlawful in that they
4 violated the state and federal laws alleged in the complaint.

5 101. Webloyalty's conduct offends public policy and is immoral, unethical,
6 oppressive or unscrupulous.

7 102. Webloyalty's conduct also caused Plaintiff and the Nationwide Class
8 substantial and ascertainable money loss. Their injury is not outweighed by any
9 countervailing benefits to consumers or competition that the practice produces; and
10 could not reasonably have been avoided.

11 103. Plaintiff and the Nationwide Class seek judgment against Webloyalty
12 for preliminary and permanent injunctive relief, restitution, and/or proportional
13 disgorgement of profits earned as a result of the conduct alleged herein, along with
14 interest, punitive damages, and attorneys' fees and costs.

15 **NINTH CLAIM**

16 **Violation of Connecticut Unfair Trade Practices Act**
17 **Brought by Plaintiff Park and the Nationwide Post-ROSCA Class**
18 **Against All Defendants**

19 104. Plaintiff refers to and incorporates by reference the above paragraphs.

20 105. The Connecticut Unfair Trade Practices Act ("CUTPA") was enacted
21 to prohibit, and protect persons from deceptive, fraudulent and unfair conduct. A
22 cause of action accrues when one suffers "an ascertainable loss of money or
23 property, real or personal, as a result of the use of employment of a method, act or
24 practice" that is deceptive, fraudulent or unfair. *See* Connecticut General Statutes

25 106. After the enactment of ROSCA, Webloyalty's acts and practices
26 became unlawful under that federal statute. Webloyalty continues to charge
27 consumers' credit and debit cards using information obtained via data pass and
28 without obtaining directly from consumers their full account numbers, names,

1 addresses, and contact information as required under ROSCA. Webloyalty does
2 these acts in the conduct of trade and/or commerce.

3 107. As alleged above, Webloyalty's conduct violated ROSCA because
4 Webloyalty took and charges consumers' credit and debit accounts without first
5 obtaining consumers' billing information. A ROSCA violation is expressly treated
6 as a violation of the Federal Trade Commission Act regarding unfair or deceptive
7 acts or practices.

8 108. Webloyalty's conduct offends public policy and is immoral, unethical,
9 oppressive or unscrupulous.

10 109. Webloyalty's conduct also caused Plaintiff and the Nationwide Post-
11 ROSCA Class substantial and ascertainable money loss. Their injury is not
12 outweighed by any countervailing benefits to consumers or competition that the
13 practice produces; and could not reasonably have been avoided

14 110. Plaintiff and the Nationwide Post-ROSCA Class seek judgment
15 against Webloyalty for preliminary and permanent injunctive relief, restitution,
16 and/or proportional disgorgement of profits earned as a result of the conduct
17 alleged herein, along with interest, punitive damages, and attorneys' fees and costs.

18
19 **XII. PRAYER FOR RELIEF**

20 Plaintiff and the Classes pray for judgment against Webloyalty as follows:

- 21 A. An order certifying the classes and designating Plaintiff as the class
22 representatives and their counsel as class counsel;
- 23 B. That the Court preliminarily and permanently enjoin Webloyalty from
24 engaging in the conduct alleged herein;
- 25 C. Other injunctive and declaratory relief as may be appropriate;
- 26 D. Restitution and disgorgement any ill-gotten profits from Webloyalty
27 to the extent permitted by applicable law, together with interest
28 thereon from the date of payment;

- 1 E. For statutory damages according to proof;
- 2 F. For general damages according to proof;
- 3 G. For special damages according to proof;
- 4 H. For exemplary or punitive damages;
- 5 I. A declaration that Webloyalty is financially responsible for notifying
- 6 the Classes about the pendency of this action;
- 7 J. Reasonable costs and attorneys' fees;
- 8 K. Statutory pre-judgment interest; and
- 9 L. For such other relief as the Court may deem proper.

10 **XIII. DEMAND FOR JURY TRIAL**

11 Plaintiff, on behalf of himself and the classes, demands a jury trial for all of
12 the claims so triable.

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Dated: September 5, 2017

PATTERSON LAW GROUP APC
AMARTIN LAW

By: /s/ James R. Patterson

James R. Patterson (211102)
Allison H. Goddard (211098)
1350 Columbia Street, Suite 603
San Diego, CA 92101
Telephone: (619) 756-6990
Facsimile: (619) 756-6991
jim@pattersonlawgroup.com
ali@pattersonlawgroup.com

Attorneys for Plaintiff and the Class

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on September 5, 2017 to all counsel of record who are deemed to have consented to electronic service via the Court’s CM/ECF system per Civil Local Rule 5.4, and that all parties herein are represented by counsel have consented to electronic service.

/s/ James R. Patterson