

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Nov-06-2013 01:55 pm

Case Number: CGC-13-535309

Filing Date: Nov-06-2013 01:42 pm

Filed by: DEBORAH STEPPE

Juke Box: 001 Image: 04266225

COMPLAINT

MELISSA BLEAK, INDIVIDUALLY AND ON BEHALF OF ALL VS. SPOTIFY USA,
INC., A DELAWARE CORPORATION

001C04266225

Instructions:

Please place this sheet on top of the document to be scanned.

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

Spotify USA, Inc., a Delaware Corporation

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Melissa Bleak, individually and on behalf of all others similarly situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Civic Center Courthouse
400 McAllister St., San Francisco, CA, 94102

CASE NUMBER:
(Número del Caso): 13-535309

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Julian Hammond, 1180 S. Beverly Dr., Suite 610, Los Angeles, CA, 90035; tel: 310-601-6766

BY FAX

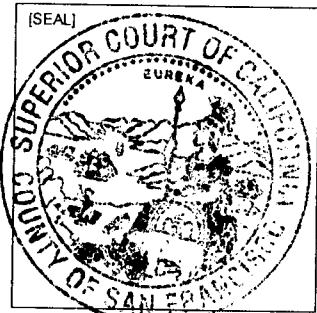
CLERK OF THE COURT

DATE: 11/06/2013
(Fecha)

Clerk, by
(Secretario) **Deborah Stepp**

Deputy
(Adjunto)
[Signature]

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):
- 3. on behalf of (specify):

under: <input checked="" type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
- 4. by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 Julian Hammond (SBN 268489)
 Hammond Law, P.C.
 1180 S. Beverly Dr., Suite 610
 Los Angeles, CA 90035
 TELEPHONE NO.: 310-601-6766 FAX NO.: 310-295-2385
 ATTORNEY FOR (Name): Plaintiff Melissa Bleak

FORTGOULB USE ONLY
 SUPERIOR COURT
 COUNTY OF SAN FRANCISCO
 2013 NOV -6 PM 1:52
 CLERK OF THE COURT
 BY: _____
 DEPUTY CLERK
 Deborah Stepp

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
 STREET ADDRESS:
 MAILING ADDRESS: 400 McAllister St.
 CITY AND ZIP CODE: San Francisco, 94102
 BRANCH NAME: Civic Center Courthouse

CASE NAME:
 Melissa Bleak v. Spotify USA, Inc., a Delaware Corporation

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
CGC-13-535309
 JUDGE:
 DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:
- | | | |
|--|---|---|
| <p>Auto Tort</p> <input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46) <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/WD (23) <p>Non-PI/PD/WD (Other) Tort</p> <input checked="" type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35) <p>Employment</p> <input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | <p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37) <p>Real Property</p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26) <p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38) <p>Judicial Review</p> <input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | <p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20) <p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42) <p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|--|---|---|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): Cal. Bus. and Prof. Code Sec. 17603, 17604, & 17535; UCL Violations
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

BY FAX

Date: 11/06/2013
 Julian Hammond
 (TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
- Breach of Rental/Lease
 - Contract (*not unlawful detainer or wrongful eviction*)
- Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
- Collection Case—Seller Plaintiff
- Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
- Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment (*non-domestic relations*)
 - Sister State Judgment
 - Administrative Agency Award (*not unpaid taxes*)
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (*not specified above*) (42)
 - Declaratory Relief Only
 - Injunctive Relief Only (*non-harassment*)
 - Mechanics Lien
 - Other Commercial Complaint Case (*non-tort/non-complex*)
 - Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief From Late Claim
- Other Civil Petition

RECEIVED
FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

2013 NOV -6 PM 1:52

CLERK OF THE COURT

DEPUTY CLERK
Debrah Stepp

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

JULIAN HAMMOND, CA Bar No. 268489
Hammond.julian@gmail.com
HammondLaw, PC
1180 S. Beverly Drive, Suite 610
Los Angeles, CA 90035
(310) 601-6766
(310) 295-2385 (Fax)

ARI CHERNIAK, CA Bar No. 290071
ari.cherniak@gmail.com
HammondLaw, P.C.
1829 Reisterstown Rd. Suite 410
Baltimore, MD 21208
(443) 739-5758
(310) 295-2385 (Fax)

Attorneys for Plaintiff and Putative Class

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

Melissa Bleak, individually and on behalf of all
others similarly situated,

Plaintiff,

vs.

Spotify USA, Inc., a Delaware Corporation

Defendant.

Case No.: CGC-13-535309

CLASS ACTION

COMPLAINT FOR: (1) VIOLATION OF
CALIFORNIA'S AUTOMATIC RENEWAL
LAW (CAL. BUS. PROF. CODE §§17600-
17604); (2) UCL VIOLATIONS (BUS. &
PROF. CODE §§ 17200-17204); AND (3)
INJUNCTIVE RELIEF AND RESTITUTION
(BUS. & PROF. CODE § 17535)

DEMAND FOR JURY TRIAL

BY FAX

1 Plaintiff Melissa Bleak (“Plaintiff”), on behalf of herself and all others similarly situated,
2 complains and alleges as follows:

3 OVERVIEW OF CLAIMS

4
5 1. This is a class action, under California Code of Civil Procedure § 382, seeking
6 damages, restitution, injunctive and/or other equitable relief under California Business and Professions
7 Code (hereinafter “Cal. Bus. & Prof. Code”) §§17602, 17603, 17604, 17535, and 17200, et seq., on
8 behalf of Plaintiff and all other individuals who purchased a subscription through their desktop
9 computers for streaming music services (hereinafter “Class Members”) in California from Spotify
10 USA, Inc. (“Spotify” or “Defendant”), a Delaware Corporation with its principal place of business in
11 New York. Plaintiff and Class Members throughout California paid a subscription fee to Spotify for
12 access to its streaming music services. However, prior to charging Plaintiff and Class Members’ credit
13 or debit cards, Defendant failed to first obtain the Plaintiff’s and Class Members’ affirmative consent
14 to the agreement containing the automatic renewal offer terms or continuous service offer terms in
15 violation of Cal. Bus. Prof. Code §17602(a) (2), and as result all goods, wares, or merchandise sent to
16 Plaintiff and Class Members under the automatic renewal or continuous service agreement is deemed
17 to be an unconditional gift pursuant to Cal. Bus. Code §17603. Plaintiff, on behalf of herself and Class
18 Members, also seeks injunctive relief and/or restitution of all unjust enrichment Defendant has
19 obtained from its failure to comply with Cal Bus. Prof. Code § 17602(a).

20 2. The “Class Period” is designated as the period from December 1, 2010 through to the
21 trial date. Defendant’s violations of California’s Business and Professions Code and unfair
22 competition laws, as described more fully below, have been ongoing since December 1, 2010, and are
23 continuing at present.

24 JURISDICTION

25 3. This Court has jurisdiction over the claims for damages, injunctive relief and/or
26 restitution arising from Defendant’s unlawful business practices, under California’s Business &
27 Professions Code §§ 17203, 17204, 17535, and 17603.
28

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

VENUE

4. Venue as to Defendant is proper in the County of San Francisco.

PARTIES

5. Plaintiff Melissa Bleak resides in Pasadena, California. Plaintiff Bleak purchased a subscription with Spotify in California through her desktop computer in August 2013. During that time Plaintiff Bleak was subject to Defendant's unlawful policies and/or practices set forth herein. Plaintiff is a consumer as defined under Cal Bus. Prof. Code §17601 (d).

6. Defendant Spotify USA, Inc. is a Delaware corporation with its principal place of business located at 76 9th Ave., #1110, New York, NY, 10011. The policies and practices complained of herein were formulated, implemented, and maintained, in whole or in substantial part, at that address.

7. All of Plaintiff's claims stated herein are asserted against Defendant and any of its predecessors, successors, and/or assigns that do, or have done, business, with Class Members in California during the Class Period.

FACTUAL BACKGROUND

8. Defendant operates and, at all times during the Class Period, has done business throughout California. Defendant is an on-line subscription service that streams music from numerous record labels to its customers over the internet.

9. Since at least December 1, 2010 through to the filing of this action, Defendant has charged Plaintiff's and Class Members' credit or debit cards with a third party for an automatic renewal or continuous service without first obtaining the Plaintiff's and Class Members' affirmative consent to the agreement containing the automatic renewal offer terms or continuous service offer terms.

10. Plaintiff and all similarly situated Class Members are consumers within the meaning of Cal. Bus. Prof. Code § 17601(d).

1 11. During the Class Period, Plaintiff and Class Members entered into a subscription
2 agreement with Spotify through their desktop computers in which Plaintiffs and Class Members agreed
3 to pay a monthly subscription fee in exchange for Spotify providing streaming music services over the
4 internet.

5 12. In entering into the subscription agreement with Spotify through their desktop
6 computers, Plaintiff and Class Members chose between a one month subscription agreement that
7 provides the subscriber access to streaming music on their desktop computer only (“Unlimited Plan”)
8 or that provides the subscriber access on any device (“Premium Plan”). At the end of the month, the
9 agreement is automatically renewed for an additional one month, and as such the subscription
10 agreement contains an automatic renewal plan within the meaning Cal. Bus. Prof. Code. §1701(1).
11 Furthermore, the subscription agreement continues until cancelled, and therefore is and was a
12 continuous service plan or arrangement as defined by Cal. Bus. Prof Code § 117601(e).

13 13. Once Plaintiff and Class Members select their plan, Plaintiffs and Class Members were
14 taken to another webpage where they are requested to select their payment method. Once this
15 information was selected, Plaintiffs and Class Members were required to press a button with the word
16 “Continue” on it. Plaintiff and Class Members were subsequently required to enter their credit or debit
17 card information. In order to start the subscription, Plaintiff and Class Members were then required to
18 press a button called “Confirm Payment.” Once the Confirm Payment button was pressed, the order
19 was confirmed, and shortly thereafter, the Plaintiff and Class Members’ credit or debit card was
20 charged.

21 14. Paragraph 13 of the Spotify Terms and Conditions of Use (“Terms”) entitled
22 “Payments, Cancellations and Cooling Off” contains Defendant’s automatic renewal offer terms.
23 Paragraph 17 of the Terms entitled “Entire Agreement” states as follows: “These agreements constitute
24 all the terms and conditions agreed upon between you and Spotify”.

25 15. Accordingly, the Terms are “the agreement containing the automatic renewal offer
26 terms or continuous service offer terms” pursuant Cal. Bus. Prof. Code § 17602(a)(2) and Defendant
27
28

1 was required to obtain Plaintiff and Class Members' affirmative consent to these Terms pursuant to
2 Cal. Bus. Prof. Code § 17602(a)(2) which states that it is "unlawful for any business making an
3 automatic renewal or continuous service offer to charge the consumer's credit or debit card...without
4 first obtaining the consumer's affirmative consent to the agreement containing the automatic renewal
5 offer terms or continuous service offer terms".

6 16. However, prior to charging the Plaintiff and Class Members' credit or debit card for an
7 upgrade to the Premium Plan, Defendant's website states as follows: "If you do not cancel your
8 subscription before the end of the free trial the credit card you provide will automatically be charged
9 the Spotify Premium subscription fee of US \$9.99 + \$0.00 sales tax per month, until you cancel. You
10 can cancel at any time by logging into your Spotify account and follow the cancellation instructions.
11 No refunds or credits for partial monthly subscriptions period. For complete terms and conditions,
12 please see our Terms of Service" (hereinafter "Premium Plan notice").

13 17. Furthermore, prior to charging Class Members' credit or debit card for an upgrade to
14 the Unlimited Plan, Defendant states as follows: "You authorize Spotify to automatically bill your
15 credit card each month, until you cancel your subscription. No refunds or credits for partial monthly
16 subscription periods. You can cancel your subscription at any time by logging into your account and
17 follow the cancellation instructions" (hereinafter "Unlimited Plan notice").

18 18. However, in the Premium Plan notice Defendant failed to provide a hyperlink to the
19 Terms, and the Terms are not referenced at all on the Unlimited Plan notice. Moreover, Defendant
20 failed to provide a box to check or any other method by which Plaintiff's and Class Members could
21 provide their affirmative consent to Defendant's Terms.

22 19. As a result of the above, Defendant failed to obtain Plaintiff and Class Members'
23 affirmative consent to the agreement containing the Terms prior to charging their credit or debit card
24 for an automatic renewal or continuous service as required under § 17602(a) (2).
25
26
27
28

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

CLASS ACTION ALLEGATIONS

20. Plaintiff brings this action, on behalf of herself and all others similarly situated, as a class action pursuant to Code of Civil Procedure § 382. The Class that Plaintiff seeks to represent is composed of and defined as all persons who purchased an Unlimited Plan or Premium Plan subscription on their desktop computer in California from Defendant since December 1, 2010.

21. This action has been brought and may properly be maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation, the proposed class is easily ascertainable, and Plaintiff is a proper representatives of the Class:

a. Numerosity: The potential members of the Class as defined are so numerous and so diversely located throughout California, that joinder of all the members of the Class is impracticable. The Class Members are dispersed throughout California. Joinder of all members of the proposed class is therefore not practicable.

b. Commonality: There are questions of law and fact common to the Plaintiff and the Class that predominate over any questions affecting only individual members of the Class. These common questions of law and fact include, without limitation:

i. Whether Defendant charged Plaintiff and Class Members credit or debit card with a third party for an automatic renewal or continuous service without first obtaining the Plaintiff and Class Members' affirmative consent to the agreement containing the automatic renewal offer terms or continuous service offer terms in violation of Cal. Bus. Code §17602(a)(2);

ii. Whether Cal. Bus. Prof. Code § 17603 provides for damages and/or restitution for money paid by Class Members in circumstances where the goods and services provided by Defendant is deemed an unconditional gift.

iii. Whether Plaintiff and Class Members' are entitled to damages and/or restitution under Cal. Bus. Prof Code. § 17200-17203

iv. Whether Plaintiff and Class Members are entitled to injunctive relief and/or restitution under Cal. Bus. Prof Code. § 17535.

1 v. The proper formula(s) for calculating damages and/or restitution owed to
2 Class Members.

3 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both
4 Plaintiff and Class Members were deprived of property rightly belonging to them, arising out of and
5 caused by Defendant's common course of conduct in violation of law as alleged herein, in similar
6 ways.

7 d. Adequacy of Representation: Plaintiff is a member of the Class and will fairly
8 and adequately represent and protect the interests of the Class Members. Plaintiff's interests do not
9 conflict with those of Class Members. Counsel who represent Plaintiff are competent and experienced
10 in litigating large class actions, and will devote sufficient time and resources to the case and otherwise
11 adequately represent the Class.

12 e. Superiority of Class Action: A class action is superior to other available means
13 for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is
14 not practicable, and questions of law and fact common to the Class predominate over any questions
15 affecting only individual members of the Class. Plaintiff and each Class Member has suffered loss or
16 may suffer loss in the future by reason of Defendant's unlawful policies and/or practices of not
17 complying with Cal. Bus Prof. Code §§ 17600-17606. Certification of this case as a class action will
18 allow those similarly situated persons to litigate their claims in the manner that is most efficient and
19 economical for the parties and the judicial system. Certifying this case as a class action is superior
20 because it allows for efficient and full restitution to Class Members, and will thereby effectuate
21 California's strong public policy of protecting the California public from violations of its laws. If this
22 action is not certified as a Class Action, it will be impossible as a practical matter for many or most
23 Class Members to bring individual actions to recover monies due from Defendant, due to the relatively
24 small amounts of such individual recoveries relative to the costs and burdens of litigation.
25
26
27
28

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

FIRST CAUSE OF ACTION
FAILURE TO OBTAIN THE CONSUMER'S AFFIRMATIVE CONSENT BEFORE THE
SUBSCRIPTION IS FULFILLED
(CAL. BUS. PROF. CODE §§ 17602(a) (2) and 17603)

22. The allegations of Paragraphs 1 through 21 are realleged and incorporated herein by reference, and Plaintiff alleges this cause of action on behalf of herself and the above-described class of similarly situated Class Members.

23. Cal. Bus. Prof. Code § 17602(a)(2) provides:

“(a) It shall be unlawful for any business making an automatic renewal or continuous service offer to a consumer in this state to do any of the following:

(2) Charge the consumer's credit or debit card or the consumer's account with a third party for an automatic renewal or continuous service without first obtaining the consumer's affirmative consent to the agreement containing the automatic renewal offer terms or continuous service offer terms.

24. Defendant charged the Class Members' credit or debit card or the Class Members' account with a third party for an automatic renewal or continuous service without first obtaining the Class Members' affirmative consent to the agreement containing the automatic renewal offer terms or continuous service offer terms.

25. As a result of Defendant's violations of Cal. Bus. Prof. Code § 17602(a) (2), Defendant is liable to provide damages and/or restitution to Plaintiffs and Class Members under Cal. Bus. Prof. Code §17603.

26. Plaintiff, on behalf of herself and Class Members, request relief as described below.

SECOND CAUSE OF ACTION
UNFAIR COMPETITION LAW VIOLATIONS
(BUS. & PROF. CODE § 17200 *et. seq.*)

27. The allegations of Paragraphs 1 through 26 are realleged and incorporated herein by reference, and Plaintiff alleges this cause of action on behalf of herself and the above-described class of similarly situated Class Members.

1 28. Business & Professions Code §§17200, *et seq.* (the “UCL”) prohibits unfair competition
2 in the form of any unlawful, unfair, or fraudulent business act or practice. Business & Professions
3 Code § 17204 allows “any person who has suffered injury in fact and has lost money or property” to
4 prosecute a civil action for violation of the UCL. Such a person may bring such an action on behalf of
5 herself and others similarly situated who are affected by the unlawful, unfair, or fraudulent business
6 practice.

7 29. Beginning at an exact date unknown to Plaintiff, but at least since December 1, 2010,
8 and continuing to the present, Defendant has committed unlawful, unfair, and/or fraudulent business
9 acts and practices as defined by the UCL, by violating Cal. Bus. Prof. Code §17602.

10 30. As a direct and proximate result of Defendant’s unlawful, unfair, and/or fraudulent acts
11 and practices described herein, Defendant has received and continues to hold unlawfully obtained
12 property and money belonging to Plaintiff and Class Members in the form of payments made for
13 subscription agreements by Plaintiff and Class Members. Defendant has profited from its unlawful,
14 unfair, and/or fraudulent acts and practices in the amount of those business expenses and interest
15 accrued thereon.

16 31. Plaintiff and similarly situated Class Members are entitled to damages and/or restitution
17 pursuant to Business & Professions Code §§ 17203 and 17208 for all monies paid by Class Members
18 under the subscription agreements from December 1, 2010 to the date of such restitution, at rates
19 specified by law. Defendant should be required to disgorge all the profits and gains it has reaped and
20 restore such profits and gains to Plaintiff and Class Members, from whom they were unlawfully taken.

21 32. Plaintiff and similarly situated Class Members are entitled to enforce all applicable
22 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

23 33. Plaintiff has assumed the responsibility of enforcement of the laws and public policies
24 specified herein by suing on behalf of themselves and other similarly situated members of the public
25 previously and presently employed by Defendant in California. Plaintiff’s success in this action will
26 enforce important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing
27
28

1 this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is
2 appropriate pursuant to Code of Civil Procedure §1021.5.

3 34. Plaintiff, on behalf of herself and Class Members, request relief as described below.
4

5 **THIRD CAUSE OF ACTION**
6 **INJUNCTIVE RELIEF AND RESTITUTION**
7 **(BUS. & PROF. CODE § 17535)**

8 35. The allegations of Paragraphs 1 through 34 are realleged and incorporated herein by
9 reference, and Plaintiff alleges this cause of action on behalf of herself and the above-described class
of similarly situated Class Members.

10 36. Business & Professions Code §17535, *et seq.* (the "UCL") allows "any person who has
11 suffered injury in fact and has lost money or property" to prosecute a civil action for violation of the
12 UCL. Such a person may bring such an action on behalf of herself and others similarly situated who
13 are affected by the unlawful, unfair, or fraudulent business practice.

14 37. Beginning at an exact date unknown to Plaintiff, but at least since December 1, 2010,
15 and continuing to the present, Defendant has committed unlawful, unfair, and/or fraudulent business
16 acts and practices as defined by the UCL, by violating Cal. Bus. Prof. Code §17602.

17 38. As a direct and proximate result of Defendant's unlawful, unfair, and/or fraudulent acts
18 and practices described herein, Defendant has received and continues to hold unlawfully obtained
19 property and money belonging to Plaintiff and Class Members in the form of payments made for
20 subscription agreements by Plaintiff and Class Members. Defendant has profited from its unlawful,
21 unfair, and/or fraudulent acts and practices in the amount of those business expenses and interest
22 accrued thereon.

23 39. Plaintiff and similarly situated Class Members are entitled to injunctive relief and/or
24 restitution pursuant to Business & Professions Code §17535 for all monies paid by Class Members
25 under the subscription agreements from December 1, 2010 to the date of such restitution, at rates
26 specified by law. Defendant should be required to disgorge all the profits and gains it has reaped and
27 restore such profits and gains to Plaintiff and Class Members, from whom they were unlawfully taken.
28

1 40. Plaintiff and similarly situated Class Members are entitled to enforce all applicable
2 penalty provisions of the Labor Code pursuant to Business & Professions Code.

3 41. Plaintiff has assumed the responsibility of enforcement of the laws and public policies
4 specified herein by suing on behalf of themselves and other similarly situated members of the public
5 previously and presently employed by Defendant in California. Plaintiff's success in this action will
6 enforce important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing
7 this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is
8 appropriate pursuant to Code of Civil Procedure §1021.5.

9 42. Plaintiff, on behalf of herself and similarly situated Class Members, request relief as
10 described below.

11
12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff requests the following relief:

14 A. That the Court determine that this action may be maintained as a class action under
15 Code of Civil Procedure §382, and define the Class as requested herein;

16 B. That the Court find and declare that Defendant's subscription agreement violates Cal
17 bus. Pro. Code §17602 by charging Plaintiff and Class Members credit or debit card without first
18 obtaining their affirmative consent to the agreement containing the automatic renewal offer term or
19 continuous service offer terms prior to charging their credit cards;

20 C. That the Court find and declare that Defendant has violated the UCL and committed
21 unfair and unlawful business practices by violating Cal. Bus. Prof Code. §17602;

22 D. That the Court award to Plaintiff and Class Members damages and/or full restitution in
23 the amount of the subscription payments made by them pursuant to Cal. Bus. Prof. Code §17603, in an
24 amount to be proved at trial;
25
26
27
28

1 E. That Defendant be ordered to pay damages and/or restitution to Plaintiff and the Class
2 due to Defendant's UCL violations, pursuant to Business and Professions Code §§17200-17205 in the
3 amount of their subscription agreement payments;

4 F. That the Court find that Plaintiff and Class Members are entitled to damages, injunctive
5 relief and/or restitution pursuant to Cal. Bus. Prof. Code §17535;

6 G. That Plaintiff and the Class be awarded reasonable attorneys' fees and costs pursuant to
7 Code of Civil Procedure §1021.5, and/or other applicable law;

8 H. That the Court award such other and further relief as this Court may deem appropriate.
9

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff, on behalf of herself and the Class Members, hereby demand a jury trial on all causes
12 of action and claims with respect to which they have a right to jury trial.

13 Dated: November 6, 2013

14 

15 JULIAN HAMMOND, CA Bar No. 268489
Hammond.julian@gmail.com
HammondLaw, PC
1180 S. Beverly Drive, Suite 610
Los Angeles, CA 90035
17 (310) 601-6766
(310) 295-2385 (Fax)

18 ARI CHERNIAK, CA Bar No. 290071
19 ari.cherniak@gmail.com
HammondLaw, P.C.
1829 Reisterstown Rd. Suite 410
Baltimore, MD 21208
21 (443) 739-5758
(310) 295-2385 (Fax)

22 ATTORNEYS FOR PLAINTIFF AND THE PUTATIVE
23 CLASS
24
25
26
27
28