

1 Rosemary M. Rivas (State Bar No. 209147)
Email: rrivas@zlk.com

2 Quentin A. Roberts (State Bar No. 306687)
Email: qroberts@zlk.com

3 **LEVI & KORSINSKY LLP**
4 44 Montgomery Street, Suite 650
5 San Francisco, California 94104
Telephone: (415) 291-2420
Facsimile: (415) 484-1294

6 *Attorneys for Individual and Representative*
7 *Plaintiff Ronald Meyer*

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 RONALD MEYER, on behalf of himself
11 and all others similarly situated,

12 Plaintiff,

13 vs.

14 AABACO SMALL BUSINESS, LLC; and
15 YAHOO! INC.,

16 Defendants.

Case No. 5:17-cv-2102

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Ronald Meyer (“Plaintiff”), on behalf of himself and the proposed Class defined
2 herein, brings this class action suit against Defendants Aabaco Small Business, LLC and Yahoo!
3 Inc. (respectively “Aabaco” and “Yahoo,” collectively “Defendants”). In support of this Class
4 Action Complaint, Plaintiff alleges, based on his personal knowledge and the investigation of
5 his counsel, as follows:

6 **NATURE OF THE ACTION**

7 1. This is a class action seeking monetary damages, restitution, injunctive, and
8 declaratory relief from Defendants, arising from their failure to provide services to the
9 customers who paid for them and for their failure to cancel the service according to the Terms
10 of Service.

11 2. Yahoo is a technology company that offers online services to millions of people.
12 Through its wholly-owned subsidiary, Aabaco, Yahoo offers a range of small business services,
13 including providing storage space and access for websites and email addresses connected to
14 those websites (“Web Hosting”).

15 3. Customers pay monthly or annual fees to Defendants in order to receive Web
16 Hosting. Many of Defendants’ customers are business owners who pay for Web Hosting with
17 the goal of being able to create websites for their businesses, advertise for their businesses, and
18 obtain emails addresses for their businesses.

19 4. Defendants’ Terms of Service governs the relationship between Defendants and
20 customers who pay for Web Hosting. The general relationship is straightforward; money in
21 exchange for services. Unfortunately, however, many customers are paying Defendants for
22 Web Hosting and are not receiving it. When this is brought to Defendants’ attention, nothing is
23 done. Moreover, many customers attempt to cancel the Web Hosting according to the Terms of
24 Service but are unable to.

25 5. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of Civil
26 Procedure to redress Defendants’ failure to provide Web Hosting to those who paid for it, and
27 for Defendants’ failure to cancel the Web Hosting in accordance with the Terms of Service.

28 6. Plaintiff alleges claims on behalf of himself and all others similarly situated for

1 violations of the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, the
2 California False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*, breach of contract,
3 breach of the implied covenant of good faith and fair dealing, and unjust enrichment.

4 **THE PARTIES**

5 7. Plaintiff Ronald Meyer is a resident and citizen of Oxford, Michigan.

6 8. Plaintiff signed up for Defendants' Web Hosting, when it was still referred to as
7 Yahoo Small Business, at some point between 1998 and 2000. He received and used the
8 provided Web Hosting until October of 2016 when Defendants abruptly and without reason or
9 notice stopped providing Plaintiff with the Web Hosting he was and continues to pay for.
10 Plaintiff called and emailed Defendants multiple times, asking them to either reactivate his Web
11 Hosting, or to cancel the Web Hosting altogether—neither were done.

12 9. Yahoo is a Delaware corporation with its principal place of business in
13 Sunnyvale, California. This technology company is primarily built on its digital search
14 platform, communication services, and digital content products. Yahoo also provides customers
15 with services geared towards small business owners, through its wholly-owned and controlled
16 subsidiary, Aabaco.

17 10. Aabaco shares the same headquarters and principal place of business as Yahoo in
18 Sunnyvale, California. Aabaco is the legal entity through which Yahoo provides its services
19 geared towards small business owners.

20 11. Because Aabaco is wholly-owned and controlled by Yahoo and shares the same
21 principal place of business and corporate headquarters, both entities are jointly responsible for
22 the acts complained of herein. Yahoo is liable for any wrongful acts carried out by Aabaco
23 under a theory of *respondeat superior* and/or alter ego liability. Moreover, Aabaco is liable for
24 any acts committed when the service was known as Yahoo Small Business as it is the successor
25 in interest.

26 **JURISDICTION AND VENUE**

27 12. This Court has original jurisdiction of this Action under the Class Action
28 Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2), this Court has original jurisdiction

1 because (i) at least one member of the Class is a citizen of a different state than Defendants;
2 (ii) the amount in controversy exceeds \$5,000,000, exclusive of interests and costs; and
3 (iii) none of the exceptions under that subsection apply to this Action.

4 13. The Northern District of California has personal jurisdiction over Defendants
5 because they conduct substantial business in this District and it is in this District where
6 Defendants maintain their corporate headquarters, including where Defendants run, manage, and
7 make decisions involved with the Web Hosting at issue. Additionally, this Court has personal
8 jurisdiction over Defendants pursuant to the Choice of Law and Forum clause, specifically
9 listing Santa Clara County, contained in Defendants' Terms of Service agreement entered into
10 between them and all members of the Class.

11 14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(1) because a
12 substantial part of the events and omissions giving rise to this action occurred in this District
13 and because Defendants are headquartered in this District. It is also proper pursuant to the
14 Choice of Law and Forum clause contained in Defendants' Terms of Service.

15 **APPLICATION OF CALIFORNIA LAW TO THE CLASS IS APPROPRIATE**

16 15. Application of California law to the claims of the Class is appropriate because
17 Defendants maintain their headquarters in Sunnyvale, California.

18 16. Defendants also made corporate decisions from their California headquarters
19 concerning the Web Hosting, including what is provided to paying customers and how the service is
20 cancelled. Moreover, the Choice of Law and Forum provision in the Terms of Service explicitly
21 states that California law governs any disputes arising from the Web Hosting.

22 **FACTUAL ALLEGATIONS**

23 17. Defendants offer Web Hosting for a monthly or annual fee, targeting small
24 business owners. Specifically, through this service, Defendants provide website building tools
25 and storage space, business emails attached to the website, and the ability to market or advertise
26 through the website.

27 18. The Web Hosting benefits have been at the core of the service since the 1990s.
28 Within the last several years, however, Defendants have, without reason or notice, cut off the

1 Web Hosting benefits to their paying customers. Additionally, Defendants have not honored the
2 cancellation rights included in the Terms of Service.

3 **A. Plaintiff's Experience**

4 19. Plaintiff starting paying for Defendants' Web Hosting at some point between
5 1998 and 2000 in order to utilize the service, specifically to have and maintain the following
6 photography related website: www.naturesbeautyphotography.com. In exchange for \$9.95 a
7 month, Defendants hosted Plaintiff's website and provided him with business email accounts
8 tied to his website. Within Plaintiff's photography website, he also had two separate URLs he
9 paid for related to two children's books he wrote and illustrated—www.freddyfox.com and
10 www.caseycougar.com. These URLs were directed to his photography website. People who
11 would like to buy Plaintiff's children's books could email Plaintiff via the account tied to his
12 photography website, and would be directed to his photography website.

13 20. In October 2016, Plaintiff noticed he was no longer receiving emails to his
14 website's business email account. Later Plaintiff determined that the functions of the Web
15 Hosting he was paying for, including maintaining an accessible website, had been terminated
16 without notice or reason. As a result of this, potential buyers of his books could no longer visit
17 his URLs or write to him through his business email addresses.

18 21. Once Plaintiff found out he was paying for services he was not receiving, he
19 called Defendants' 800 number several times to try and get his website and email accounts
20 reactivated. Not a single customer service representative could help him in either reactivating
21 his website and email accounts, or cancelling his service after returning his website and email
22 content.

23 22. As of April 12, 2017, Plaintiff's website and email accounts remain inaccessible,
24 yet Defendants continue to charge him the monthly fee for the Web Hosting. Below is a
25 screenshot of what appears when Plaintiff's URL is entered into a search engine.

26
27 ///

28 ///



This site can't be reached

naturesbeautyphotography.com's server DNS address could not be found.

- Did you mean <http://naturesbeautyphotography.biz/>?
- Search Google for nature's beauty photography

ERR_NAME_NOT_RESOLVED

Reload

B. Defendants' Representations Regarding Their Service are False and Misleading

23. Since Plaintiff began paying for the Web Hosting, Defendants have represented their service in the typical money-for-service arrangement. Specifically, the customer pays the specified amount at the specified time according to the current version of Defendants' Web Hosting offer, and Defendants provide the customer with the advertised benefits, including Web Hosting.

24. Plaintiff and many of Defendants' other Web Hosting customers, however, have upheld their end of the bargain by paying Defendants, and yet have gone months or years without receiving the promised Web Hosting.

25. Defendants' Terms of Service clearly provides how a customer cancels their Web Hosting. Specifically, the agreement states: "You may cancel Your Service and terminate this Agreement at any time. To cancel any Service, You must either sign in to Your account, go to the My Services tab, and follow the instructions, or contact us and speak to a live representative."

26. If a customer's account is deactivated, he or she cannot log in to cancel it. But, the second option, calling a live representative, also does not work. Plaintiff and many others have reported requesting that their accounts be cancelled with a live customer service

1 representative with no success. Thus, Defendants' representation regarding how to cancel the
2 Web Hosting is also false and misleading.

3 **C. Plaintiff's Situation is Not Unique**

4 27. A basic Internet search reveals there are a large number of Defendants'
5 customers with the same problems as Plaintiff; either their Web Hosting was cancelled while
6 they were still being charged, or they were simply unable to cancel their service. Below is a
7 *small* sample of relevant portions of publicly posted complaints found on the Internet¹:

- 8 • Same BS. Locked me out of both my business websites. Call and get put on hold
9 until you give up.
- 10 • I have had this website for over 20 years, I pay 12.95 a month, there are over 500
11 pages for my class, it is gone, I AM IN TEARS!!!!!! This website is part of my life
with all of these children. I cannot access anything and to make matters worse, they
12 have been charging me 12.95 for over a year and it is not even there...
- 13 • I tried to login this morning and don't have access to my business email. They are
preventing me from conducting business. WOW – unbelievable.
- 14 • Do you have ANY idea... how I can retrieve the FILES/FOLDERS of my website
listed?
- 15 • Being a long-time Yahoo customer, I thought that my service would continue when
16 then changed to Aabaco Small Business. I WAS WRONG! Even though I was
unable to log on since 2014, they continued to charge me anyway.
- 17 • Cancelled on the last day of my annual term, and they still charged me and won't
18 refund. It is impossible to get a hold of them.
- 19 • Disabled my Business Email without even sending a courtesy notice.
- 20 • Trying to cancel domains I no longer need and they want 34.95 a year to renew. The
21 system will not let me cancel, says I must call them, and has charged my credit card
while I absolutely cannot contact them.
- 22 • This seems to be a common Yahoo problem, and I just had the same experience.
Cancelled two sites, and one keeps showing up for renewal.
- 23 • Does anyone have a physical address we can MAIL account cancellations and
24 requests for information? At least maybe we can get the legal process started. What a
nightmare. On hold for 47 minutes so far and unable to access all of my domains.
25 Will not let me drop this account.

26
27 ¹ Complaints found on <https://www.pissedconsumer.com/aabaco-small-business/RT-F.html>,
<https://www.complaintsboard.com/complaints/yahoo-small-business-c25608.html>, and
28 <https://www.telapost.com/aabaco-yahoo-host-problem/> (last visited April 11, 2017).

- 1 • At this point, I'm just trying to cancel the service and get a refund, which also is not
2 easy. Avoid doing business with Aabaco at all costs.
- 3 • I have gone through this every year with Yahoo. They say it is cancelled but bill
4 every year. I have transferred everything over to Go Daddy back in 2014 and I am
5 still being charged by Yahoo. I would like to get a class action law suit going. I have
6 heard of to many people they keep doing this to.
- 7 • I'm having the same problem that everyone else is having. Can't access my account
8 or any of my many domains.
- 9 • Yahoo small business is a scam ... I called to cancel and they cancelled but charged
10 me for the next year, which I dont even have the next year service.
- 11 • I just had the same thing happen to me. I canceled the account 6 weeks ago and yet
12 my card was charged.
- 13 • OMG ... This is insane. I have not received any email for weeks ... The business
14 email just quit.
- 15 • We lost a lot of business emails, and there is no getting them back.

CLASS ALLEGATIONS

16 28. Plaintiff brings this action on behalf of himself and the members of the proposed
17 Class under Rule 23(a), (b)(2), (b)(3), and/or (c)(4) of the Federal Rules of Civil Procedure.

18 The proposed Class consists of the following:

19 Any person or entity in the United States who was charged for Web Hosting but
20 (1) did not receive such services, or (2) tried to cancel such services according to
21 the Terms and Conditions and could not.

22 29. Plaintiff reserves the right to redefine the Class prior to certification after having
23 the opportunity to conduct discovery.

24 30. Excluded from the Class are Defendants, their parents, subsidiaries, affiliates,
25 officers and directors, any entity in which Defendants have a controlling interest, and all judges
26 assigned to hear any aspect of this litigation, as well as their immediate family members.

27 31. Numerosity. Fed. R. Civ. P. 23(a)(1). The members of the Class are so
28 numerous that joinder is impractical. The Class consists of hundreds of members, the precise
number which is within the knowledge of and can be ascertained only by resort to Defendants'
records.

32. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3). There are numerous
questions of law and fact common to the Class, which predominate over any questions affecting

1 only individual members of the Class. Among the questions of law and fact common to the
2 Class are:

- 3 (a) Whether Defendants entered into contractual relationships with the Class;
- 4 (b) Whether Defendants breached their contracts with the Class by not providing
5 Web Hosting service to paying customers;
- 6 (c) Whether Defendants breached their contracts with the Class by not allowing
7 them to cancel their service according to the Terms and Conditions;
- 8 (d) Whether Defendants were unjustly enriched as a result of their acts complained
9 of herein;
- 10 (e) Whether Defendants' representations concerning their service constituted false
11 advertising under California law;
- 12 (f) Whether Defendants engaged in deceptive, unfair, unlawful, and/or fraudulent
13 business practices under California law;
- 14 (g) Whether Defendants breached their duty of good faith and fair dealing under
15 California law;
- 16 (h) Whether Class members are entitled to restitution, and in what amount; and
- 17 (i) Whether Defendants should be enjoined from continuing the practices alleged
18 herein.

19 33. Typicality. Fed. R. Civ. P. 23(a)(3). Plaintiff's claims are typical of the claims
20 of the members of the Class and, like all members of the Class, Plaintiff paid Defendants for
21 Web Hosting but was not provided with Web Hosting and could not cancel his account
22 according to the Terms and Service. Accordingly, Plaintiff has no interest antagonistic to the
23 interests of any other member of the Class.

24 34. Adequacy. Fed. R. Civ. P. 23(a)(4). Plaintiff is a representative who will fairly
25 and adequately assert and protect the interests of the Class, and retained counsel experienced in
26 prosecuting class actions. Accordingly, Plaintiff is an adequate representative and will fairly
27 and adequately protect the interests of the Class.

28 35. Superiority of Class Action. Fed. R. Civ. P. 23(b)(3). A class action is superior
to all other available methods for the fair and efficient adjudication of this lawsuit, because
individual litigation of the claims of all members of the Class is economically unfeasible and
procedurally impracticable. While the aggregate damages sustained by the Class are in the

1 millions of dollars, the individual damages incurred by each member of the Class resulting from
2 Defendants' wrongful conduct are too small to warrant the expense of individual lawsuits. The
3 likelihood of individual Class members prosecuting their own separate claims is remote, and
4 even if every member of the Class could afford individual litigation, the court system would be
5 unduly burdened by individual litigation of such cases.

6 36. The prosecution of separate actions by members of the Class would create a risk
7 of establishing inconsistent rulings and/or incompatible standards of conduct for Defendants.
8 Additionally, individual actions may be dispositive of the interests of the Class, although certain
9 class members are not parties to such actions.

10 37. Injunctive and Declaratory Relief. Fed. R. Civ. P. 23(b)(2). The conduct of
11 Defendants is generally applicable to the Class as a whole and Plaintiff seeks equitable remedies
12 with respect to the Class as a whole. As such, the systematic policies and practices of
13 Defendants make declaratory or equitable relief with respect to the Class as a whole appropriate.

14 38. Issue Certification. Fed. R. Civ. P. 23(c)(4). In the alternative, the common
15 questions of law and fact, set forth in Paragraph 33, are appropriate for issue certification on
16 behalf of the proposed Class.

17 **COUNT I**

18 ***Unfair Business Practices Against All Defendants***
19 (California Business & Professions Code § 17200, *et seq.*
20 Unfair Competition Law ("UCL"))

21 39. Plaintiff incorporates and realleges by reference each and every allegation above
22 as if set forth herein in full.

23 40. The UCL defines unfair business competition to include any "unlawful, unfair or
24 fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising.
25 Cal. Bus. & Prof. Code § 17200.

26 41. During the relevant time period, Defendants misrepresented and omitted material
27 facts they were obligated to, or should have disclosed, regarding the fact that the Web Hosting
28 would, without notice or reason, cease to be provided to those who paid for the service.

29 Additionally, during the relevant time period, Defendants misrepresented and omitted material

1 facts they were obligated to or should have disclosed regarding the process to cancel the Web
2 Hosting.

3 42. Such information with respect to the services provided, as well as the method to
4 cancel the service, was material to Plaintiff in that as a reasonable customer he would have
5 considered such information to be a substantial factor in deciding whether to pay Defendants for
6 Web Hosting. Plaintiff and the Class had a reasonable expectation that Defendants' Web
7 Hosting would not be explicitly misrepresented through Defendants' representations and Terms
8 of Conditions.

9 43. Defendants' practices constitute unfair business practices in violation of the UCL
10 because, among other things, they are immoral, unethical, oppressive, unscrupulous, or
11 substantially injurious to customers and/or any utility of such practices is outweighed by the
12 harm caused to customers. Defendants' practices violate the legislative policies of the
13 underlying statutes alleged herein: namely, protecting customers from unfair business practices
14 and preventing persons from being injured by misleading advertising. Defendants' practices
15 caused substantial injury to Plaintiff and members of the Class and are not outweighed by any
16 benefits, and Plaintiff and members of the Class could not have reasonably avoided their
17 injuries.

18 44. As a result of Defendants' unfair business practices, Plaintiff has suffered injury
19 in fact and a loss of money or property because he paid for a service which he did not receive
20 and was materially misrepresented, something he would not have done had the true nature of the
21 Web Hosting not been misrepresented or had the material facts been fully disclosed.

22 45. Pursuant to Business and Professions Code § 17204, Plaintiff and the Class are
23 entitled to an order of this Court enjoining such conduct on the part of Defendants, specifically,
24 (1) prohibiting Defendants from charging for Web Hosting when they do not provide it; and
25 (2) requiring Defendants to cancel the service for customers who have requested such
26 cancellation. Plaintiff and the Class are also entitled to any other orders and judgments that may
27 be necessary to provide for complete equitable monetary relief by disgorging Defendants' ill-
28 gotten gains, including the monies Defendants received or saved as a result of its wrongful acts

1 and practices detailed herein, and restoring to any person in interest such monies paid for
2 Defendants' Web Hosting by ordering the payment of full restitution plus interest.

3 **COUNT II**

4 ***Fraudulent Business Practices Against All Defendants***
5 **(California Business & Professions Code § 17200, *et seq.*)**

6 46. Plaintiff incorporates and realleges by reference each and every allegation above
7 as if set forth herein in full.

8 47. A business act or practice is "fraudulent" under the UCL if it is likely to deceive
9 members of the consuming public.

10 48. Defendants have misrepresented what services will be provided to paying
11 customers and the process for how to cancel such services. These misrepresentations, as
12 complained of herein, are misleading and false.

13 49. Throughout the relevant time period, Defendants omitted material facts they were
14 obligated to disclose regarding what services would be provided to paying customers, namely
15 that Web Hosting services could be discontinued for no reason and without notice, and that the
16 Web Hosting could not be cancelled according to the Terms and Conditions. The facts
17 concealed or not disclosed by Defendants with respect to Web Hosting at issue are material in
18 that Plaintiff would have considered these facts to be a substantial factor in deciding whether to
19 purchase and use Defendants' service.

20 50. Plaintiff and the Class members had a reasonable expectation that the Web
21 Hosting was not misrepresented as to what a paying customer is provided with, and how an
22 existing customer cancels the service. A large number of complaints posted on various online
23 communities and message boards substantiate these expectations and assumptions.

24 51. Such acts and practices of Defendants, as described herein, constitute
25 "fraudulent" business practices under California Business and Professions Code § 17200, *et seq.*
26 in that such conduct was and is likely to deceive reasonable customers into believing
27 Defendants' Web Hosting included Web Hosting to paying customers and that the Terms and
28 Services included an accurate method for how to cancel the Web Hosting.

1 52. As a result of Defendants’ fraudulent business practices, Plaintiff has suffered
2 injury in fact and a loss of money or property because he paid for a service which he did not
3 receive and was materially misrepresented, something he would not have done had the true
4 nature of the Web Hosting not been misrepresented or had the material facts been fully
5 disclosed.

6 53. Pursuant to Business and Professions Code § 17204, Plaintiff and the Class are
7 entitled to an order of this Court enjoining such conduct on the part of Defendants, specifically,
8 (1) prohibiting Defendants from charging for Web Hosting when they do not provide it; and
9 (2) requiring Defendants to cancel the service for customers who have requested such
10 cancellation. Plaintiff and the Class are also entitled to any other orders and judgments that may
11 be necessary to provide for complete equitable monetary relief by disgorging Defendants’ ill-
12 gotten gains, including the monies Defendants received or saved as a result of its wrongful acts
13 and practices detailed herein, and restoring to any person in interest such monies paid for
14 Defendants’ Web Hosting by ordering the payment of full restitution plus interest.

15 **COUNT III**

16 ***Unlawful Business Practices Against All Defendants***
17 **(California Business & Professions Code § 17200, et seq.)**

18 54. Plaintiff incorporates and realleges by reference each and every allegation above
19 as if set forth herein in full.

20 55. A business act or practice is “unlawful” under the UCL if it violates any other
21 law or regulation.

22 56. Defendants’ deceptive and misleading business practices and acts, as described
23 herein, breached and continue to breach the contract entered into between Defendants and the
24 Class—money for Web Hosting. Defendants’ conduct also violated and continues to violate
25 California’s False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, et seq., by representing
26 that paying customers would receive Web Hosting and could cancel their accounts according to
27 the Terms and Conditions, when this is not true.

28 57. Plaintiff reserves the right to identify other violations of law as the facts develop.

1 provided to paying customers, and that existing customers can cancel their accounts according
2 to the Terms of Service.

3 64. On each day throughout the relevant period, Defendants, with the intent to induce
4 members of the public to purchase their Web Hosting, made or caused to be made each of the
5 untrue or misleading statements, claims, or representations described herein.

6 65. Defendants knew, or by the exercise of reasonable care should have known, that
7 these claims were untrue, deceptive, or misleading.

8 66. When Defendants made or caused to be made the untrue or misleading claims,
9 statements, or misrepresentations described herein to customers in California, Defendants failed
10 to adequately disclose the facts pleaded herein. Plaintiff requests that this Court cause
11 Defendants to restore this money to Plaintiff and all other respective members of the Class, and
12 to enjoin such conduct on the part of Defendants, specifically, (1) prohibiting Defendants from
13 charging for Web Hosting when they do not provide it; and (2) requiring Defendants to cancel
14 the service for customers who have requested such cancellation. Plaintiff and the Class are also
15 entitled to any other orders and judgments that may be necessary to provide for complete
16 equitable monetary relief by disgorging Defendants' ill-gotten gains, including the monies
17 Defendants received or saved as a result of its wrongful acts and practices detailed herein, and
18 restoring to any person in interest such monies paid for Defendants' Web Hosting by ordering
19 the payment of full restitution plus interest.

20 **COUNT VI**

21 ***Breach of Contract Against All Defendants***

22 67. Plaintiff incorporates and realleges by reference each and every allegation above
23 as if set forth herein in full.

24 68. Defendants offered to provide the Web Hosting, including web hosting, as long
25 as Plaintiff and the Class paid the applicable monthly or yearly fees on time.

26 69. Plaintiff entered into a contract with Defendants when he purchased their Web
27 Hosting for web hosting.

1 70. At all relevant times, Plaintiff has automatically paid the applicable monthly fee,
2 at least up through the filing of this Action.

3 71. Defendants owed duties and obligations to Plaintiff and members of the Class
4 under the contracts, including the duty to provide Web Hosting and the duty to allow customers
5 to cancel their service according to the Terms and Conditions.

6 72. Defendants materially breached Plaintiff's contract when Plaintiff's Web Hosting
7 was discontinued in October of 2016, without notice or reason, as Plaintiff continued to
8 automatically pay the monthly fee. Defendants further materially breached Plaintiff's contract
9 by not allowing Plaintiff to cancel his service according to the Terms and Conditions.

10 73. Defendants were put on notice of the breach, at least once a month from the time
11 of the breach, by Plaintiff through his phone calls and correspondence to customer service
12 representatives.

13 74. As a result of Defendants' breach, Plaintiff and the Class have been injured and
14 harmed by their failure to provide Web Hosting to paying customers, and by their failure to
15 cancel the service to those who requested such cancellation according to the Terms and Service.
16 As a direct and proximate result of Defendants' breach, Plaintiff and the Class have suffered
17 damages; they have spent time and/or money, and will continue to spend time and/or money in
18 the future paying for their deactivated Web Hosting and spending time and/or money in trying
19 to contact Defendants' customer service representatives in order to reactivate the Web Hosting
20 or cancel their service. Plaintiff and the Class are entitled to compensation for those reasonable
21 efforts to protect their interests, as well as for all detriment proximately caused by Defendants'
22 breach, or in the alternative, for nominal damages and/or restitution.

23 **COUNT VII**

24 ***Breach of the Duty of Good Faith and Fair Dealing Against All Defendants***

25 75. Plaintiff incorporates and realleges by reference each and every allegation above
26 as if fully set forth herein.

27 76. Plaintiff and the Class purchased Defendants' Web Hosting in the reasonable
28 expectation that the service would include web hosting as long as they continued to pay the

1 appropriate fees, and that the service could be cancelled according to the Terms and Conditions,
2 and that Defendants would take all reasonable steps to ensure that these representations were
3 honored and accurate.

4 77. Plaintiff and the Class also purchased Defendants' Web Hosting with the
5 reasonable expectation that Defendants would deal with them fairly, equitably, in good faith,
6 and in full conformity with the express and implied terms of the Web Hosting. This expectation
7 was brought about and intended by Defendants as a result of the contractual language and by the
8 express representations of the respective employees, agents, and representatives of Defendants.

9 78. Defendants have materially breached their duty of good faith and fair dealing
10 owed to Plaintiff and the Class in at least the following respects:

- 11 (a) By failing to offer Web Hosting to paying customers; and
- 12 (b) By failing to allow customers to cancel the service according to the Terms and
13 Conditions.

14 79. As a result of Defendants' breach, Plaintiff and the Class have been injured and
15 harmed by their failure to provide Web Hosting to paying customers, and by their failure to
16 cancel the service to those who requested such cancellation according to the Terms and Service.
17 As a direct and proximate result of Defendants' breach, Plaintiff and the Class have suffered
18 damages; they have spent time and/or money, will continue to spend time and/or money in the
19 future paying for their deactivated Web Hosting, and spending time and/or money in trying to
20 contact Defendants' customer service representatives in order to reactivate the Web Hosting or
21 cancel their service. Plaintiff and the Class are entitled to compensation for those reasonable
22 efforts to protect their interests, as well as for all detriment proximately caused by Defendants'
23 breach, or in the alternative, for nominal damages and/or restitution.

24 **COUNT VIII**

25 ***Unjust Enrichment Against All Defendants***

26 80. Plaintiff incorporates and realleges by reference each and every allegation above
27 as if fully set forth herein.

1 81. Plaintiff and Class members conferred benefits on Defendants by paying for Web
2 Hosting.

3 82. Defendants have been unjustly enriched in retaining the revenues derived from
4 Plaintiff's and Class members' purchases of the Web Hosting because Defendants did not
5 provide the benefits due under the terms of the service. Retention of those monies under these
6 circumstances is unjust and inequitable because Defendants misrepresented that the Web
7 Hosting would be provided if the annual or monthly membership dues were paid, and also that
8 customers could cancel the service according to the Terms and Conditions. These
9 misrepresentations caused injuries to Plaintiff and Class members because they would not have
10 purchased the Web Hosting if the true facts had been known.

11 83. Because Defendants' retention of the benefits conferred on them by Plaintiff and
12 the Class members is unjust and inequitable, Defendants must pay restitution to Plaintiff and
13 Class members for their unjust enrichment, as ordered by the Court.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff and the Class demand judgment against Defendants as follows:

16 A. An order certifying that this Action may be maintained as a class action, that
17 Plaintiff be appointed Class Representative and Plaintiff's counsel be appointed Class Counsel;

18 B. A judgment awarding Plaintiff and all members of the Class damages as alleged
19 above incurred by Plaintiff and Class members as a result of Defendants' unlawful, deceptive,
20 unfair, and fraudulent business and trade practices described herein;

21 C. A judgment awarding Plaintiff and all members of the Class restitution or other
22 equitable relief, including, without limitation, disgorgement of all profits and unjust enrichment
23 that Defendants obtained from Plaintiff and the Class as a result of their unlawful, unfair, and
24 fraudulent business practices described herein;

25 D. An order enjoining Defendants from continuing to violate the laws as described
26 herein;

27 E. A judgment awarding Plaintiff the costs of suit, including reasonable attorneys'
28 fees, and pre and post-judgment interest; and

1 F. Such other and further relief as may be deemed necessary or appropriate.

2 **JURY DEMAND**

3 Plaintiff demands a trial by jury.

4
5 Dated: April 14, 2017

LEVI & KORSINSKY LLP

6 By: /s/ Rosemary M. Rivas
7 Rosemary M. Rivas

8 Quentin A. Roberts
9 44 Montgomery Street, Suite 650
10 San Francisco, California 94104
11 Telephone: (415) 291-2420
12 Facsimile: (415) 484-1294
13 Email: rrivas@zlk.com
14 Email: qroberts@zlk.com

15
16
17
18
19
20
21
22
23
24
25
26
27
28
*Attorneys for Individual and
Representative Plaintiff Ronald Meyer*