

CAUSE NO. 07-05545

FILED

THOMAS WONG, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

TRUEBEGINNINGS, LLC,  
D/B/A TRUE.COM,

Defendant.

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IN THE DISTRICT COURT OF

07/30/12 PM 12:39

CARY FITZGERALD  
CLERK OF DISTRICT COURT  
DALLAS COUNTY, TEXAS

DALLAS COUNTY, TEXAS DEPUTY

A-14th JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

Plaintiff, Thomas Wong, for his complaint against defendant True Beginnings, LLC d/b/a True.com, alleges as follows:

**DISCOVERY LEVEL**

1. Pursuant to Texas Rules of Civil Procedure, Plaintiff asserts that this lawsuit should proceed under a Level 3 Discovery Plan.

**BACKGROUND FACTS**

2. Plaintiff, Thomas Wong, is a resident of Seattle, Washington.  
3. Defendant TrueBeginnings, LLC (referred to hereinafter as "the Company") is a Texas corporation, with its home office and principal place of business at 5215 North O'Connor, Suite 1600, Irving, Texas 75039. The Company may be served with process via its registered agent, Curtis R. Swinson, 12222 Merit Drive, Suite 1000, Dallas, Texas 75251.

4. The Company owns and operates a website (hereinafter "True.com") at www.true.com, through which it sells its services.

5. Via True.com, the Company provides Internet dating services to millions of consumers in the United States. The Company's services include, but are not limited to: access

to online profiles purportedly of other members, email accounts, dating tips and advice, “compatibility” testing, and online matchmaking services (hereinafter the “Service” or “Services”). The typical monthly subscription fee for the Service is approximately \$49.99 for a subscription (“Subscription”), \$.99 for services from the “Coaching Center” (“Coaching Center”) and \$2.99 for “live Chat” services (“live Chat”).

6. For purposes of this Complaint, the “Service” includes the Subscription, Coaching Center, and live Chat.

7. The Company markets the Service as a way to find “safer, smarter, more satisfying relationships” and boasts that it is the only “online dating and relationship service endorsed by Psychology Today.”

8. The Company requires subscribers to pay the monthly fees for the Service and other charges by credit card or electronic fund transfers from debit cards or bank accounts.

9. In order to initially subscribe to the Service, the Company requires prospective subscribers to accept the Company’s “Terms of Use,” and “Terms and Conditions” (hereinafter the “Agreement” and/or “Contract”).

10. According to the “Terms of Use,” subscribers agree that in order “to change or terminate my account and my membership subscription at any time, I agree to contact a TRUE Customer Care representative by phone between the hours of 8 a.m. and 8 p.m. (Central) Monday through Friday, and between the hours of 10 a.m. and 7 p.m. (Central) on Saturday and Sunday.”

11. The Company’s “Terms and Conditions” state that, in order to resign their Subscription, subscribers must “resign your Trial no later than the 3<sup>rd</sup> day of activation by calling True.com at 1.866.583.TRUE (8783) and requesting cancellation.”

12. The Company's "Terms and Conditions" state that, in order to resign from the live Chat service, subscribers must "resign your Trial no later than the 3<sup>rd</sup> day of activation by calling True.com at 1.866.583.TRUE (8783) and requesting cancellation."

13. The Company's "Terms and Conditions" state that, in order to resign from the "Profile service," subscribers must "resign your Trial no later than the 3<sup>rd</sup> day of activation by calling True.com at 1.866.583.TRUE (8783) and requesting cancellation."

14. The Company's "Terms and Conditions" state that, "upon completion of your Trial period," subscribers will be "automatically billed" for the Subscription, Coaching Center services, and live Chat.

15. According to the "Terms and Conditions," the Subscription, Coaching Center, and live Chat are "separate product offerings that will be charged separately on your credit card if you do not properly cancel before the completion of your Trial period" and that a subscriber "will be automatically renewed on a monthly basis thereafter until you submit your resignation."

16. According to the "Terms and Conditions" and "Terms of Use," the Service may only be cancelled via telephone and, therefore, subscribers who wish to cancel cannot cancel in writing.

17. The Company's "Terms and Conditions" include a provision stating that the subscriber "agree[s] not to dispute any authorized charge by True.com or its authorized agents."

18. The Company's "Terms and Conditions" further state that the subscriber "agree[s] and acknowledge[s] that if you fraudulently report the card used to obtain your subscription as stolen, or if you fraudulent [sic] report that an authorized charge by True.com or its authorized agents is unauthorized, you shall be liable to True.com for liquidated damages of One Thousand Dollars (\$1,000.00) per incident."

19. The Company's "Terms of Use" inform subscribers that, after proper cancellation, the "membership subscription will not be renewed after [their] then-current term expires."

20. The Company also advertises on its website that subscribers may "[c]ancel at any time."

21. On numerous occasions, the Company bills former subscribers for the Service after they have cancelled their subscription, without their knowledge or authorization. The Company does not notify or obtain permission from their former subscribers in order to bill them after cancellation. Nevertheless, the Company bills former subscribers and collects fees for these unauthorized charges by applying the fees to former subscriber's credit cards, debit cards, or bank accounts.

22. Plaintiff subscribed to the Service during the past four years.

23. By way of this lawsuit, Plaintiff, on behalf of himself and a class of others who have subscribed to the Service and have been charged unauthorized post-cancellation fees, alleges that the Company's practice of billing and collecting subscription fees from subscribers after they have cancelled constitutes unjust enrichment, conversion, money had and received, negligence, unconscionability, breach of contract, and/or violates the Texas Deceptive Trade Practices and Consumer Protection Act. Plaintiff, on behalf of himself and the class of others similarly situated, seeks compensatory damages, actual damages, punitive damages, equitable relief, and statutory fees against the Company for its unlawful billing and collection of post-cancellation fees. Plaintiff, on behalf of himself and the class of others similarly situated, also seeks an injunction prohibiting the Company from continuing to collect post-cancellation fees for the Service, barring the Company from using certain contract terms, and demanding that the Company implement sufficient systems for cancellation.

24. The Company bills monthly subscription fees and other charges to former subscribers after they cancel their subscription. The Company collects these fees without their former subscribers' authorization, knowledge, or consent. Former subscribers do not agree to be charged such monthly subscription fees after they cancel their subscription.

25. The Company uses the financial information collected from subscribers upon the initial establishment of their accounts to charge and collect fees for the Service after cancellation. The Company engages in this practice even though their former subscribers do not agree to pay such fees and/or charges after they have cancelled their accounts.

26. Former subscribers who are charged after cancellation attempt to contact the Company to dispute the unauthorized charges. However, the Company often disputes the cancellation, fails to issue refunds, and continues to bill former subscribers without their permission or authorization.

27. Plaintiff Thomas Wong signed up online for the Service in August of 2006.

28. At the time he signed up, Mr. Wong was given a free trial offer. Mr. Wong also provided his credit card information at the time of his initial sign up.

29. Mr. Wong allowed his free trial to expire.

30. On or about August 23, 2006, Mr. Wong was charged \$49.99 on his credit card for the Service. Shortly thereafter, Mr. Wong attempted to cancel his subscription via the True.com website.

31. On or about September 22, 2006, after his first attempt to cancel, Mr. Wong was charged \$49.99 on his credit card for the Service.

32. On or about October 11, 2006, Mr. Wong called the Company at 1.866.583.TRUE (8783) and cancelled his account again. When Mr. Wong cancelled his account with the

Company, he did not authorize the Company to sign him up for other services or to bill his credit card for Service fees or any other charges.

33. On or about November 29, 2006, Mr. Wong was charged \$49.99 on his credit card for the Service.

34. On or about December 7, 2006, Mr. Wong called the Company at 1.866.583.TRUE (8783) and to dispute the November 29<sup>th</sup> charge and yet again requested cancellation of his account.

35. On or about February 19, 2007, Mr. Wong was charged \$49.99 on his credit card for the Service.

36. Shortly thereafter, Mr. Wong called the Company at 1.866.583.TRUE (8783). During the call, Mr. Wong disputed the charges and demanded a refund. Mr. Wong yet again requested that his account be cancelled. Mr. Wong also requested that his profile be removed from True.com. Mr. Wong was informed by a representative of the Company that his account had merely been "suspended" and then "reactivated" and, as a result, he was being charged for the Service. Mr. Wong did not authorize reactivation at any time and again cancelled his account and requested that his profile be removed from the website. Mr. Wong again demanded a refund.

37. Despite his numerous requests, Mr. Wong has never received a refund from the Company.

38. Mr. Wong has fully complied with the requirements of Tex. Bus. & Com. Code § 17.505.

### **JURISDICTION AND VENUE**

39. The Court has jurisdiction over this class action under Article V, Section 8 of the Constitution of the State of Texas and the Texas Government Code § 24.007.

40. The Court has jurisdiction over the Defendant as it maintains its principal place of business within Texas, conducts substantial business within Texas, and the complained of activities occurred in or emanated from Texas.

41. Venue is proper in this Court under the Texas Civil Practice and Remedies Code §§ 15.001, 15.002, 15.003 because the Defendant's principal office is in this County.

### **CLASS ACTION ALLEGATIONS**

42. Paragraphs 1 through 40 are incorporated herein by reference.

43. This action is properly maintainable as a class action pursuant to Rule 42 of the Texas Rules of Civil Procedure and the case law thereunder.

44. Plaintiff seeks to represent a class defined as follows: all persons who, during the period beginning four (4) years before the date on which this complaint is filed, and ending on the date that the Court certifies a class, were charged service fees by Defendant after they cancelled their True.com subscription (the "Class")

45. The Class will not include any such person who is an employee, officer, director or shareholder of defendant True Beginnings LLC.

46. The members of the Class are so numerous and widely dispersed that joinder of them in one action is impracticable.

47. Plaintiff does not currently know the exact number of persons that fall within the Class; however, the Company boasts more than ten million subscribers and subscriptions to True.com are sold online from the Company itself and via links from other online sources;

therefore, upon information and belief, Plaintiff alleges that, at a minimum, the Class consists of several thousand members.

48. Plaintiff will be an adequate representative of the Class. Plaintiff is a member of the Class, as defined above. Plaintiff has no known conflicts of interest with other members of the Class. Plaintiff has retained experienced and highly-qualified counsel, and Plaintiff's counsel have agreed to advance all necessary costs of this litigation, thereby assuring adequate financial resources to vigorously represent the interests of the Class.

49. The claims or defenses of the Plaintiff are typical of the claims or defenses of the class in that all members of the Class are former True.com subscribers who were charged Service fees and/or other fees by the Company after they cancelled their accounts.

50. This case presents questions of law and fact common to the Class, including the following:

- a. Whether the Company billed subscription fees and other charges to former subscribers after they cancelled their subscriptions; and
- b. Whether the Company prevented former subscribers from obtaining refunds for subscription fees and other charges levied on them after they cancelled their subscriptions; and
- c. Whether the Company developed and implemented a scheme to bill subscription fees and other charges to former subscribers after they cancelled their subscriptions; and
- d. Whether the Company maintains insufficient systems for processing and documenting cancellation requests; and



- e. Whether Defendant's conduct constituted conversion, as alleged herein;  
and
- f. Whether Defendant's conduct constituted unjust enrichment, as alleged  
herein; and
- g. Whether Defendant's conduct constituted negligence, as alleged herein;  
and
- h. Whether Defendant's conduct constituted breach of contract, as alleged  
herein; and
- i. Whether Defendant's conduct constituted moneys had and received, as  
alleged herein; and
- j. Whether the Company has made false and/or misleading statements in  
connection with the marketing and sale of subscriptions to True.com; and
- k. Whether the Company made such false and/or misleading statements  
knowingly or recklessly; and
- l. Whether the Company's false and/or misleading statements violated the  
Texas Deceptive Trade Practices and Consumer Protection Act ("DTPA"); and
- m. Whether the Company's billing and collecting subscription fees and other  
charges from former subscribers post-cancellation violates Tex. Bus. & C. Code § 17.41  
*et seq.*; and
- n. Whether the Company failed to disclose information concerning the  
Service(s) which was known at the time of contracting with the intent to induce  
consumers into entering into the Agreement; and

o. Whether the Company took advantage of the lack of knowledge, ability, experience, or capacity of former subscribers to a grossly unfair degree by falsely advertising that they would not be charged fees for services after cancellation, in violation of the DTPA; and

p. Whether, by falsely advertising that subscribers would not be charged fees for services after cancellation, the Company represented that its Service(s) have characteristics and/or benefits which it does not have, in violation of the DTPA; and

q. Whether, by falsely advertising that subscribers would not be charged fees for services after cancellation, the Company advertised its Service(s) with the intent not to sell them as advertised, in violation of the DTPA; and

r. Whether the Company deceived former subscribers by falsely advertising that reinstatement of their subscription was only achieved by e-mailing or calling the Company, in violation of the DTPA; and

s. Whether the Company represented that the Agreement conferred or involved rights, remedies, or obligations which it does not have, or which are prohibited by law, in violation of the DTPA; and

t. Whether Plaintiff and the Class members have sustained damages as a result of the Company's unlawful conduct; and

u. Determination of the appropriate amount of damages suffered by Plaintiff and the Class members; and

v. Whether Plaintiff and the Class members are entitled to injunctive relief; and

w. Whether Plaintiff and the Class members are entitled to punitive damages and, if so, in what amount.

51. A class action is superior to other available methods for the fair and efficient adjudication of this controversy due to, but not limited to, the following:

- a. Prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class and would establish incompatible standards of conduct for the party opposing the class; and/or
- b. Adjudications with respect to individual members of the class would be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; and/or
- c. The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; and/or
- d. The questions of law or fact common to the members of the class predominate over any questions affecting only individual members.

**COUNT ONE**  
**CONSTRUCTIVE TRUST**

52. Paragraphs 1 through 51 are incorporated herein by reference

53. Plaintiff asserts this claim against Defendant on behalf of himself and the Class.

54. The Company had a fiduciary relationship with Plaintiff and each member of the Class.

55. By billing and collecting money from Plaintiff and members of the Class for subscription fees and other charges after they cancelled their accounts, the Company has

breached the fiduciary relationship and has benefited by fraud, duress, and/or the taking of an undue advantage, at the expense of consumers, including the Plaintiff and members of the proposed class.

56. The profits obtained thereby constitute unjust enrichment of the Company.

57. Accordingly, the Court should impose a constructive trust on such profits and/or should require the Company to disgorge those profits and/or make restitution to the Plaintiff and the members of the proposed class.

**COUNT TWO**  
**UNJUST ENRICHMENT**

58. Paragraphs 1 through 57 are incorporated herein by reference.

59. Plaintiff asserts this claim against Defendant on behalf of himself and the Class.

60. By billing and collecting money from Plaintiff and members of the Class for Subscription fees and other charges after they cancelled their accounts, the Company has benefited from Plaintiff and each member of the Class by fraud, duress, and/or the taking of an undue advantage.

61. By using their credit card, debit card, and/or bank account information after cancellation, the Company took undue advantage of Plaintiff and the class members.

62. It would be unconscionable for the Company to retain the monies billed and collected from Plaintiff and the class members after they cancelled their accounts.

63. Thus, the profits obtained thereby constitute unjust enrichment of the Company.

64. Accordingly, the Court should impose a constructive trust on such profits and/or should require the Company to disgorge those profits and/or make restitution to the Plaintiff and the members of the proposed class.

**COUNT THREE**  
**CONVERSION**

65. Paragraphs 1 through 64 are incorporated herein by reference.

66. Plaintiff asserts this claim against Defendant on behalf of himself and the Class.

67. Plaintiff and/or each member of the Class owned or had legal possession of the monies collected by the Company for payment of Service fees and other charges after cancellation.

68. Without authorization by Plaintiff and each member of the Class, the Company has assumed and exercised its dominion and control over the personal property of Plaintiff and each member of the Class, to the exclusion of, or inconsistent with the rights of Plaintiff and each class member.

69. The Company knowingly and/or intentionally charged and collected money from Plaintiff and each Class member by billing them, without their authorization or approval, for Service fees and other charges after they cancelled their accounts.

70. The Company knowingly and/or intentionally charged and collected such money through Plaintiff's and each Class member's respective credit cards, debit cards, bank accounts, and/or other means.

71. Plaintiff demanded return of his property.

72. The Company refused to return his property.

73. Accordingly, the Company converted to its own dominion and control, the personal property, specifically monies, of the Plaintiff without his authorization and inconsistent with his rights.

74. As a result of the Company's unlawful acts, Plaintiff suffered damages.

75. The specific amount of Plaintiff's and each class member's unlawfully converted property is readily identifiable from information and records in the Company's possession and/or control.

**COUNT FOUR**  
**MONEY HAD AND RECEIVED**

76. Paragraphs 1 through 75 are incorporated herein by reference.

77. Plaintiff asserts this claim against Defendant on behalf of himself and the Class.

78. Plaintiff and/or each member of the Class owned or had legal possession of the monies collected by the Company for payment of Service fees and other charges after cancellation.

79. The Company obtained the monies of the Plaintiff and each member of the Class, without their authorization or approval, for Service fees and other charges after they cancelled their accounts.

80. The monies collected by the Company after cancellation rightfully belong to Plaintiff and each member of the Class.

81. Accordingly, the Company has obtained monies which, in equity and good conscience, belong to Plaintiff and each member of the Class.

82. As a result of the Company's unlawful acts, Plaintiff and each class member have suffered damages.

**COUNT FIVE**  
**NEGLIGENCE**

83. Paragraphs 1 through 82 are incorporated herein by reference.

84. Plaintiff asserts this claim against Defendant on behalf of himself and the Class.

85. Plaintiff and the class members entered into contracts with the Company whereby the Company agreed to cancel their accounts if Plaintiff and the class members called True.com and requested cancellation.

86. It was foreseeable to the Company that its subscribers, including Plaintiff and the class members, would attempt to cancel their subscriptions by calling True and requesting cancellation.

87. Given this foreseeable result, the Company owed a duty of due care to Plaintiff and the class members to take appropriate measures and implement sufficient systems to ensure that Plaintiff and the class members could successfully cancel their subscriptions by calling True and requesting cancellation.

88. Plaintiff and the class members called True and cancelled their subscriptions.

89. Despite their cancellations, Plaintiff's and the class members' subscriptions were not cancelled by the Company and Plaintiff and the class members were charged unauthorized post-cancellation fees.

90. Upon information and belief, most organizations that make a majority of their sales via online subscriptions and/or memberships maintain an online system for written cancellation of subscriptions and/or memberships.

91. Given that, upon information and belief, a majority of the Company's subscriptions are purchased online via True.com, it is unreasonable for the Company not to also maintain an online cancellation system and written record of subscription cancellations.

92. Accordingly, by failing to take appropriate measures and implement sufficient systems to ensure that subscribers could successfully cancel their subscriptions, the Company breached its duty to Plaintiff and the class members.

93. Plaintiff and the class members have suffered damages as a proximate cause of the Company's breach.

94. Plaintiff and the class members are entitled to injunctive relief preventing the Company's ongoing negligent conduct and demanding that the Company implement sufficient systems for cancellation of subscriptions.

**COUNT SIX**  
**BREACH OF CONTRACT**

95. Paragraphs 1 through 94 are incorporated herein by reference.

96. Plaintiff and the class members entered into the "Terms of Conditions" and "Terms of Use" with the Company whereby the Company agreed to cancel their accounts if Plaintiff and the class members called True.com and requested cancellation.

97. According to the "Terms of Use," Plaintiff and each class member agreed that "to change or terminate my account and my membership subscription at any time, I agree to contact a TRUE Customer Care representative by phone between the hours of 8 a.m. and 8 p.m. (Central) Monday through Friday, and between the hours of 10 a.m. and 7 p.m. (Central) on Saturday and Sunday."

98. Plaintiff and the class members contacted True by telephone as specified above and requested cancellation of their subscriptions.

99. The Company did not cancel Plaintiff's and the class members' subscriptions and, instead, continued to charge and collect fees from Plaintiff and the class members.

100. Consequently, the Company breached the conditions of the "Terms of Use".

101. As a result, Plaintiff and the class members suffered damages.

**COUNT SEVEN**  
**UNCONSCIONABILITY/UNENFORCEABLE PENALTY**

102. Paragraphs 1 through 101 are incorporated herein by reference.



103. Plaintiff asserts this claim against Defendant on behalf of himself and the Class.

104. According to the Company's "Terms and Conditions," the subscriber "agree[s] and acknowledge[s] that if you fraudulently report the card used to obtain your subscription as stolen, or if you fraudulent [sic] report that an authorized charge by True.com or its authorized agents is unauthorized agents is unauthorized, you shall be liable to True.com for liquated damages of One Thousand Dollars (\$1,000.00) per incident.

105. In the event a subscriber makes a fraudulent report that his/her card has been stolen and/or that an authorized charge by the Company or its agents is unauthorized, the actual damages suffered by the Company are capable of estimation.

106. The amount of liquated damages called for by the Agreement, namely one thousand dollars (\$1,000.00) per incident, is not a reasonable forecast of just compensation.

107. The aforementioned liquated damages clause included in the Agreement is substantively unconscionable and an unenforceable penalty.

108. The aforementioned liquated damages clause included in the Agreement is a contract term of adhesion.

109. Accordingly, Plaintiff and the members of the Class are entitled to an order enjoining the Company from enforcing the provision described herein and including the provision in any and all future agreements, contracts, and/or terms and conditions.

**COUNT EIGHT**  
**UNCONSCIONABLE AND UNENFORCEABLE PROVISION**

110. Paragraphs 1 through 109 are incorporated herein by reference.

111. Plaintiff asserts this claim against Defendant on behalf of himself and the Class.

112. According to the Company's "Terms of Use," the subscriber "consent[s] and license[s] True.com® ("TRUE") to use and disclose the content that [the subscriber] furnish[es]

in providing the Service. Additionally, [the subscriber] grant[s], and [the subscriber] represent[s] and warrant[s] that [the subscriber] ha[s] the right to grant, to TRUE, its affiliates, licensees and successors and other non-affiliated third parties an irrevocable, perpetual, non-exclusive, fully paid, worldwide license to use, copy, perform, display, reproduce, adapt, modify, and distribute such information and content, and to grant and authorize sublicenses of the foregoing in any medium. [The subscriber] further represent[s] and warrant[s] that public posting and use of [the subscriber's] content by TRUE will not infringe or violate the rights of any third party[.]”

113. The aforementioned contract term is a contract term of adhesion and is substantively unconscionable.

114. By granting the Company and all of its agents, affiliates, non-affiliates, successors, and licensees a worldwide, irrevocable, and perpetual license to use Plaintiff's (and each class member's) likeness and information *without consideration*, the aforementioned contract term is so highly one-sided that it is unconscionable under the circumstances existing at the time of contracting.

115. The aforementioned contract term is also substantively unconscionable given the relative bargaining power and knowledge of the parties at the time of contracting.

116. Plaintiff is a layperson and did not have legal representation at the time he entered into the contract.

117. Upon information and belief, a majority of the proposed class are laypersons and do not obtain legal representation at the time of contracting.

118. Accordingly, Plaintiff and the members of the Class are entitled to an order enjoining the Company from enforcing the provision described herein and/or including the provision in any and all future agreements, contracts, and/or terms and conditions.

**COUNT NINE**  
**VIOLATION OF TEXAS DECEPTIVE TRADE PRACTICES AND CONSUMER**  
**PROTECTION ACT**

**Texas Business & Commerce Code § 17.41, et seq.**

119. Paragraphs 1 through 118 are incorporated herein by reference.
120. The Company's marketing campaign is designed to convince consumers that, for a specified time period, they can sign up for the Service, use the Service, and cancel the Service, all free of charge.
121. The Company's marketing campaign is designed to convince consumers that, once they cancel their Service, they will no longer be charged and/or responsible for any subsequent fees.
122. In fact, however, the Company knowingly, intentionally, and/or recklessly charges and collects money from former subscribers after they cancel the Service.
123. The Company deceives consumers by failing to inform them, via its marketing campaign, that the Company continues to charge and collect monthly fees after cancellation.
124. The Company sends false and misleading electronic mail messages to its former subscribers after the former subscribers have cancelled their accounts.
125. The electronic mail messages that are sent by the Company convey the message to the former subscriber that other True.com subscribers are interested in contacting the former subscriber via the Service.
126. These messages are false and misleading. Upon information and belief, the electronic mail messages sent by the Company are not delivered due to interest in the former subscriber by other current subscribers. Instead, upon information and belief, the electronic mail messages are sent by the Company on behalf of fraudulent and/or non-existing subscribers.

127. If a former subscriber opens one of the aforementioned fraudulent, false, and misleading electronic mail messages, the former subscriber is automatically reactivated as a subscriber to the Service, without the authorization or consent of the former subscriber.

128. After alleged reactivation, the Company charges and collects fees from the former subscribers without their knowledge or consent.

129. As of the filing of this Complaint, the True.com website made numerous false and/or misleading representations, including the following:

a. On the website's homepage ([www.true.com](http://www.true.com)) the Company advertises that subscribers can "Sign Up Free" and "Contact Members Free."

b. On the page titled "Free Trial," the Company states that subscribers may "Reply Now FREE!" and "Cancel at any time."

c. On the page titled "Welcome," the Company states that subscribers may "Search for FREE and contact thousands of singles."

d. On the page titled "Safer Online Dating FAQ," the Company purports to answer several "Frequently Asked Questions" regarding the Service.

i. The "FAQ" page contains the following question: "How much does a membership cost?" The FAQ page provides the following answer:  
"Membership is free. When you complete your profile, take the TRUE Compatibility Test, agree to abide by the TRUE Code of Ethics and User Agreement and post a picture, you will automatically become a member. We offer several subscription levels that allow full site access, including the ability to communicate with other quality singles on the site: \$49.99 for one month (30 days), \$79.99 for three months (90 days) and \$129.99

for six months (180 days).” The answer provided is false and misleading. First, the answer states that membership is “free,” but later notes that the “subscription levels” range from \$49.99 to \$129.99.

- ii. The “FAQ” page contains the following question: “How do I cancel my membership?” The FAQ page provides the following answer: “Please contact Customer Care by phone toll-free at 1.866.212.8198 or, for international callers, 1.972.374.9402 (toll charges apply) to cancel your membership.” The answer provided is false and misleading. Even if the Company’s customers call the above numbers and request cancellation as directed, the Company continues to charge and collect fees from the former customers without their permission or consent. Former subscribers do not agree to be charged such subscription fees after they have terminated their accounts.
- iii. The “FAQ” page contains the following question: “How do I reinstate my membership?” The FAQ page provides the following answer: “Please contact Customer Care by email or by phone toll-free at 1.866.212.8198 or, for international callers 1.972.374.9402 (toll charges apply), to reinstate your membership.” The answer provided is false and misleading. The Company has a pattern and practice of reinstating membership of former subscribers without their former subscriber’s authorization or consent and even if the former subscribers do not complete the above steps. After the Company reinstates their former subscribers’ membership without request or authorization by their former subscribers, the Company

bills their accounts and collects monthly subscription fees from their former subscribers. Former subscribers do not agree to be charged such subscription fees after they have terminated their accounts.

- iv. The “FAQ” page contains the following question: “What if I want to cancel my access to the Coaching Center?” The FAQ page provides the following answer: “You can cancel at any time. Click on My Account (underneath Tools on the left navigation) and click the link that says ‘Cancel My Exclusive Access to the Coaching Center.’” The answer provided is false and misleading. Even if a subscriber completes the steps listed in the above answer, the Company does not cancel the subscriber’s access to the Coaching Center. Instead, the Company continues to bill monthly service fees to subscribers for the Coaching Center, after cancellation and without the subscribers’ authorization or consent.

130. The Company makes these false and/or misleading representations in order to knowingly, intentionally, and/or recklessly attempt to deceive subscribers by failing to inform them that the Company continues to bill and collect monthly fees after cancellation.

131. Plaintiff asserts this claim against Defendant on behalf of himself and the Class.

132. The Company is a “person” within the meaning of TEX. Bus. & C. Code § 17.45 (3), and provides “services” within the meaning of TEX. Bus. & C. Code § 17.45 (2).

133. The Company’s former customers, including Plaintiff and the class members, are “consumers” within the meaning of TEX. Bus. & C. Code § 17.45 (4).

134. Plaintiff and each class member’s purchase of the Service(s) advertised and sold by Defendant, and/or each imposition of fees to Plaintiff and each class member after

cancellation, constitutes an “unconscionable action or course of action” within the meaning of TEX. Bus. & C. Code § 17.4 (5).

135. Plaintiff and each class member have suffered a detriment as a result of Defendant’s unconscionable actions and/or course of action.

136. As explained fully herein, Defendant’s actions, practices, representations, omissions, and conduct with respect to charging subscription fees and other fees to former subscribers after they have cancelled their accounts violate the Deceptive Trade Practices and Consumer Protection Act, §§ 17.50(a)(3), 17.46(b)(5), 17.46(b)(9), 17.46(b)(12), 17.46(b)(24) in that:

- a. The Company engaged in an act or practice which, to the detriment of Plaintiff and each class member, took advantage of the lack of knowledge, ability, experience, or capacity of Plaintiff and each class member to a grossly unfair degree; and/or
- b. The Company represented that its Service(s) have characteristics and/or benefits which it does not have; and/or
- c. The Company advertised its Service(s) with the intent not to sell them as advertised; and/or
- d. The Company represented that the Agreement entered into between Plaintiff and the Company and each class member and the Company conferred or involved rights, remedies, or obligations which it does not have, or which are prohibited by law; and/or
- e. The Company failed to disclose information concerning its Service(s) which was known at the time of the Agreement entered into between Plaintiff and the

Company and each class member and the Company, and the Company's failure to disclose such information was intended to induce Plaintiff and each class member into the Agreement. If the Company had disclosed such information, neither Plaintiff nor each class member would have entered into the Agreement.

137. Pursuant to TEX. Bus. & C. Code § 17.50 (b) *et seq.*, Plaintiff and each class member are entitled to the following relief:

- a. Treble economic damages
- b. Actual damages
- c. Injunctive relief
- d. Attorney's fees and costs
- e. Restitution.

#### **PRAYER**

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for the following relief:

1. An order certifying the Class and appointing Plaintiff and his counsel of record to represent the Class;
2. An order enjoining Defendant from engaging in the conduct and practices complained of herein;
3. Restitution, disgorgement, and such other equitable relief this Court deems proper;
4. Actual damages sustained by Plaintiff and all others similarly situated as a result of Defendant's unlawful conduct and practices complained of herein;
5. Punitive damages;



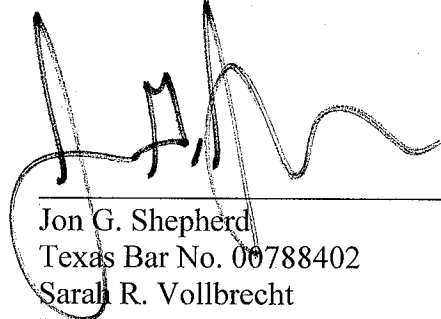
6. Pre-judgment and post-judgment interest;
7. Treble damages;
8. Reasonable attorney's fees and costs of suit; and
9. Such other relief that this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all claims so triable.

DATED: June 12, 2007

Respectfully submitted,



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