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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

15 SUSAN COSTA, an individual. on behalf of
herself and all others similarly situated,

16 Plaintiff,

17 v.

18 ROAD RUNNER SPORTS, INC., ROAD
19 RUNNER SPORTS RETAIL, INC., and
DOES 1-50, inclusive,

20 Defendants.

Case No. 37-2020-00017100-CU-MC-CTL

CLASS ACTION

CLASS ACTION COMPLAINT FOR:

1. **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW (Cal. Bus. & Prof. Code §§ 17200, *et seq.*);**
2. **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT (Cal. Civ. Code §§ 1750, *et seq.*);**
and
3. **DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

BLOOD HURST & O' REARDON, LLP

1 Plaintiff Susan Costa (“Plaintiff”), individually, and on behalf of all others similarly
2 situated, upon personal knowledge of the facts pertaining to herself and on information and belief
3 as to all other matters, by and through undersigned counsel, hereby brings this class action complaint
4 against defendants Road Runner Sports, Inc. and Road Runner Sports Retail, Inc. (collectively,
5 “Road Runner” or “Defendants”) and alleges as follows:

6 INTRODUCTION

7 1. Road Runner is a running shoe and an athletic apparel company based in San Diego,
8 California with more than 35 retail outlets throughout California and other states. The company
9 derives revenue from the sale of running and walking shoes, athletic apparel, and other related gear
10 and accessories through its retail stores, online store (roadrunnersports.com), and direct mail and
11 online catalogs.

12 2. To enhance sales and increase profits, Road Runner offers customers discounts and
13 rewards through its customer loyalty program which it calls the VIP Family Rewards Membership
14 and VIP Family Rewards Plus Membership (collectively, “VIP Family Membership”). According
15 to Road Runner’s website, there are more than 842,500 current VIP Family Membership holders.

16 3. Customers are encouraged to and typically sign up for the VIP Family Membership
17 at the time of checkout. To entice customers, Road Runner initially charges a small amount – right
18 now, just \$1.99 – for the VIP Family Membership. It is an easy sell for Road Runner because
19 customers are told that for just a small charge, they will receive 10% instant savings plus 5% in
20 rewards cash. However, Road Runner fails to disclose the balance of the deal: the VIP Family
21 Membership automatically renews every year for \$39.99 (or more) and will be charged to the
22 customer’s credit or debit card on file.

23 4. Road Runner’s policy and practice of automatically renewing customers’ VIP Family
24 Memberships without obtaining affirmative consent prior to the customers’ purchase, without
25 providing the auto-renewal terms in a clear and conspicuous manner prior to purchase, and without
26 providing an acknowledgement identifying an easy and efficient mechanism for customers to cancel
27 their VIP Family Memberships violates California’s Automatic Renewal Law (“ARL”), Cal. Bus.
28 & Prof. Code §§ 17600, *et seq.* In further violation of the ARL, Road Runner makes it difficult and

1 confusing for customers to cancel their VIP Family Memberships, often resulting in unsuccessful
2 cancellations and continued membership charges.

3 5. As a direct result of Road Runner's conduct, Plaintiff and all those similarly situated
4 customers (the "Class Members") suffered economic injury in the loss of money paid for their VIP
5 Family Memberships. As such, Plaintiff brings this class action on behalf of herself and all similarly
6 situated Class Members seeking declaratory relief, injunctive relief, equitable relief (including, but
7 not limited to, restitution), damages, and reasonable attorneys' fees and costs pursuant to and under
8 California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, and
9 California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, *et seq.*

10 THE PARTIES

11 6. Plaintiff Susan Costa is, and at all relevant times hereto was, an individual residing
12 in San Diego, California. On or about July 8, 2015, Plaintiff Costa visited a Road Runner retail store
13 in San Diego, California to purchase a pair of shoes. At checkout, Plaintiff was encouraged to and
14 did sign up for the VIP Family Membership to receive the promised discount off her purchase.
15 However, neither before nor after signing up was Plaintiff told she was in reality enrolling into a
16 paid subscription agreement with Road Runner, and that her debit card would be automatically
17 charged a fee every year. The next year, Plaintiff's debit card was charged the undisclosed renewal
18 fee for her VIP Family Membership. Plaintiff would not have agreed to sign up for and purchase the
19 VIP Family Membership had she known at the time of purchase the membership would be
20 automatically renewed each year at a cost of approximately \$27.99. Plaintiff has suffered injury in
21 fact and lost money or property as a result of Road Runner's misconduct as alleged herein.

22 7. Defendant Road Runner Sports, Inc. is a Delaware corporation with its principal
23 place of business located at 5549 Copley Drive, San Diego, California 92111.

24 8. Defendant Road Runner Sports Retail, Inc. is a California corporation with its
25 principal place of business located at 5549 Copley Drive, San Diego, California 92111.

26 9. Plaintiff is unaware of the true names and capacities of the Defendants sued herein
27 as DOES 1 through 50, inclusive, and therefore sues these Defendants by such fictitious names
28 pursuant to Cal. Civ. Proc. Code § 474. Plaintiff is informed and believes, and based thereon, alleges

1 that each of the Defendants designated herein is legally responsible in some manner for the unlawful
2 acts and occurrences complained of herein, whether such acts were committed intentionally,
3 negligently, recklessly, or otherwise, and that each of the Defendants thereby proximately caused
4 the injuries and damages to Plaintiff and the Class Members as herein alleged. Plaintiff will seek
5 leave of Court to amend this complaint to reflect the true names and capacities of the Defendants
6 when they have been ascertained and become known.

7 10. The agents, servants and/or employees of the Defendants and each of them acting on
8 behalf of the Defendants acted within the course and scope of his, her or its authority as the agent,
9 servant and/or employee of the Defendants, and personally participated in the conduct alleged herein
10 on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of
11 each Defendant are legally attributable to the other Defendants and all Defendants are jointly and
12 severally liable to Plaintiff and other similarly situated employees, for the loss sustained as a
13 proximate result of the conduct of the Defendants' agents, servants and/or employees.

14 **JURISDICTION AND VENUE**

15 11. This Court has jurisdiction over this action pursuant to Cal. Code of Civ. Proc.
16 § 410.10, Cal. Bus. & Prof. Code §§ 17203-17204, 17604, and Cal. Civ. Code § 1780. This action
17 is brought as a class action on behalf of Plaintiff and all Class Members pursuant to Cal. Code Civ.
18 Proc. § 382.

19 12. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. §§ 395 and 395.5,
20 because Plaintiff resides in San Diego County and Road Runner (i) currently maintains and at all
21 relevant times maintained its principal offices and facilities in San Diego County and conducts
22 substantial and regular business in San Diego County; (ii) formulated, implemented, and
23 maintained, in whole or in substantial part, the policies and practices complained of herein in San
24 Diego County; and (iii) committed the wrongful conduct herein alleged in San Diego County. Road
25 Runner operates a distribution center in San Diego, California and at least 13 retail stores in
26 California, with three retail stores located in San Diego County.

27
28

1 **FACTUAL BACKGROUND**

2 **A. Road Runner's VIP Family Membership**

3 13. Road Runner owns and operates 39 retail stores across the country, including at least
4 13 stores throughout California, selling running shoes, apparel and accessories. Road Runner also
5 sells products online through its retail website, www.roadrunnersports.com.

6 14. Since at least 2011, Road Runner has marketed and sold its VIP Family Membership.
7 Among the advertised benefits of the VIP Family Membership are 10% off purchases, 5% rewards
8 cash on purchases, a 90-day test run on shoes, free shipping, and access to sales and events.

9 15. According to Road Runner, there are over 842,500 current VIP Family Membership
10 holders.

11 16. Road Runner charges customers a small, one-time fee to purchase the VIP Family
12 Membership. To encourage customers to make the purchase and enroll them in the VIP Family
13 Membership, Road Runner offers an immediate 10% discount on that day's purchase. The amount
14 of this one-time charge varies, but it is typically less than the value of the 10% discount, creating
15 the false appearance that the VIP Family Membership immediately pays for itself.

16 17. Pursuant to Road Runner's policy and practice, when shopping at a Road Runner
17 retail store, customers are encouraged at the time of checkout to purchase the VIP Family
18 Membership for a small, one-time fee – at times, as low as \$1.99 or \$2.99. Customers are then told
19 about the benefits the membership purports to offer – such as the percent discount. No other material
20 terms or conditions are voluntarily disclosed to customers before the VIP Family Membership is
21 purchased.

22 18. In truth, the small, one-time fee mimics that of an initial membership enrollment fee
23 and *only* covers the cost of initial membership enrollment. Road Runner fails to clearly and
24 conspicuously disclose prior to purchase that the VIP Family Membership is a subscription
25 agreement for one-year intervals, which automatically renews at the end of each year unless the
26 consumer affirmatively cancels the membership prior to the end of the annual term. The renewal
27 fees range from \$25.99 to \$59.99 (or more) – substantially more than the initial enrollment/first-
28 year membership fee.

1 **B. Road Runner's Conduct Violates California's Automatic Renewal Law**

2 19. On December 1, 2010, California's Automatic Renewal Law took effect. The
3 Automatic Renewal Law codifies the California Legislature's intent to "end the practice of ongoing
4 charging of consumer credit or debit cards or third party payment accounts without the consumers'
5 explicit consent for ongoing shipments of a product or ongoing deliveries of service." Cal. Bus. &
6 Prof. Code § 17600. The ARL is codified in §§ 17601–17606 of California's Business and
7 Professions Code.

8 20. Cal. Bus. & Prof. Code § 17601(a) defines "automatic renewal" to mean "a plan or
9 arrangement in which a paid subscription or purchasing agreement is automatically renewed at the
10 end of a definite term for a subsequent term."

11 21. Road Runner's VIP Family Membership is an "automatic renewal" plan under Cal.
12 Bus. & Prof. Code § 17601(a).

13 22. Cal. Bus. & Prof. Code § 17602(a)(1) makes it unlawful for any business making an
14 automatic renewal or continuous service offer to a consumer in California to:

15 Fail to present the automatic renewal offer terms or continuous service offer terms in
16 a clear and conspicuous manner before the subscription or purchasing agreement is
17 fulfilled and in visual proximity, or in the case of an offer conveyed by voice, in
18 temporal proximity, to the request for consent to the offer.

19 23. "Automatic renewal offer terms" means "the following clear and conspicuous
20 disclosures: (1) That the subscription or purchasing agreement will continue until the consumer
21 cancels. (2) The description of the cancellation policy that applies to the offer. (3) The recurring
22 charges that will be charged to the consumer's credit or debit card or payment account with a third
23 party as part of the automatic renewal plan or arrangement, and that the amount of the charge may
24 change, if that is the case, and the amount to which the charge will change, if known. (4) The length
25 of the automatic renewal term or that the service is continuous, unless the length of the term is
26 chosen by the consumer. (5) The minimum purchase obligation, if any." Cal. Bus. & Prof. Code
27 § 17601(b).

28 24. At all relevant times, Road Runner failed to disclose the "automatic renewal offer
terms" defined by Cal. Bus. & Prof. Code § 17601(b) before California consumers purchased their

1 VIP Family Memberships. At no time during the process by which California consumers are
2 presented with and then purchase the VIP Family Membership did Road Runner clearly and
3 conspicuously disclose (i) that the VIP Family Membership is a subscription-based plan that will
4 continue until cancelled; (ii) the entirety of the cancellation policy that applied to the offer; (iii) the
5 amount and nature of the recurring charges that would be charged to the consumer's credit or debit
6 cards or third party payment accounts; or (iv) the length of the automatic renewal term or that the
7 service was continuous. This conduct violates Cal. Bus. & Prof. Code §17602(a)(1).

8 25. Cal. Bus. & Prof. Code § 17602(a)(2)) makes it unlawful for any business that makes
9 an automatic renewal or continuous service offer to a consumer in California to:

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

13 26. At all relevant times, Road Runner charged, and continues to charge, Plaintiff and
14 the Class Members for VIP Family Membership subscriptions. However, Road Runner has done so,
15 and continues to do so, without first obtaining these California consumers' affirmative consent to
16 the agreement containing the automatic renewal offer terms or continuous service offer terms.
17 Indeed, there is no mechanism during the initial purchase process or at any subsequent point in time
18 that requires California consumers to affirmatively consent to such terms. This conduct violates Cal.
19 Bus. & Prof. Code § 17602(a)(2).

20 27. Cal. Bus. & Prof. Code § 17602(a)(1) makes it unlawful for any business making an
21 automatic renewal or continuous service offer to a consumer in California to:

22 Fail to provide an acknowledgment that includes the automatic renewal offer terms
23 or continuous service offer terms, cancellation policy, and information regarding
how to cancel in a manner that is capable of being retained by the consumer.

24 28. Cal. Bus. & Prof. Code § 17602(b) further provides:

25 A business that makes an automatic renewal offer or continuous service offer shall
26 provide a toll-free telephone number, electronic mail address, a postal address if the
27 seller directly bills the consumer, or it shall provide another cost-effective, timely,
and easy-to-use mechanism for cancellation that shall be described in the
28 acknowledgement specified in paragraph (3) of subdivision (a).

1 29. Road Runner fails to provide California consumers with an acknowledgement that
2 satisfies any of the requirements of Cal. Bus. & Prof. Code §§ 17602(a)(3) and 17602(b).

3 30. Cal. Bus. & Prof. Code § 17603 provides:

4 In any case in which a business sends any goods, wares, merchandise, or products to
5 a consumer, under a continuous service agreement or automatic renewal of a
6 purchase, without first obtaining the consumer's affirmative consent as described in
7 Section 17602, the goods, wares, merchandise, or products shall for all purposes be
8 deemed an unconditional gift to the consumer, who may use or dispose of the same
9 in any manner he or she sees fit without any obligation whatsoever on the consumer's
10 part to the business, including, but not limited to, bearing the cost of, or responsibility
11 for, shipping any goods, wares, merchandise, or products to the business.

12 31. As a result of the foregoing, all goods, wares, merchandise, or products sent to
13 Plaintiff and the Class Members as part of and pursuant to the terms of their VIP Family
14 Memberships are deemed to be an "unconditional gift" under Cal. Bus. & Prof. Code § 17603.

15 32. As a result of Road Runner's violations of the ARL, Plaintiff and the Class Members
16 suffered economic injury and are entitled to reimbursement of their VIP Family Membership
17 payments.

18 **C. Consumer Complaints About Injuries Resulting from Road Runner's VIP Family**
19 **Membership**

20 33. Unbeknownst to customers, once their payment information is entered into Road
21 Runner's computer system, the system stores the information indefinitely for the purpose of
22 automatically charging the customers' payment method an annual membership fee without their
23 knowledge or consent.

24 34. The reasonable consumer is likely to be deceived by Road Runner's misleading bait-
25 and-switch-like sales tactics. Consumers throughout the United States have publicly complained
26 about the unwanted and unexpected annual renewal charges associated with their VIP Family
27 Memberships.¹ As one former California member shared with the Yelp community:

28 "I'm another victim of their VIP auto renewal. I recently signed up for credit card
mobile alerts on my phone and I was woken up at 1am on a Sunday morning altering

¹ <http://mikeschubert.com/2011/07/21/do-you-watch-your-credit-card-statements/>;
<https://www.yelp.com/biz/road-runner-sports-san-carlos?start=140>;
<https://www.complaintsboard.com/road-runner-sports-b126986>.

1 me of a charge for \$44.99 from RSS*VIPCLUBROADRUNNER. There was a
 2 phone number linked in the text and the perky recording that answered said,
 3 'Welcome to the VIP hotline at Road Runner Sports! If you're calling about a recent
 4 charge on your credit card statement, it's your annual renewal for your VIP club
 5 membership. As our best customer you save...blah blah blah...' so they know people
 6 see this charge and say 'What's this?' Then they have to explain it and try to sell it.
 7 If it hadn't been for the alert, I might not have even noticed it on my statement. I
 8 didn't sign up for auto renew, and I wasn't told about it. I never, ever, ever, sign up
 9 for anything that involves an automatic renewal. What I do remember is having the
 10 membership pushed on me because I bought a couple of pairs of shoes and was
 11 offered a percentage back. If I paid anything for the membership, it was only because
 12 I would have come out ahead on that purchase. I've heard others say it's difficult to
 13 get them to stop the yearly charges... ..They know that many people don't check
 14 their statements carefully and they know people are mad because there are
 15 complaints about it online going back years. It's just a smarmy business practice, but
 16 they do it anyway and make their employees complicit in the scam. I'm so mad. I
 17 will never shop there again."²

18 35. Hundreds of other customers have publicly shared similar complaints about the VIP
 19 Family Membership's unauthorized automatic annual renewal charges:

20 "Was a customer for many years until they started helping themselves to my credit
 21 card without my approval, billing me \$27.99 for annual membership fee I did not
 22 authorize... ..Must be a hot issue as the opening message on their phone line is to
 23 explain the membership fee..."³

24 * * *

25 "This place wouldn't be so bad if it wasn't for the pains in the rear end at the counter
 26 trying to sell you this VIP and that VIP membership. Then they go into your bank
 27 account without your permission and take money for all their VIP memberships. Just
 28 a real pain getting past their register without the hard sell for memberships that you
 29 can't get out of."⁴

30 * * *

31 "Beware of fraud!

32 This company will offer you a membership that will give you 10% off and discount
 33 on your next purchase. What they don't tell you is that they will keep your credit card
 34 information and set up a recurring \$25 charge on your card. They are so stupid, I
 35 would actually buy from this store if it wasn't for their scams."⁵

36 * * *

37 ² [https://www.yelp.com/biz/road-runner-sports-san-carlos.](https://www.yelp.com/biz/road-runner-sports-san-carlos)

38 ³ [https://www.yelp.com/biz/road-runner-sports-san-carlos.](https://www.yelp.com/biz/road-runner-sports-san-carlos)

⁴ [https://www.yelp.com/biz/road-runner-sports-san-carlos?start=20.](https://www.yelp.com/biz/road-runner-sports-san-carlos?start=20)

⁵ [https://www.yelp.com/biz/road-runner-sports-san-carlos?start=200.](https://www.yelp.com/biz/road-runner-sports-san-carlos?start=200)

1 “What a sleazy store. Last time I was there the clerk tried to sign me up as a "VIP"
2 member where I get special deals. I politely told him no thanks. He told me it was
3 free and that I would receive 10% off. Now it is about a year later and I see they have
4 charged my debit card 24.99 for a year long VIP membership.”⁶

4 **“VIP program bait & switch**

5 Shopped Columbia MD store and all prices quoted changed at checkout. Told I had
6 to join VIP program for \$25 in order to get quoted prices. Told I would receive a \$10
7 coupon to purchase the socks I was looking at for my next purchase. Found out later
8 I had to spend \$75 in order to get \$10. Did not tell me VIP membership would
9 automatically be renewed (charged to my credit card) each year. Very pushy sales
10 people obviously well schooled in bait and switch technique. Last dollar I ever spend
11 in this store.”⁷

10 “If I could give them 0 stars I would. Shady business practices they try to sneak a
11 yearly fee past you without mentioning it, and then merely apologize if you catch
12 it.”⁸

13 36. Road Runner trains, coaches, and scripts its employees on how they are supposed to
14 systematically and uniformly sell the VIP Family Membership to customers. In fact, the number of
15 memberships sold is effectively the primary metric by which Road Runner measures the
16 performance of its retail sales employees. Employees who meet or exceed their minimum sales goals
17 are rewarded with bonuses, promotions, and other benefits.

18 37. Road Runner also continues to charge customers even after they request to cancel
19 their membership.

20 38. When customers request to cancel their VIP Family Membership and avoid the
21 automatic charges to which they did not consent to in the first place, Road Runner assures customers
22 their membership will be cancelled and that they will not incur any additional charges (beyond the
23 prorated charges for that year). Despite these assurances, Road Runner continues to charge
24 customers without their knowledge or consent.

27 ⁶ https://www.yelp.com/biz/road-runner-sports-san-carlos?start=100&sort_by=date_asc.

28 ⁷ <https://www.resellerratings.com/user/Tn10>.

⁸ <https://www.yelp.com/biz/road-runner-sports-san-carlos?start=160>.

1 39. Road Runner fails to provide effective and easy-to-use mechanisms for customers to
2 cancel their VIP Family Memberships. Customer complaints about the difficulty in cancelling the
3 VIP Family Membership and receiving a refund even after requesting cancellation date back several
4 years and are well documented publicly:

5 Was billed in September 2019 for a VIP membership that I had previously cancelled
6 more than 18 months earlier in April of 2018. I disputed the charge, and Road Runner
7 disputed my dispute, and so the charge stayed on my card. I consider this fraud.

7 * * *

8 Roadrunner Sports continues to Bill me from a membership 6years ago. I even called
9 them to cancel and they continue to bill even when my credit card changes through
10 the same banking institution it goes on my new card. I want credit for all charges
11 over the last 6 years. This seems to be a big issue looking at all these complaints at
12 the bbb. Customer service says the membership was never canceled, but I've never
13 lived in Naperville Illinois for the last six years either where I joined nor bought
14 anything from them since. I continue to call and cancel and it still gets charged.

12 * * *

13 Even though i canceled my VIP membership years ago they still charged me \$39.99
14 this year. When I called the first time I was assured it would be credited back to my
15 Paypal account. Some time went by and no credit was received so I called back and
16 was told that for some reason that credit was initiated but somehow suspended. I was
17 promised I would see the credit in a few days. I did not. When I called back the third
18 time I was met with a very rude gentleman who INSISTED that the amount had
19 already been credited and gave me some BS confirmation numbers. Paypal has no
20 record of a credit. The whole thing is a scam. I honestly cannot believe they're able
21 to continue to get away with this.⁹

18 This is a scam & the only thing I'm surprised at is that authorities are not investigating
19 OR this has not made the news. When you buy shoes, you also agree thru the fine
20 print to a \$24.99 or \$27.99 VIP membership that supposedly you can cancel at any
21 time.

21 * * *

22 This is a scam & the only thing I'm surprised at is that authorities are not investigating
23 OR this has not made the news. When you buy shoes, you also agree thru the fine
24 print to a \$24.99 or \$27.99 VIP membership that supposedly you can cancel at any
25 time.

24 So the first surprise is the charge that shows up annually. And RoadRunner is hoping
25 you won't notice & they roll the \$24.99 or \$27.99 charge forever. The fun begins
26 when you do notice and this is how it goes: 1) You call them to cancel &
27 RoadRunner's customer rep says they cannot find any record of any purchase &

28 ⁹ <https://www.bbb.org/us/ca/san-diego/profile/sporting-goods-retail/road-runner-sports-inc-1126-5000470/complaints>

1 simply to call your credit card company & cancel through them b/c it must be their
 2 error; 2) You call the credit card company & they cancel the charge pending the
 3 investigation of the charge; 3) When the Credit card company calls RoadRunner VIP,
 4 they actually provide the credit card company with supporting documentation & an
 5 explanation of the charge and further state when the membership was purchased, I
 6 was advised that it will renew automatically. In addition, when the Credit card
 7 company sent me the documentation that RoadRunner sent them supporting the
 8 documentation, I noticed that they had changed our address as well as ONE digit in
 9 the last 4 digits of our phone number -- likely to make it more difficult to track; 4)
 10 FURTHERMORE -- they tell the credit card company that they (I'm reading right
 11 off the letter) "do not see any attempt of canceling the membership." An absolute lie.
 12 5) The Credit card company then re-instates the charge, attaches proof (complete
 13 with incorrect address & phone number); 6) Then you go through the same thing
 14 again....and again.

15 It has been said to "just cancel your change the number on your card or have the
 16 credit card company place a merchant block on RoadRunner". A friend of ours who
 17 went though the same thing did change his credit card number & Roadrunner
 18 responded by sending the \$27.99 charge to a collection agency which he is now
 19 fighting.¹⁰

20 40. Many customers have made similar complaints about Road Runner's deceptive
 21 conduct on the Better Business Bureau's website. Representative examples of these complaints
 22 include:

23 Roadrunner Sports continues to Bill me from a membership 6years ago. I even called
 24 them to cancel and they continue to bill even when my credit card changes through
 25 the same banking institution it goes on my new card. I want credit for all charges
 26 over the last 6 years. This seems to be a big issue looking at all these complaints at
 27 the bbb. Customer service says the membership was never canceled, but I've never
 28 lived in Naperville Illinois for the last six years either where I joined nor bought
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* * *

Even though i canceled my VIP membership years ago they still charged me \$39.99
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 already been credited and gave me some BS confirmation numbers. Paypal has no
 record of a credit. The whole thing is a scam. I honestly cannot believe they're able
 to continue to get away with this.

¹⁰ <https://road-runner-sports.pissedconsumer.com/road-runner-vip-membership-is-a-scam-201702201011231.html>

* * *

1
2 On March 4th, 2012 I spent \$91.95 on a pair of shoes from Road Runner Sports. This
3 transaction went smoothly and I was pleased with my purchase. However, I recently
4 discovered that without my knowledge or my consent, this company has been
5 charging my credit card an annual fee every March for a membership fee into their
6 VIP program. I neither signed up for this program nor did I consent to their annual
7 charge. I simply bought a pair of shoes from them once in 2012. The charges are as
8 follows: 3/26/18 - \$28.99, 3/25/17 - \$27.99, 3/24/16 - \$26.99, 3/24/15 - \$24.99,
9 3/23/14 - \$24.99, 3/22/13 - \$24.99 for a grand total of \$158.94. They recently tried
10 to charge me another \$39.99, but thankfully my credit card company caught the
11 charge and flagged it as fraudulent. A quick internet search tells me that I am not the
12 first person to make a complaint about this shady business practice.¹¹

13 41. Road Runner's marketing and sale of its VIP Family Membership violates the ARL
14 because Road Runner (1) at the time of making the automatic renewal and continuous service offer,
15 fails to present the offer terms in a clear and conspicuous manner before the purchase agreement is
16 fulfilled and in visual proximity to the request for consent to the offer; (2) automatically charges
17 customers' payment cards, or third party payment accounts an annual renewal fee without first
18 obtaining their affirmative consent; and (3) fails to provide a retainable acknowledgement that
19 contains the renewal offer terms, cancellation policy, and an easy-to-use method for cancellation.

20 **D. Factual Allegations as to Plaintiff Susan Costa**

21 42. On or about July 8, 2015, Plaintiff Costa visited a Road Runner store in San Diego,
22 California to buy a pair of shoes. Prior to purchasing the shoes, a sales representative told her she
23 could receive a discount off her current purchase price if she paid a small fee for a VIP Family
24 Membership.

25 43. Prior to her purchasing the VIP Family Membership, Road Runner failed to clearly
26 and conspicuously disclose the VIP Family Membership terms to Plaintiff in visual proximity to the
27 request for consent to the terms. Specifically, Road Runner failed to notify Plaintiff that her
28 membership would automatically renew annually and that her debit card would be charged every
year unless and until she cancelled the membership. At no point did Road Runner properly obtain

¹¹ <https://www.bbb.org/us/ca/san-diego/profile/sporting-goods-retail/road-runner-sports-inc-1126-5000470/complaints>

1 Plaintiff's affirmative consent to an agreement containing the automatic renewal terms or
2 continuous service offer terms.

3 44. The next year, on or about July 2016, the anniversary of her signing up for the VIP
4 Family Membership, Road Runner charged Plaintiff Costa's debit card \$27.99 to automatically
5 renew her membership. Road Runner did this without obtaining Plaintiff's affirmative consent to
6 the automatic renewal offer terms.

7 45. Had Road Runner complied with its disclosure obligations under the ARL, Plaintiff
8 would not have purchased the VIP Family Membership or she would have cancelled her
9 membership prior to the expiration of the initial subscription period. As a direct result of Road
10 Runner's violations of the ARL, Plaintiff suffered economic injury.

11 **THE CALIFORNIA CLASS ALLEGATIONS**

12 46. Plaintiff brings this action on behalf of herself and all other persons similarly
13 situated, pursuant to the provisions of Cal. Code. Civ. Proc. § 382.

14 47. The Class that Plaintiff seeks to represent is defined as follows:

15 All persons within California who purchased a Road Runner VIP Family
16 Membership from Road Runner and who were charged a fee to renew their
membership.

17 48. Excluded from the Class are: (1) Road Runner and its officers, directors, employees,
18 principals, affiliated entities, controlling entities, agents, and other affiliates; (2) the agents,
19 affiliates, legal representatives, heirs, attorneys at law, attorneys in fact, or assignees of such persons
20 or entities described herein; and (3) the Judge(s) assigned to this case and any members of their
21 immediate families.

22 49. Certification of Plaintiff's claims for classwide treatment is appropriate because
23 Plaintiff can prove the elements of her claims on a classwide basis using the same evidence as would
24 be used to prove those elements in individual actions alleging the same claims.

25 50. The Class members are so numerous and geographically dispersed throughout
26 California that joinder of all Class members would be impracticable. While Plaintiff does not know
27 the precise number of Class members, Plaintiff reasonably believes that they number in the
28

1 thousands and that their identities can be ascertained from Road Runner's records. According to
2 Road Runner's website, there are over 842,500 current VIP Family Membership holders.

3 51. There is a well-defined community of interest in the common questions of law and
4 fact affecting all Class Members. The questions of law and fact common to Class Members
5 predominate over questions affecting only individual Class Members, and include without
6 limitation:

- 7 a. Whether Road Runner's VIP Family Membership loyalty program constitutes an
8 automatic renewal and/or continuous service plan or arrangement for the
9 purposes of Cal. Bus. & Prof. Code § 17601;
- 10 b. Whether the information presented to Plaintiff and Class Members by Road
11 Runner prior to their signing up for the VIP Family Membership contained all
12 the disclosures required by Cal. Bus. & Prof. Code § 17601(b);
- 13 c. Whether the information regarding the VIP Family Membership auto-renewal
14 provided by Road Runner at the point of sale was provided in a "clear and
15 conspicuous manner" as defined by Cal. Bus. & Prof. Code § 17601(c);
- 16 d. Whether Road Runner failed to provide disclosures and acknowledgment to
17 Plaintiff and the Class Members as required by Cal. Bus. & Prof. Code
18 §§ 17602(a)(1)-(3);
- 19 e. Whether Road Runner charged Plaintiff's and Class Members' debit or credit
20 cards for an automatic renewal or continuous service offer without first obtaining
21 their affirmative consent to the agreement containing the automatic renewal or
22 continuous service offer terms in violation of Cal. Bus. & Prof. Code
23 § 17602(a)(2);
- 24 f. Whether Road Runner failed to present the automatic renewal or continuous
25 service offer terms in a clear and conspicuous manner before the subscription or
26 purchasing agreement was fulfilled and in visual proximity to the request for
27 consent to the offer in violation of Cal. Bus. & Prof. Code § 17602(a)(3);
28

- 1 g. Whether Plaintiff and Class Members are entitled to restitution in accordance
2 with Cal. Bus. & Prof. Code § 17603, for money paid by them in circumstances
3 where the goods provided by Road Runner are deemed an unconditional gift;
4 h. Whether Plaintiff and Class Members are entitled to monetary relief;
5 i. Whether Plaintiff and Class Members are entitled to injunctive relief;
6 j. Whether Plaintiff and Class Members are entitled to declaratory relief; and
7 k. Whether Plaintiff and Class Members are entitled to attorneys' fees and costs.

8 52. Plaintiff's claims are typical of the claims of Class Members. Plaintiff, like all Class
9 Members, was deprived of money and/or property rightly belonging to her, and sustained economic
10 injury as a result thereof, arising out of and caused by Road Runner's uniform and systematic course
11 of conduct in violation of California law as alleged herein, in similar or substantially the same ways.
12 Plaintiff and Class Members were and are similarly or identically harmed by the same unlawful,
13 unfair, deceptive, and persuasive pattern of misconduct engaged in by Road Runner.

14 53. Plaintiff is an adequate representative of the Class because her interests do not
15 conflict with the interests of the Class Members she seeks to represent, and she is similarly situated
16 with members of the Class. Plaintiff will fairly, adequately and vigorously represent and protect the
17 interests of the Class and has retained counsel who are competent and experienced in the prosecution
18 of class action litigation.

19 54. A class action is superior to other available means for the fair and efficient
20 adjudication of this controversy. Plaintiff and the members of the Class have suffered and will
21 continue to suffer harm as a result of Road Runner's conduct. Road Runner continues to deny
22 wrongdoing or remedy the conduct that is the subject of this complaint.

23 55. Road Runner has have acted or refused to act on grounds generally applicable to the
24 entire Class, thereby making it appropriate for this Court to grant final injunctive and declaratory
25 relief with respect to the Class as a whole.
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27
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1 **FIRST CAUSE OF ACTION**

2 **Violation of California's Unfair Competition Law**

3 **(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

4 56. Plaintiff repeats and realleges all other paragraphs as if fully set forth herein.

5 57. Defendants are "person[s]" as that term is defined under Cal. Bus. & Prof.
6 Code § 17201.

7 58. The UCL, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, prohibits any "unlawful,"
8 "fraudulent," or "unfair" business act or practice. In the course of business, Defendants committed
9 "unlawful" business practices by, among other things, making the representations and omissions of
10 material facts, as set forth more fully herein, and violating Cal. Bus. & Prof. Code §§ 17600, *et seq.*,
11 and the common law. Plaintiff, individually and on behalf of the other Class Members, reserves the
12 right to allege other violations of the law, which constitute other unlawful business acts or practices.
13 Such conduct is ongoing and continues to this date.

14 59. During the class period, Road Runner made, and continues to make, automatic
15 renewal or continuous service offers to consumers in in California, through its VIP Family
16 Membership program, and (1) at the time of making the automatic renewal or continuous service
17 offers, failed, and continues to fail, to present the automatic renewal or continuous service offer
18 terms in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled
19 and in visual proximity, . . . , in temporal proximity, to the request for consent to the offer in violation
20 of Cal. Bus. & Prof. Code § 17602(a)(1); (2) charged, and continues to charge, Plaintiff's and Class
21 Members' credit or debit cards, or third party payment accounts, without first obtaining their
22 affirmative consent to the agreement containing the automatic renewal or continuous service offer
23 terms in violation of Cal. Bus. & Prof. Code § 17602(a)(2); and (3) failed, and continues to fail, to
24 provide an acknowledgment that includes the automatic renewal or continuous service offer terms,
25 cancellation policy, and information regarding how to cancel in a manner that is capable of being
26 retained by Plaintiff and the Class Members in violation of Cal. Bus. & Prof. Code § 17602(a)(3).

27 60. Defendants also failed to provide customers the opportunity to cancel their VIP
28 Family Membership in violation of Cal. Bus. & Prof. Code § 17602(b), which requires "business

1 that makes an automatic renewal offer or continuous service offer [] [to] provide a toll-free telephone
2 number, electronic mail address, a postal address if the seller directly bills the consumer, or [] [to]
3 provide another cost-effective, timely, and easy-to-use mechanism for cancellation that shall be
4 described in the acknowledgement specified in paragraph (3) of subdivision (a).”

5 61. Further, as set forth in this Complaint, Plaintiff alleges violations of California’s
6 Automatic Renewal Law, consumer protection and unfair competition laws in California resulting
7 in harm to consumers. Defendants’ acts and omissions also violate and offend the public policy
8 against engaging in unfair competition and deceptive conduct towards consumers, as well as the
9 California Legislature’s intent, codified by the Automatic Renewal Law, “to end the practice of
10 ongoing charging of consumer credit or debit cards or third party payment accounts without the
11 consumers’ explicit consent.” Cal. Bus. & Prof. Code § 17602. This conduct constitutes violations
12 of the unfair prong of the UCL. There were reasonably available alternatives to further Defendants’
13 legitimate business interests other than the conduct described herein.

14 62. The UCL also prohibits any “fraudulent business act or practice.” In the course of
15 business, Defendants committed “fraudulent business act[s] or practices” by, among other things,
16 failing to make the required disclosures under Cal. Bus. & Prof. Code §§ 17600, *et seq.*

17 63. Defendants’ actions, claims, omissions, and misleading statements, as more fully set
18 forth above, were also false or misleading and likely to deceive the consuming public within the
19 meaning of the UCL.

20 64. Plaintiff, in fact, had been deceived as a result of her reliance on Defendants’ material
21 representations and omissions, which are described above. Plaintiff has suffered injury in fact and
22 lost money as a result of Defendants’ acts and omissions. Such injury includes being charged an
23 annual renewal membership fee for a Road Runner VIP Family Membership, and other damages
24 proximately caused by Defendants’ misconduct as alleged herein.

25 65. Unless restrained and enjoined, Defendants will continue to engage in the above-
26 described conduct. Accordingly, injunctive relief is appropriate. Plaintiff, on behalf of herself, all
27 others similarly situated, and the general public, seeks restitution from Defendants of all money
28 obtained from Plaintiff and the other Class Members as a result of unfair competition, an injunction

1 prohibiting Defendants from continuing such practices, and all other relief this Court deems
2 appropriate, consistent with Cal. Bus. & Prof. Code § 17203.

3 **SECOND CAUSE OF ACTION**

4 **Violation of California’s Consumers Legal Remedies Act**

5 **(Cal. Civ. Code §§ 1750, *et seq.*)**

6 66. Plaintiff repeats and realleges all other paragraphs as if fully set forth herein.

7 67. Defendants are a “person” under Cal. Civ. Code § 1761(c). Road Runner’s VIP
8 Family Membership program is a “good or service” within the meaning of the Act.

9 68. Plaintiff and each of the Class Members are “consumers” as defined by Cal. Civ.
10 Code § 1761(d), because they are individuals who acquired or purchased “goods or services for
11 personal, family, or household purposes” including Road Runner running and walking shoes,
12 athletic apparel, and other related gear and accessories.

13 69. Defendants’ conduct, as described herein, which includes its failure to timely and
14 adequately disclose the terms of its automatic renewal and/or continuous service associated with its
15 Road Runner VIP Family Membership program pursuant to Cal. Bus. & Prof. Code §§ 17600, *et*
16 *seq.* violates California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750, *et*
17 *seq.* Specifically, Defendants violated the CLRA by misrepresenting and omitting material facts
18 regarding the automatic renewal and/or continuous service terms of its Road Runner VIP Family
19 Membership program, and by engaging in the following practices proscribed by Cal. Civ. Code
20 § 1770(a) in transactions that were intended to result in, and did result in, the sale of its VIP Family
21 Membership program:

- 22 a. Advertising goods or services with intent not to sell them as advertised (Civil
- 23 Code § 1770(a)(9));
- 24 b. Representing that the subject of a transaction has been supplied in accordance
- 25 with a previous representation when it has not (Civil Code § 1770(a)(16));
- 26 c. Representing that consumers will receive a rebate, discount, or other
- 27 economic benefit, if the earning of the benefit is contingent on an event to
- 28

1 occur subsequent to the consummation of the transaction (Civil Code
2 § 1770(a)(17));

3 d. Inserting an unconscionable provision in the contract (Civil Code
4 § 1770(a)(19)).

5 70. Defendants violated the CLRA by failing to clearly and conspicuously disclose the
6 terms of its automatic renewal and/or continuous service associated with its Road Runner VIP
7 Family Membership program, automatically charging Plaintiff and members of the Class a fee to
8 renew their membership, and failing to cancel the VIP Family Memberships upon request.

9 71. Pursuant to Cal. Civ. Code § 1782(d), Plaintiff, individually and on behalf of the
10 other Class Members, seeks a Court order enjoining the above-described wrongful acts and practices
11 of Defendants and for restitution and disgorgement.

12 72. Pursuant to § 1782 of the Act, Plaintiff notified Road Runner in writing by certified
13 mail of the particular violations of § 1770 of the Act, and demanded that Road Runner rectify the
14 problems associated with the actions detailed above and give notice to all affected consumers of
15 Road Runner's intent to so act. A copy of the letter is attached hereto as Exhibit A.

16 73. If Road Runner fails to rectify or agree to rectify the problems associated with the
17 actions detailed above and give notice to all affected consumers within 30 days of the date of written
18 notice pursuant to § 1782 of the Act, Plaintiff will amend this Complaint to add claims for actual,
19 punitive and statutory damages, as appropriate.

20 74. Road Runner's conduct is fraudulent, wanton, and malicious.

21 75. Pursuant to § 1782(d) of the Act, attached as Exhibit B is the affidavit showing that
22 this action was commenced in the proper form.

23 **THIRD CAUSE OF ACTION**

24 **Declaratory Relief**

25 76. Plaintiff repeats and realleges all other paragraphs as if fully set forth herein.

26 77. An actual controversy has arisen regarding Road Runner's compliance with
27 California's Automatic Renewal Law, Cal. Bus. & Prof. Code § 17600, *et seq.* Road Runner disputes
28 these contentions.

1 78. Plaintiff and Class Members continue to suffer damages, other injury or harm as a
2 result of Defendants' failure to comply with California's Automatic Renewal Law, continuing to
3 charge an annual renewal membership fee without timely and adequate disclosures, and Defendants'
4 failure to cancel memberships upon request.

5 79. Plaintiff and Class Members request a judicial determination of their rights and
6 duties, and ask the Court to enter a judgment declaring, *inter alia*, (i) Road Runner owed (and
7 continues to owe) a legal duty to comply with California's Automatic Renewal Law, (ii) Road
8 Runner breached (and continues to breach) such legal duties by continuing to charge annual renewal
9 membership fees and making it difficult for consumers to cancel their membership and not
10 cancelling memberships upon request, and (iii) Road Runner's breach of its legal duties directly and
11 proximately caused the resulting damages, injury, or harm suffered by Plaintiff and Class Members.
12 A declaration from the Court ordering Road Runner to stop its illegal practices is required. Plaintiff
13 and Class Members will otherwise continue to suffer harm as alleged above.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,
16 as follows:

17 A. An Order certifying the proposed Class defined herein, designating Plaintiff as
18 representative of said Class, and appointing the undersigned counsel as Class Counsel;

19 B. For restitution of all amounts obtained by Road Runner as a result of its wrongful
20 conduct in an amount according to proof at trial, plus pre-judgment and post-judgment interest
21 thereon;

22 C. For all recoverable compensatory, consequential, actual, and/or statutory damages in
23 the maximum amount permitted by law;

24 D. For punitive and exemplary damages;

25 E. For other equitable relief;

26 F. For such injunctive relief, declaratory relief, orders, or judgment as necessary or
27 appropriate to prevent these acts and practices;

28 G. For payment of attorneys' fees and costs of suit as allowable by law; and

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H. For all such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all issues so triable.

Respectfully submitted,

Dated: May 22, 2020

BLOOD HURST & O'REARDON, LLP
TIMOTHY G. BLOOD (149343)
THOMAS J. O'REARDON II (247952)
JENNIFER L. MACPHERSON (202021)

By: s/ Timothy G. Blood
TIMOTHY G. BLOOD

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Attorneys for Plaintiff

Exhibit A

Timothy G. Blood
tblood@bholaw.com

May 22, 2020

VIA CERTIFIED MAIL (RETURN RECEIPT)
(RECEIPT NO. 7018 0040 0000 8022 5474)

Michael Gotfredson, President & CEO
Road Runner Sports, Inc.
Road Runner Sports Retail, Inc.
5549 Copley Drive
San Diego, CA 92111

Dear Mr. Gotfredson:

We represent Susan Costa ("Plaintiff") and all other consumers similarly situated in an action against Road Runner Sports, Inc. and Road Runners Sports Retail, Inc. (collectively, "Road Runner" or "Defendants"), arising out of, *inter alia*, Road Runner's failure to disclose to members of its VIP Family Rewards and VIP Family Rewards Plus loyalty programs (collectively, "VIP Family Memberships") that membership will automatically renew each year at which time Defendants will charge members' debit or credit cards on file an annual membership fee of \$39.99 or more.

Road Runner's practice of automatically renewing customers' VIP Family Memberships without obtaining affirmative consent prior to the customers' purchase, without providing the auto-renewal terms in a clear and conspicuous manner prior to purchase, and without providing an acknowledgement identifying an easy and efficient mechanism for customers to cancel their VIP Family Memberships is deceptive and not truthful. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is attached and incorporated by this reference.

These representations and omissions are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Defendants with the intent to result in the sale of its VIP Family Memberships to the consuming public.

Defendants' practices constitute violations of the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.* Specifically, Defendants' practices violate California Civil Code § 1770(a) under, *inter alia*, the following subdivisions:

- (9) Advertising goods or services with intent not to sell them as advertised.
* * *
- (16) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.
* * *
- (17) Representing that consumers will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction.

Michael Gotfredson, President & CEO
Road Runner Sports, Inc.
Road Runner Sorts Retail, Inc.
May 22, 2020
Page 2

* * *

(19) Inserting an unconscionable provision in the contract.

As detailed in the attached Complaint, Defendants' practices also violate California Business and Professions Code §§ 17200, *et seq.* and California's Automatic Renewal Law, Cal. Bus. & Prof. Code §§ 17600 *et seq.*

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code § 1782, we hereby demand on behalf of our client and all others similarly situated that Defendants immediately correct and rectify these violations by ceasing the misleading marketing campaign, ceasing dissemination of false and misleading information as described in the enclosed Complaint, and initiating a corrective advertising campaign to re-educate consumers regarding the truth of the products at issue. In addition, Road Runner must offer to refund the annual renewal fee charged to all consumer purchasers of its VIP Family Membership programs, plus provide reimbursement for interest, costs, and fees.

We await your response.

Sincerely,



TIMOTHY G. BLOOD

TGB:jk

Enclosure

Exhibit B

1 JOHNSON FISTEL LLP
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10 tblood@bholaw.com
toreardon@bholaw.com
11 jmacpherson@bholaw.com

12 Attorneys for Plaintiff

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

15 SUSAN COSTA, an individual. on behalf of
herself and all others similarly situated,

16 Plaintiff,

17 v.

18 ROAD RUNNER SPORTS, INC., ROAD
19 RUNNER SPORTS RETAIL, INC., and
DOES 1-50, inclusive,

20 Defendants.
21

Case No.

CLASS ACTION

**AFFIDAVIT OF TIMOTHY G. BLOOD
PURSUANT TO CALIFORNIA CIVIL
CODE § 1780(d)**

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I, TIMOTHY G. BLOOD, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of California. I am the managing partner of the law firm of Blood Hurst & O'Reardon LLP, one of the counsel of record for plaintiff in the above-entitled action.

2. Defendants Road Runner Sports, Inc. and Road Runner Sports Retail, Inc., Inc. have done, and are doing, business in California, including San Diego County. Such business includes the marketing, promotion, distribution, and sale of running shoes, athletic apparel, and VIP Family Rewards Memberships. Road Runner's corporate headquarters is also located in San Diego County.

3. Plaintiff Susan Costa is a resident of San Diego County, California, and purchased the VIP Family Rewards Membership in San Diego County, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 22nd day of May, 2020, at San Diego, California.

s/ Timothy G. Blood
TIMOTHY G. BLOOD