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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 FENELLA ARNOLD, KELLY
12 NAKAI, and MICHELE
13 RUPPERT, individually and on
14 behalf of all others similarly
situated,

Plaintiffs,

15 v.
16

17 HEARST MAGAZINE MEDIA,
18 INC., a Delaware corporation;
19 CDS GLOBAL, INC., an Iowa
20 corporation; and DOES 1-50,
inclusive,

Defendants.

Case No.: 19-cv-1969-WQH-MDD

ORDER

21 HAYES, Judge:

22 The matter before the Court is the Motion to Dismiss Plaintiffs' Second Amended
23 Complaint filed by Defendants Hearst Magazine Media, Inc., and CDS Global, Inc. (ECF
24 No. 26).
25

26 **I. PROCEDURAL BACKGROUND**

27 On September 10, 2019, Plaintiffs Fenella Arnold and Kelly Nakai filed a Class
28 Action Complaint against Defendants Hearst Magazine Media, Inc. ("Hearst"), CDS

1 Global, Inc. (“CDS”), and Does 1 through 50 in the Superior Court for the State of
2 California, County of San Diego. (ECF No. 1-2). On October 10, 2019, Defendants Hearst
3 and CDS (hereinafter, “Defendants”) removed the action to this Court. (ECF No. 1).

4 On December 9, 2019, Plaintiffs Fenella Arnold, Kelly Nakai, and Michele Ruppert
5 filed a First Amended Complaint (“FAC”). (ECF No. 14). On June 25, 2020, the Court
6 issued an Order granting Defendants’ Motion to Dismiss the FAC and dismissing the FAC
7 without prejudice for failure to state a claim upon which relief can be granted. (ECF No.
8 20).

9 On September 18, 2020, Plaintiffs filed a Second Amended Complaint (“SAC”),
10 bringing individual and class claims arising from Defendants’ alleged violations of
11 California’s Automatic Purchase Renewals Statute (“Automatic Renewal Law” or “ARL”),
12 Cal. Bus. & Prof. Code §§ 17600, *et seq.* (ECF No. 25).

13 On October 2, 2020, Defendants filed a Motion to Dismiss the SAC. (ECF No. 26).
14 Defendants move to dismiss the SAC pursuant to Rule 12(b)(6) of the Federal Rules of
15 Civil Procedure for failure to state a claim upon which can be granted. On October 26,
16 2020, Plaintiffs filed an Opposition to the Motion to Dismiss. (ECF No. 28). On November
17 2, 2020, Defendants filed a Reply. (ECF No. 30).

18 **II. ALLEGATIONS IN THE SAC**

19 Defendant Hearst is “one of the largest magazine publishers in the world.” (ECF No.
20 25 ¶ 11). Hearst publishes approximately two dozen magazines in the United States,
21 including *Food Network Magazine*, *Cosmopolitan*, *Good Housekeeping*, *Woman’s Day*,
22 *Country Living*, *HGTV Magazine*, and *Car & Driver*. Defendant CDS is “the largest
23 magazine fulfillment house in the United States.” (*Id.* ¶ 12). CDS is a wholly-owned
24 subsidiary of Hearst that provides services to Hearst, including “assisting with
25 subscriptions, billing, collection, and/or other account services.” (*Id.*).

26 Defendants have “implemented a negative option model” for the renewal of
27 magazine subscriptions. (*Id.* ¶ 14). Under this model, Defendants “solicit orders for
28 magazine subscriptions that purport to be fixed for a period of time (e.g., one year, or two

1 years)” and then “enroll the consumer in a program under which the magazine subscription
2 will be ‘automatically renewed’ for subsequent periods, with corresponding charges posted
3 to the consumer’s credit card, debit card, or other payment account.” (*Id.* ¶ 15).

4 On September 5, 2018, Plaintiff Kelly Nakai received an email from Defendants
5 promoting a sweepstakes to win a trip to the New York City Wine and Food Festival. A
6 link in the email took Nakai to Defendants’ webpage, which directed Nakai to “[f]ill in the
7 fields below to get 1 FREE issue of Food Network Magazine and be automatically entered
8 for your chance to win . . . If you like what you see, you’ll get 1 year (for a total of 11
9 issues) for just \$12.00” (*Id.* ¶ 22 (emphasis omitted); Ex. 4, ECF No. 25-5 at 3). A
10 disclosure appeared above the “SUBMIT” button that stated:

11 ***Continuous Service Program:** I understand that unless I tell you otherwise,
12 I will receive uninterrupted service and access; my subscription(s) will be
13 automatically renewed at the end of each subscription term, at the rate(s) then
14 in effect. I authorize you to fulfill my subscription(s) and charge the
15 credit/debit card if provided, or send me a bill if not. I won’t be bothered with
16 any renewal notices, instead, I will receive a clearly marked reminder notice
17 with the then current rate(s) about 30 days prior to charging my credit/debit
18 card or receiving a bill. I may opt out of the automatic renewal at any time by
19 contacting customer service referenced below and receive a refund for all
20 undelivered issues.

21 (the “CSP Disclosure”)¹ (ECF No. 25 ¶ 23; *see* Ex. 4, ECF No. 25-5 at 3). The CSP
22 Disclosure was in a type smaller than the surrounding text.

23 Nakai submitted the sweepstakes entry and received an “Order Confirmation” email
24 for a \$12.00, 1-year subscription to *Food Network Magazine*. (ECF No. 25 ¶ 29). The CSP
25 Disclosure appeared at the bottom of the confirmation email in a type smaller than the
26 surrounding text. (*Id.* ¶ 29; *see* Ex. 6, ECF No. 25-7 at 2).

27 ¹ The Court refers to all continuous service disclosures that contain the same material terms as the “CSP
28 Disclosure” for clarity and brevity. The wording of the CSP Disclosures referenced in this Order differs
slightly depending on whether the CSP Disclosure appeared in an advertisement, webpage, or email.

1 On September 8, 2018, Nakai received an email “INVOICE” from Defendants “for
2 an 11-issue term subscription to *Food Network Magazine*, stating an amount due of
3 \$12.00.” (ECF No. 25 ¶ 27; *see* Ex. 5, ECF No. 25-6 at 2). The invoice “d[id] not contain
4 any disclosure that a subscription is to be automatically renewed.” (ECF No. 25 ¶ 27).
5 Nakai paid the invoice with her credit card through the “PAY YOUR INVOICE” link in
6 the email. (*Id.* ¶ 28).

7 In December 2019, “the invoice payment form for Nakai’s account on Defendants’
8 website reflected that there was a ‘Payment Due’ on December 15, 2019 in the amount of
9 \$19.97.” (*Id.* ¶ 34). The CSP Disclosure appeared above the “PAY NOW” button in a type
10 smaller than the surrounding text. (*Id.*; *see* Ex. 8, ECF No. 25-9 at 2). The 2018 invoice
11 payment form that Nakai had previously used “was in all material aspects the same as the
12 invoice payment form” from December 2019. (ECF No. 25 ¶ 37).

13 In June 2017, Plaintiff Fenella Arnold completed and returned a paper order form
14 for a two-year subscription to *HGTV Magazine*. Arnold received a \$22.00 email invoice
15 for the subscription and paid the invoice on July 3, 2017, by entering her credit card
16 information in an invoice payment form for her account through Defendants’ website. (*See*
17 Ex. 9, ECF No. 25-10 at 2). The invoice payment form “was in all material aspects the
18 same as the invoice payment form” from Nakai’s December 2019 transaction and
19 contained the CSP Disclosure in a type smaller than the surrounding text. (ECF No. 25 ¶
20 49).

21 Arnold subsequently submitted a paper order form for one-year subscriptions to
22 *Good Housekeeping* and *Woman’s Day* for \$5.00 each. The following disclosure appeared
23 at the bottom of the paper form in a type smaller than the surrounding text:

24 **Continuous Service Program:** Your subscription will continue unless you
25 ask us to stop. Each year you’ll receive a reminder notice followed by an
26 invoice for the low renewal rate than in effect. You can cancel at any time at
27 service.womansday.com and receive a refund on all unmailed issues.

28 (“Paper Form CSP Disclosure”) (*Id.* ¶ 59; *see* Ex. 10, ECF No. 25-11 at 2).

1 On November 11, 2018, Arnold received “Order Confirmation” emails from
2 Defendants for the one-year subscriptions for *Good Housekeeping* and *Woman’s Day*. The
3 CSP Disclosure appeared at the bottom of the emails in a type smaller than the surrounding
4 text. (See ECF No. 25 ¶ 62; Ex. 11, ECF No. 25-12 at 3; Ex. 12, ECF No. 25-13 at 3).

5 On November 12, 2018, Arnold paid the \$5.00 subscriptions by entering her credit
6 card information in an invoice payment form for her account through Defendants’ website.
7 The invoice payment form “was in all material aspects the same as the invoice payment
8 form” from Nakai’s December 2019 transaction and contained the CSP Disclosure in a
9 type smaller than the surrounding text. (ECF No. 25 ¶ 67).

10 In November 2018, Arnold submitted a paper order form for a one-year subscription
11 to *Oprah Magazine* for \$5.00. On November 11, 2018, Arnold received an “Order
12 Confirmation” email from Defendants for the one-year subscription for *Oprah Magazine*.
13 The CSP Disclosure appeared at the bottom of the email in a type smaller than the
14 surrounding text. (*Id.* ¶ 78; see Ex. 13, ECF No. 25-14 at 3).

15 On November 12, 2018, Arnold paid the \$5.00 subscription by entering her credit
16 card information in an invoice payment form for her account through Defendants’ website.
17 The invoice payment form “was in all material aspects the same as the invoice payment
18 form” from Nakai’s December 2019 transaction and contained the CSP Disclosure in a
19 type smaller than the surrounding text. (ECF No. 25 ¶ 82).

20 On June 28, 2019, “Defendants posted a charge of \$34.97 to Arnold’s credit card,
21 purportedly for renewal of *HGTV Magazine*.” (*Id.* ¶ 56). On September 20, 2019,
22 “Defendants posted charges of \$19.97 and \$14.97 to Arnold’s credit card, purportedly for
23 renewal of *Good Housekeeping* and *Woman’s Day*, respectively.” (*Id.* ¶ 75). On October
24 11, 2019, “Defendants posted a charge of \$34.97 to Arnold’s credit card, purportedly for
25 renewal of *Oprah Magazine*.” (*Id.* ¶ 90).

26 In July 2018, Plaintiff Michele Ruppert received a paper advertisement from
27 Defendants for a one-year subscription to *Food Network Magazine* for \$9.99 and a one-
28 year subscription to *HGTV Magazine* for \$2.00. The Paper Form CSP Disclosure appeared

1 on the advertisement in a type smaller than the surrounding text. (*Id.* ¶ 92; *see* Ex. 14, ECF
2 No. 25-15 at 2). On July 25, 2018, Ruppert accessed the “credit.foodnetworkmag.com”
3 website listed on the paper advertisement, entered her credit card information, and
4 submitted a subscription for both magazines. (ECF No. 25 ¶ 98). The CSP Disclosure
5 appeared above the “PLACE ORDER” button in a type smaller than the surrounding text.
6 (*Id.* ¶ 100; *see* Ex. 15, ECF No. 25-16 at 2).

7 On July 25, 2018, Ruppert received “Order Confirmation” emails from Defendants
8 for the one-year *Food Network Magazine* and *HGTV Magazine* subscriptions. (ECF No.
9 25 ¶ 103). The CSP Disclosure appeared at the bottom of the emails in a type smaller than
10 the surrounding text. (*Id.* ¶ 104; *see* Ex. 16, ECF No. 25-17 at 3; Ex. 17, ECF No. 25-18 at
11 3).

12 On April 5, 2019, “Defendants posted a charge of \$34.97 to Ruppert’s credit card,
13 purportedly for renewal of *HGTV Magazine*.” (ECF No. 25 ¶ 113). On May 17, 2019,
14 “Defendants posted a charge of \$29.97 to Ruppert’s credit card, purportedly for renewal of
15 *Food Network Magazine*.” (*Id.* ¶ 114).

16 Plaintiffs have been victimized by Defendants’ negative option model. Defendants’
17 disclosures of the automatic renewal terms of their magazine subscriptions were in a
18 smaller type than the surrounding text, failed to state that the subscriptions will continue
19 until the consumer cancels, failed to describe a cancellation policy, failed to state the
20 amount of the recurring charges, and failed to state the length of the automatic renewal
21 term. When Plaintiffs purchased Defendants’ magazines, they were not aware that
22 Defendants were going to enroll them in an automatic renewal program. If Plaintiffs knew
23 that Defendants were going to enroll them in an automatic renewal program, they would
24 not have submitted orders to Defendants or paid Defendants any money.

25 Other consumers have also been victimized by Defendants’ negative option model.
26 Plaintiffs seek to represent a class of “[a]ll individuals in California who, within the
27 applicable limitations period, were enrolled by Defendants in an automatic renewal
28

1 program or a continuous service program and had a credit card, debit card, and/or a third-
2 party payment account charged by Defendants as part of such program.” (*Id.* ¶ 121).

3 Plaintiffs allege that Defendants violated the Automatic Renewal Law. Based on
4 Defendants’ alleged violation of the Automatic Renewal Law, Plaintiffs bring the
5 following individual and class claims against Defendants: 1) violation of California’s False
6 Advertising Law (“FAL”), Cal. Bus. & Prof. Code § 17535; 2) violation of California’s
7 Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750, *et seq.*²; 3) violation
8 of California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et*
9 *seq.*; and 4) unjust enrichment. Plaintiffs seek damages, including punitive damages,
10 restitution, injunctive relief, attorneys’ fees, and costs.

11 **III. LEGAL STANDARD**

12 Rule 12(b)(6) of the Federal Rules of Civil Procedure permits dismissal for “failure
13 to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). In order to state
14 a claim for relief, a pleading “must contain . . . a short and plain statement of the claim
15 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Dismissal under Rule
16 12(b)(6) “is proper only where there is no cognizable legal theory or an absence of
17 sufficient facts alleged to support a cognizable legal theory.” *Shroyer v. New Cingular*
18 *Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (citation omitted).

19 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
20 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*,
21 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).
22 “A claim has facial plausibility when the plaintiff pleads factual content that allows the
23 court to draw the reasonable inference that the defendant is liable for the misconduct
24 alleged.” *Id.* (citation omitted). However, “a plaintiff’s obligation to provide the ‘grounds’
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26
27 ² Plaintiffs “do not oppose the motion to dismiss the CLRA claim.” (ECF No. 28 at 9). The Motion to
28 Dismiss the second claim for violation of the CLRA is granted.

1 of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic
2 recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555
3 (alteration in original) (quoting Fed. R. Civ. P. 8(a)). A court is not “required to accept as
4 true allegations that are merely conclusory, unwarranted deductions of fact, or
5 unreasonable inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.
6 2001). “In sum, for a complaint to survive a motion to dismiss, the non-conclusory factual
7 content, and reasonable inferences from that content, must be plausibly suggestive of a
8 claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir.
9 2009) (citation omitted).

10 Claims sounding in fraud or mistake must additionally comply with the heightened
11 pleading requirements of Rule 9(b) of the Federal Rules of Civil Procedure, which requires
12 that a complaint “must state with particularity the circumstances constituting fraud or
13 mistake.” Fed. R. Civ. P. 9(b). The pleader must “identify the who, what, when, where,
14 and how of the misconduct charged, as well as what is false misleading about the
15 purportedly fraudulent statement, and why it is false.” *Davidson v. Kimberly-Clark Corp.*,
16 873 F.3d 1103, 1110 (9th Cir. 2017) (quoting *Cafasso, U.S. ex rel. v. Gen. Dynamics C4*
17 *Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011)), *as corrected* (Mar. 12, 2018). “To comply
18 with Rule 9(b), allegations of fraud must be specific enough to give defendants notice of
19 the particular misconduct which is alleged to constitute the fraud charged so that they can
20 defend against the charge and not just deny that they have done anything wrong.” *Bly-*
21 *Magee v. California*, 236 F.3d 1014, 1019 (9th Cir. 2001) (citation omitted).

22 **IV. AUTOMATIC RENEWAL LAW & FALSE ADVERTISING CLAIM (Claim** 23 **1)**

24 Defendants contend that Plaintiffs fail to state a claim for violation of the FAL
25 because Plaintiffs fail to allege any violation of the ARL. Defendants contend that the
26 heightened pleading standard of Rule 9(b) of the Federal Rules of Civil Procedure applies
27 because “Plaintiff’s automatic renewal theory is based on allegedly misleading conduct.”
28 (ECF No. 26-1 at 15). Defendants contend that Plaintiffs fail to sufficiently detail the

1 content of Defendants’ disclosures. Defendants contend that the exhibits attached to the
2 SAC “negate[] any inference that the automatic-renewal terms were not clearly and
3 conspicuously disclosed” (*Id.* at 20). Defendants contend that Plaintiff Nakai fails to
4 allege that she was subject to any recurring charge. Defendants further contend that all
5 Plaintiffs fail to allege facts sufficient to confer statutory standing.

6 Plaintiffs contend that Rule 9(b) does not apply because Plaintiffs do not allege that
7 Defendants knowingly made misrepresentations. Plaintiffs contend that they sufficiently
8 allege violations of the ARL and FAL under Rule 8 and Rule 9(b). Plaintiffs contend that
9 the facts alleged support an inference that Defendants failed to disclose all required
10 automatic renewal terms and failed to disclose the terms in a clear and conspicuous manner.
11 Plaintiffs contend that Nakai is not required to allege a subsequent charge to state a claim
12 for violation of the ARL. Plaintiffs further contend that they allege reliance and injury to
13 confer statutory standing.³

14 The ARL was enacted to “end the practice of ongoing charging of consumer credit
15 or debit cards . . . without the consumers’ explicit consent for ongoing shipments of a
16 product or ongoing deliveries of service.” Cal. Bus. & Prof. Code. § 17600. The ARL
17 requires “a consumer’s affirmative consent to any subscription agreement automatically
18 renewed for a new term when the initial term ends,” a “‘clear and conspicuous’ disclosure
19 of the offer terms, and an ‘easy-to-use mechanism for cancellation.’” *Mayron v. Google*
20 *LLC*, 54 Cal. App. 5th 566, 570 (2020) (quoting Cal. Bus. & Prof. Code § 17602(a)(1), (b))
21 (citing Cal. Bus. & Prof. Code § 1702(a)(2)).

22
23
24 ³ Defendants request that the Court take judicial notice of 1) the first amended complaint filed in *McKee*
25 *v. Audible, Inc.*, No. CV 17-19741-GW(Ex) (ECF No. 40) (S.D. Cal. Aug. 11, 2017); and 2) the
26 unpublished minute order of the Superior Court for State of California, County of Sacramento, in *Cortez*
27 *v. McClatchy*, No. 34-2014-00169700- CU-BT-GDS (ECF No. 241) (Cal. Super. Ct. Aug. 16, 2018). (ECF
28 No. 26-2). Plaintiffs request that the Court take judicial notice of “Exhibit B” to the first amended
complaint filed in *Hall v. Time, Inc.*, No. 8:19-cv-01153-CJC-ADS (ECF No. 26 at 33-39) (C.D. Cal. Oct.
14, 2019). (ECF No. 28-3). Judicial notice of the requested documents is unnecessary for this Order. The
parties’ requests for judicial notice are denied. *See Asvesta v. Petroutsas*, 580 F.3d 1000, 1010 n.12 (9th
Cir. 2009) (denying request for judicial notice where judicial notice would be “unnecessary”).

1 The ARL applies to “any business that makes an automatic renewal offer or
2 continuous service offer to a consumer in [California].” Cal. Bus. & Prof. Code § 17602(a).
3 “Automatic renewal” means “a plan or arrangement in which a paid subscription or
4 purchasing agreement is automatically renewed at the end of a definite term for a
5 subsequent term.” *Id.* § 17601(a). “Continuous service” means “a plan or arrangement in
6 which a subscription or purchasing agreement continues until the consumer cancels the
7 service.” *Id.* § 17601(e).

8 The ARL makes it unlawful to do any of the following:

9 (1) Fail to present the automatic renewal offer terms or continuous service
10 offer terms in a clear and conspicuous manner before the subscription or
11 purchasing agreement is fulfilled and in visual proximity . . . to the request for
12 consent to the offer. If the offer also includes a free gift or trial, the offer shall
13 include a clear and conspicuous explanation of the price that will be charged
14 after the trial ends or the manner in which the subscription or purchasing
15 agreement pricing will change upon conclusion of the trial.

16 (2) Charge the consumer’s credit or debit card . . . for an automatic renewal
17 or continuous service without first obtaining the consumer’s affirmative
18 consent to the agreement containing the automatic renewal offer terms or
19 continuous service offer terms, including the terms of an automatic renewal
20 offer or continuous service offer that is made at a promotional or discounted
21 price for a limited period of time.

22 (3) Fail to provide an acknowledgment that includes the automatic renewal
23 offer terms or continuous service offer terms, cancellation policy, and
24 information regarding how to cancel in a manner that is capable of being
25 retained by the consumer. If the automatic renewal offer or continuous service
26 offer includes a free gift or trial, the business shall also disclose in the
27 acknowledgment how to cancel, and allow the consumer to cancel, the
28 automatic renewal or continuous service before the consumer pays for the
goods or services.

25 *Id.* § 17602(a). The requirements of subdivisions (a)(1) and (a)(2) of section 17602 “apply
26 only prior to the completion of the initial order for the automatic renewal or continuous
27 service.” *Id.* § 17602(e)(1). The requirements of subdivision (a)(3) “may be fulfilled after
28 completion of the initial order.” *Id.*

1 The “automatic renewal offer terms” that must presented in a “clear and
2 conspicuous” manner include:

3 (1) That the subscription or purchasing agreement will continue until the
4 consumer cancels.

5 (2) The description of the cancellation policy that applies to the offer.

6 (3) The recurring charges that will be charged to the consumer’s credit or debit
7 card or payment account with a third party as part of the automatic renewal
8 plan or arrangement, and that the amount of the charge may change, if that is
9 the case, and the amount to which the charge will change, if known.

10 (4) The length of the automatic renewal term or that the service is continuous,
11 unless the length of the term is chosen by the consumer.

12 (5) The minimum purchase obligation, if any.

13 *Id.* § 17601(b). “Clear and conspicuous” means “in larger type than the surrounding text,
14 or in contrasting type, font, or color to the surrounding text of the same size, or set off from
15 the surrounding text of the same size by symbols or other marks, in a manner that clearly
16 calls attention to the language.” *Id.* § 17601(c).

17 There is no private right of action under the ARL. *See id.* at 573-74; *Johnson v.*
18 *Pluralsight, LLC*, 728 F. App’x 674, 676-77 (9th Cir. 2018). A consumer who has been
19 harmed by a violation of the ARL may bring a claim pursuant to other consumer protection
20 statutes, including the FAL, CLRA, and UCL. *See Johnson*, 728 F. App’x at 676-77; *see*
21 *also* Cal. Bus. & Prof. Code § 17535 (section of the FAL authorizing a private right of
22 action by “any person” for violations of Chapter 1 of California’s Business and Professions
23 Code, which includes the ARL).

24 In this case, Plaintiffs allege that Defendants violated the ARL by failing to disclose
25 all of the required automatic renewal offer terms, failing to disclose the automatic renewal
26 offer terms in a clear and conspicuous manner, and charging Plaintiffs’ credit cards for
27 magazine subscriptions without obtaining Plaintiffs’ consent to the automatic renewal offer
28 terms. Plaintiffs allege that Defendants advertised free issues of their magazines or one- or

1 two-year term subscriptions to their magazines. Plaintiffs allege that they submitted paper
2 or electronic order forms to Defendants for the term magazine subscriptions. Plaintiffs
3 allege that they subsequently received order confirmation emails and invoices for the term
4 magazine subscriptions. Plaintiffs allege that they paid the invoices by entering their credit
5 card information on Defendants' website.

6 Plaintiffs allege that at each step of their purchases of the magazine subscriptions,
7 Defendants' forms, emails, and webpages either did not contain any disclosure that the
8 subscriptions would be automatically renewed or contained a disclosure that omitted
9 required terms and that was in a type smaller text than the surrounding text. Plaintiffs allege
10 that they did not know that Defendants were going to enroll them in continuous service
11 programs. Plaintiffs allege that if they knew they were going to be enrolled in continuous
12 service programs, they would not have subscribed to Defendants' magazines or paid
13 Defendants any money.

14 Plaintiffs identify the allegedly deceptive terms on specific advertisements, emails,
15 and webpages, as well as the dates when Plaintiffs received the advertisements and emails
16 or viewed the webpages. Plaintiffs attach copies of Defendants' paper forms, emails, and
17 webpages in their possession to the Complaint, which support Plaintiffs' allegations that
18 the terms of the continuous service program were not presented at all or were presented in
19 text smaller than the surrounding text. The Court concludes that viewing the facts in the
20 light most favorable to Plaintiffs, Plaintiffs plausibly allege that Defendants failed to
21 adequately present the terms of the continuous service program under the ARL.

22 The Court further concludes that Plaintiffs' allegations that they paid Defendants for
23 term magazine subscriptions and would not have paid Defendants any money if they knew
24 they were going to be enrolled in automatic subscription programs are sufficient to satisfy
25 the standing requirements of the FAL. *See Johnson*, 728 F. App'x at 676 (the plaintiff
26 "claims that by violating Cal. Bus. & Prof. Code § 17602's requirements, including failing
27 to provide information on cancellation policies prior to charging his credit card, [defendant]
28 . . . was not entitled to charge customers such as [plaintiff] for the service. [Plaintiff] has

1 thus alleged a concrete economic injury . . . sufficient to satisfy Article III’s injury-in-fact
2 requirements” (citation omitted)). The Motion to Dismiss the first claim for false
3 advertising is denied.

4 **V. UNFAIR COMPETITON CLAIM (Claim 3)**

5 Defendants contend that Plaintiffs’ UCL claim is “entirely derivative of their other
6 failed claims,” and Plaintiffs’ factual allegations are conclusory. (ECF No. 26-1 at 29).
7 Defendants contend that Plaintiffs fail to allege independent causation sufficient to confer
8 standing under the UCL. Plaintiffs contend that they sufficiently allege a UCL claim
9 because they state a claim for violation of the ARL and allege that if they were aware that
10 they were going to be enrolled in an automatic subscription program, they would not have
11 purchased Defendants’ magazines.

12 The UCL prohibits “any unlawful, unfair or fraudulent business practice.” Cal. Bus.
13 & Prof. Code §§ 17200, 17203. “By proscribing ‘any unlawful’ business practice, ‘section
14 17200 borrows violations of other laws and treats them as unlawful practices’ that the
15 unfair competition law makes independently actionable.” *Cel-Tech Commc’ns, Inc. v. L.A.*
16 *Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999) (quoting *State Farm Fire & Cas. Co. v.*
17 *Superior Court*, 45 Cal. App. 4th 1093, 1103 (1996)). The UCL also prohibits a broader
18 category of “practice[s] [that] may be deemed unfair [or fraudulent] even if not specifically
19 proscribed by some other law.” *Id.* UCL claims that are grounded in fraud must be pleaded
20 with particularity under Rule 9(b). *Kearns*, 567 F.3d at 1125-26.

21 In this case, Plaintiffs’ UCL claim is based on the same facts underlying Plaintiffs’
22 claims for violation of the FAL. the Court has concluded that Plaintiffs sufficiently state a
23 claim for violation of the FAL. This alleged violation is “independently actionable” under
24 the UCL. *Cel-Tech Commc’ns*, 20 Cal. 4th at 180 (quoting *State Farm Fire & Cas. Co.*, 45
25 Cal. App. 4th at 1103). Plaintiffs’ allegations are sufficient to confer statutory standing
26 under the UCL. *See Mayron*, 54 Cal. App. 5th at 574 (explaining that to allege a causal
27 link sufficient to establish standing under the UCL, the plaintiff would “need to allege that
28

1 he ordered increased Google Drive storage but would not have done so had the disclosures
2 been provided”). The Motion to Dismiss the third claim for violation of the UCL is denied.

3 **VI. EQUITABLE & INJUNCTIVE RELIEF & UNJUST ENRICHMENT CLAIM**
4 **(Claim 4)**

5 Defendants contend that Plaintiffs’ request for equitable relief under the FAL and
6 UCL and Plaintiffs’ unjust enrichment claim should be dismissed because Plaintiffs have
7 alleged other claims for damages. Defendants further contend that Plaintiffs fail to allege
8 ongoing harm sufficient to assert a claim for injunctive relief. Plaintiffs do not address
9 Defendants’ assertions. (*See* ECF No. 28 at 31 (“[T]he motion to dismiss the false
10 advertising and UCL claims should be denied.”)).

11 In general, a plaintiff may only seek equitable relief for past harm if he has no
12 adequate legal remedy at law. *See Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 844
13 (9th Cir. 2020). However, no controlling authority prevents a plaintiff from asserting
14 alternative legal remedies at the pleading stage. *See Eason v. Roman Catholic Bishop of*
15 *San Diego*, 414 F. Supp. 1276, 1282 (S.D. Cal. 2019) (collecting cases); *see also Sonner*,
16 971 F.3d at 844-45 (affirming dismissal of claim for equitable relief because the operative
17 complaint, newly amended “on the eve of trial,” failed to allege the plaintiff had no
18 adequate remedy at law). In addition, discovery may reveal that the claims providing legal
19 remedies are inadequate.

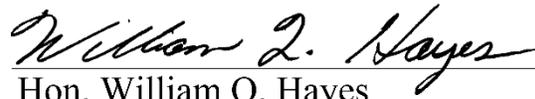
20 However, Plaintiffs do not allege that they intend to purchase Defendants’
21 magazines in the future, and they cannot demonstrate a likelihood of future injury.
22 Plaintiffs fail to allege “a sufficient likelihood that they will be injured by [Defendants]
23 again in a similar way and that the future injury can be redressed by injunctive relief.”
24 *Luman v. Theismann*, 647 F. App’x 804, 807 (9th Cir. 2016) (citing *Bates v. United Parcel*
25 *Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007)). The Motion to Dismiss Plaintiffs’ request
26 for equitable relief and Plaintiffs’ unjust enrichment claim is denied. The Motion to
27 Dismiss Plaintiffs’ request for injunctive relief is granted.

28 ///

1 **VII. CONCLUSION**

2 IT IS HEREBY ORDERED that the Motion to Dismiss the SAC (ECF No. 26) is
3 granted in part and denied in part. The Motion to Dismiss the SAC is granted as to the
4 second claim for violation of the CLRA and as to the request for injunctive relief and is
5 otherwise denied. No later than thirty (30) days from the date of this Order, Plaintiffs may
6 file any motion for leave to amend pursuant to Civil Local Rules 7.1 and 15.1(c).

7
8 Dated: February 10, 2021


9 Hon. William Q. Hayes
10 United States District Court