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Attorneys for Plaintiff,
Katherine Martinez

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KATHERINE MARTINEZ,
Individually and On Behalf of All
Others Similarly Situated,

Plaintiff,

v.

RITE AID CORPORATION,

Defendant.

Case No.: '19CV0569 H NLS

CLASS ACTION

**COMPLAINT FOR
INJUNCTIVE RELIEF AND
DAMAGES FOR VIOLATIONS OF:**

- I. CAL. BUS. & PROF. CODE
§ 17200, ET SEQ.;**
- II. CONVERSION**

JURY TRIAL DEMANDED

Case #

Martinez v. Rite Aid Corporation

INTRODUCTION

1. The plaintiff KATHERIN MARTINEZ (“Plaintiff” or “Ms. Martinez”) brings this action, on behalf of herself and other similarly situated in California, to challenge the actions of RITE AID CORPORATION (“Rite Aid”) with regard to Defendant’s failure to comply with several California statutes designed to protect the consuming public, and to obtain an injunction to stop such continuing violations.
2. Specifically, this case involves Rite Aid’s exploitation of consumers, especially senior citizens, through its utilization of a misleading opt-in method. This has allowed Rite Aid to take recurring donations from consumers, despite the consumer never providing knowing consent to the donations.
3. Rite Aid has run this campaign for years despite receiving volumes of complaints from consumers. These complaints specifically notified Rite Aid of the misleading nature of its opt-in method and that this is causing funds to be taken from consumers without their consent.
4. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to a plaintiff, or to a plaintiff’s counsel, which Plaintiff alleges on personal knowledge.
5. While many violations are described below with specificity, this Complaint alleges violations of the statute cited in its entirety.
6. Unless otherwise stated, all the conduct engaged in by Defendant took place in California.
7. Any violation by Defendant was knowing, willful, and intentional, and not in good faith.
8. Unless otherwise indicated, the use of Defendant’s name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors,

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1 assigns, principals, trustees, sureties, subrogees, representatives, and insurers of
2 the defendants named.

3 **PARTIES**

4 9. Plaintiff is a natural person who resides in the City of San Diego, County of San
5 Diego, State of California.

6 10. Ms. Martinez is a senior citizen as defined by Cal. Civ. Code § 1761(f).

7 11. Plaintiff is informed and believes, and thereon alleges, that Rite Aid is, and at
8 all times mentioned herein was, a corporation whose state of incorporation is
9 Delaware and principal place of business is in Camp Hill, Pennsylvania.

10 12. Plaintiff alleges that at all times relevant herein Defendant conducted business
11 in the State of California and in the County of San Diego.

12 **JURISDICTION AND VENUE**

13 13. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a citizen
14 of California, seeks damages for unlawfully obtained monies, which has been
15 automatically withdrawn from hundreds of thousands of individuals transaction
16 over a four year period, which, when aggregated among a proposed Class
17 numbering in the several hundred thousand, exceeds the \$5,000,000 threshold
18 for federal court jurisdiction. Additionally, the action is against Defendant, a
19 citizen of Georgia. Therefore, the elements of the Class Action Fairness Act of
20 2005 (“CAFA”) are met, and this Court has jurisdiction.

21 14. As Defendant conducts business within the State of California and within the
22 County of San Diego, personal jurisdiction is established.

23 15. Venue is proper in the United States District Court for the Southern District of
24 California pursuant to 28 U.S.C. §§ 1391(b) because Defendants, at all times
25 herein mentioned, was doing business in the County of San Diego, State of
26 California. Further, venue is proper in this district because Plaintiff has resided
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1 in this district at all times herein mentioned and a substantial part of the events
2 giving rise to the claim occurred in this judicial district.

3 **GENERAL FACTUAL ALLEGATIONS**

4 16. Sometime before December 2018, Ms. Martinez went to a Rite Aid location in
5 San Diego, California to purchase an item for personal or household use.

6 17. Sometime during the checkout process, Ms. Martinez was opted into the Rite
7 Aid Foundation's KidsCents program. As a consequence, Rite Aid rounds every
8 transaction associated with Ms. Martinez's Wellness card to the whole dollar,
9 and retained the difference for the alleged purpose of donating the difference to
10 charity.

11 18. Upon information and belief, such practice will continue into perpetuity, or at
12 least until Ms. Martinez has expressly opted out.

13 19. However, at no time did Ms. Martinez knowingly consent to this program,
14 including on a continuing basis.

15 20. Between the few months of purchases for which Ms. Martinez has receipts, Rite
16 Aid took a total of \$2.56 from Ms. Martinez without the knowledge or consent
17 of Ms. Martinez.

18 21. Rite Aid has initiated the donation program that collects consumer's change,
19 which it then redistributes to the community. However, upon information and
20 believe, before redistributing the funds, Rite Aid takes a percentage from the
21 total collected.

22 22. Rite Aid claims that it obtains consumers' consent to opt into its KidsCents
23 program by providing a prompt on the pin pad. However, such prompt is
24 misleading, as at least one Rite Aid cashier has opined that, "I can tell you it's
25 really easy to miss the 'Kidcents' donation prompt, and a lot of people will hit
26 the 'always donate' button without thinking, assuming it's a one-time deal.
27 Also, they'll sometimes think that it's part of their credit card purchase."
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1 23. The manner in which these donations are set up is inherently misleading and
2 confusing to consumers, especially senior citizens, and has resulted in money
3 being taken from Plaintiff and similarly situated consumers in California to
4 which they did not consent, and did not realize was occurring.

5 24. Any quick review of online comments regarding his campaign by Rite Aid, it
6 is apparent that a majority of consumers are opted into the KidsCents program
7 without knowingly consenting to such program.

8 25. Upon information and belief, Rite Aid ties all donations for this program to the
9 use of a Wellness card. To use a Wellness card in a Rite Aid store, a customer
10 does not need the physical card, but can use the telephone number that is tied
11 to the Wellness card account.

12 26. Consequently, any individual that has that telephone number can opt the card
13 holder into this program. After the cardholder is opted in to the program, the
14 cardholder will continue to be charged anytime they use their Wellness card,
15 regardless of whether the consumer provided knowing consent.

16 27. Reasonable consumers, such as Ms. Martinez, believe that they did not opt into
17 the program through the pin pad at the Rite Aid stores.

18 28. Since 2014, consumers have been complaining to Rite Aid that the its method
19 of opt-in is misleading, and that there is nothing displayed in the store warning
20 the consumer of the program details. Often times consumers have directly told
21 Rite Aid that its method of collecting funds is an “underhanded way to get
22 people to contribute to a charity.”

23 29. One complaint even notifies Rite Aid that her elderly grandmother, who has
24 poor vision, was opted into this program despite never providing consent.

25 30. Many of these consumers are on tight budgets and cannot always afford to make
26 a donate.

1 31. Despite being put on notice that this method of contribution is misleading to
2 consumers, over the last five years Rite Aid has taken no steps to remedy the
3 problem, as its method of opting has remained the same over the last five years.

4 32. Senior citizens, such as Ms. Martinez, are especially susceptible to such
5 deceptive business practices.

6 33. As a result of the aforementioned conduct, Plaintiff and members of the Class
7 have suffered actual injury and economic loss.

8 **CLASS ALLEGATIONS**

9 34. Plaintiff brings this action on behalf of herself and on behalf of all others
10 similarly situated (the "Class").

11 35. Plaintiff represents and is a member of the following Class, pursuant to Federal
12 Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2):

13 All natural persons within California who made a purchase
14 at Rite Aid and had the amount of their purchase/s rounded
15 up to the whole dollar after they were enrolled in the Rite
16 Aid Foundation's KidsCents program, or similar program,
17 within four years prior to the filing of the Complaint in this
18 action.

19 36. Plaintiff represents and is a member of the following Subclass:

20 All natural persons within California, who are sixty-five
21 years or older, who made a purchase at Rite Aid and had
22 the amount of their purchase/s rounded up to the whole
23 dollar after they were enrolled in the Rite Aid
24 Foundation's KidsCents program, or similar program,
25 within four years prior to the filing of the Complaint in this
26 action.

27 37. Plaintiff and others similarly situated are referred to as the "Class" and/or
28 "Subclass".

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- 1 38. Defendant and their employees or agents are excluded from the Class and
2 Subclass.
- 3 39. Plaintiff does not presently know the number of members in the Class or
4 Subclass, but believes the members number in the tens of thousands. Thus, this
5 matter should be certified as a class action to assist in the expeditious litigation
6 of this matter.
- 7 40. Plaintiff and members of the Class and Subclass were harmed by Defendant's
8 misleading and deceptive method of taking money from consumers for its
9 KidsCents program.
- 10 41. Plaintiff reserves the right to expand the class definitions to seek recovery on
11 behalf of additional persons as warranted, as facts are learned through further
12 investigation and discovery.
- 13 42. The joinder of the Class is impractical and the disposition of their claims in the
14 class action will provide substantial benefits both to the parties and to the court.
- 15 43. The Class members can be identified through Defendant's or Defendant's
16 agent's records.
- 17 44. There is a well-defined community of interest in the questions of law and fact
18 to the Classes that predominate over questions which may affect individual
19 members, including the following:
- 20 a. whether the manner in which Defendant enrolls consumers in its
21 Kidcents program is deceptive or misleading;
- 22 b. whether Defendant's conduct is an unlawful act or practice within the
23 meaning of California Business & Professions Code §§ 17200, *et seq.*;
- 24 c. whether Defendant's conduct is an unfair act or practice within the
25 meaning of California Business & Professions Code §§ 17200, *et seq.*;
- 26 d. whether Defendant wrongfully exercised dominion and control over
27 personal property that belonged to the Plaintiff, Class and Subclass;
- 28

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- 1 e. whether the Defendants and their agents should be enjoined from
2 engaging in their unlawful conduct in the future;
- 3 f. whether the subclass is entitled to treble damages under Cal. Civ.
4 Code § 3345; and,
- 5 g. whether Defendant retains monies rightfully owed to the Class and
6 Subclass.
- 7 45. Plaintiff will fairly and adequately represent and protect the interests of the
8 Class and Subclass in that Plaintiff has no interests antagonistic to any member
9 of the Class and Subclass.
- 10 46. Plaintiff and the members of the Class and Subclass have all suffered
11 irreparable harm as a result of Defendant's unlawful and wrongful conduct.
12 Absent a class action, the Class and Subclass will continue to face the potential
13 for irreparable harm. In addition, these violations of law will be allowed to
14 proceed without remedy and Defendant/s will likely continue such illegal
15 conduct.
- 16 47. Plaintiff has retained counsel experienced in handling class action claims and
17 individual claims involving consumer contracts and consumer rights.
- 18 48. A class action is a superior method for the fair and efficient adjudication of this
19 controversy. Class-wide damages are essential to induce Defendant to comply
20 with California law. The interest of the Class in individually controlling the
21 prosecution of separate claims against the Defendant is small because the
22 maximum statutory damages in an individual action for violation of privacy
23 are minimal.
- 24 49. Defendant Rite Aid has acted, and continues to act, on grounds generally
25 applicable to the Class, thereby making appropriate final injunctive relief and
26 corresponding declaratory relief with respect to the Class.

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COUNT I

CALIFORNIA'S UNFAIR COMPETITION LAW

BUS. & PROF. CODE §§ 17200, *ET SEQ.*

50. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

51. Plaintiff and Defendants are each "person[s]" as defined by California Business & Professions Code § 17201.

52. California Business & Professions Code § 17204 authorizes a private right of action on both an individual and representative basis.

53. "Unfair competition" is defined by Business and Professions Code Section § 17200 as encompassing several types of business "wrongs," including: (1) an "unlawful" business act or practice, (2) an "unfair" business act or practice, (3) a "fraudulent" business act or practice, and (4) "unfair, deceptive, untrue or misleading advertising." The definitions in § 17200 are drafted in the disjunctive, meaning that each of these "wrongs" operates independently from the others.

54. By and through Defendant's conduct alleged in further detail above and herein, Defendant engaged in conduct which constitutes (a) unlawful and (b) unfair business practices prohibited by Bus. & Prof. Code § 17200 et seq.

A. "Unlawful" Prong

55. Beginning at a date currently unknown through the time of the filing of this Complaint, Defendant has committed acts of unfair competition, including those described above, by engaging in a pattern of "unlawful" business practices, within the meaning of Bus. & Prof. Code § 17200, *et seq.*, which provides a cause of action for an "unlawful" business act or practice perpetrated on members of the California public.

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1 56. Defendant could have prompted consumers to donate on each transaction,
2 similar to its competitors. Defendant had other reasonably available alternatives
3 to further its legitimate business interest, other than the conduct described
4 herein, such as effectively deceiving consumers with regard to Defendant's
5 KidCents program.

6 57. Defendant also had other reasonably available alternatives to further its
7 legitimate business interest, other than the conduct described herein, such as
8 setting up the digital prompt in a way that was not confusing or misleading to
9 customers about how much they were donating and the meanings of the options;
10 or by requiring a prompt on each purchase before continuing to take monies for
11 the KidCents program.

12 **B. "Unfair" Prong**

13 58. Beginning at a date currently unknown and continuing up through the time of
14 this Complaint, Defendant has committed acts of unfair competition that are
15 prohibited by Bus. & Prof. Code §§ 17200, *et seq.*

16 59. Defendant's actions and representations constitute an "unfair" business act or
17 practice under § 17200 in that Defendant's conduct is substantially injurious to
18 consumers, offends public policy, and is immoral, unethical, oppressive, and
19 unscrupulous as the gravity of the conduct outweighs any alleged benefits
20 attributable to such conduct. Without limitation, it is an unfair business act or
21 practice for Defendant to deceptively sign up customers for a recurring donation
22 without their consent on their purchases.

23 60. At a date presently unknown to Plaintiff, but at least four years prior to the filing
24 of this action, and as set forth above, Defendant has committed acts of unfair
25 competition as defined by Cal. Bus. & Prof. Code §§ 17200 *et seq.*, as alleged
26 further detail above and herein.

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1 61. Plaintiff could not have reasonably avoided the injury suffered herein. Plaintiff
2 reserves the right to allege further conduct that constitutes other unfair business
3 acts or practices. Such conduct is ongoing and continues to this date, as
4 Defendant continues to display the donation prompt in a misleading manner,
5 and continues to opt-in customers to the recurring donation without their
6 knowledge or consent.

7 **COUNT II**
8 **CONVERSION**

9 62. Plaintiff incorporates by reference all of the above paragraphs of this Complaint
10 as though fully stated herein.

11 63. Plaintiff and Class and Subclass members held lawful rights in the personal
12 property that they used to purchase items at Defendant's Stores.

13 64. Defendant engaged in an unlawful act when it exercised dominion over Plaintiff
14 and Class members' and Subclass members' property when they donated
15 personal property of the Plaintiff and Class without their consent or knowledge.

16 65. Defendant acted with malice, oppression or fraud in obtaining donations it was
17 not entitled to.

18 66. As a result of the control over Plaintiff and Class members' and Subclass
19 members' personal property, Plaintiff and Class members and Subclass
20 members suffered monetary damages.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays that judgment be entered against Rite Aid for:

- 23 • Certification of this action as a Class Action, with Plaintiff appointed as the
24 representative of the Class and Subclass, and Plaintiff's attorneys appointed
25 as Class Counsel for the Class and Subclass;

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- 1 • A declaratory judgment finding Rite Aid's conduct alleged herein to be
- 2 unlawful, including that the transactions concerning donations with Plaintiff
- 3 and the Class are void and refundable;
- 4 • A temporary, preliminary and/or permanent order for injunctive relief
- 5 requiring Rite Aid to cease using deceptive means to obtain recurring
- 6 donations, pursuant to Bus. & Prof. Code § 17535;
- 7 • An order requiring imposition of a constructive trust and/or disgorgement
- 8 of Rite Aid's ill-gotten gains and to pay restitution to Plaintiff and all
- 9 members of the Class and Subclass and, also, to restore to Plaintiff and
- 10 members of the Class and Subclass all funds acquired by means of any act
- 11 or practice declared by this court to be an unlawful and/or unfair business
- 12 act or practice, in violation of laws, statutes or regulations, or constituting
- 13 unfair competition;
- 14 • Restitution pursuant to Bus. & Prof. Code § 17535;
- 15 • An award to the Subclass of three times actual damages pursuant to Cal.
- 16 Civ. Code § 3345;
- 17 • Distribution of any monies recovered on behalf of members of Classes via
- 18 fluid recovery or *cy pres* recovery where necessary and as applicable, to
- 19 prevent Rite Aid from retaining the benefits of their wrongful conduct;
- 20 • Punitive damages to Plaintiff and the Classes for Defendant's malicious,
- 21 oppressive or fraudulent misconduct;
- 22 • Prejudgment interest;
- 23 • Special, general, and compensatory damages to Plaintiff and the Classes for
- 24 negligent and/or intentional misconduct;
- 25 • Costs of Suit;
- 26 • Reasonable attorneys' fees pursuant to, *inter alia*, California Code of Civil
- 27 Procedure § 1021.5; and,
- 28

- Any and all other relief the Court deems just and proper.

TRIAL BY JURY

67. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: March 28, 2019

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s/Abbas Kazerounian
ABBAS KAZEROUNIAN, ESQ.
ATTORNEY FOR PLAINTIFF

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