

2. In so doing, Defendants turned to a well-worn method of shoring up revenues: unlawfully enrolling their customers in negative option memberships without properly disclosing the details (or even existence) of the charges at the time of enrollment. Specifically, Defendants enrolled their customers in a variety of membership programs purportedly offering access to such services as online videos and discounts at golf courses and thereafter, charged the customers' credit and debit cards (submitted for an entirely separate purchase) on a recurring basis. Adding to the injury, even when consumers like Plaintiff attempted to cancel these unwanted memberships and Defendants, in fact, agreed to cancel the memberships, Defendants nevertheless continued to charge them anyway.

3. Defendants intentionally misled and deceived consumers into submitting payment information knowing full well that they had failed to disclose the true nature of and material terms and conditions associated with their membership programs and the related charges. As a result of their wrongful conduct, Defendants have profited significantly at their customers expense and will continue to do so unless the business practices complained of herein are stopped.

Parties

4. Plaintiff Robert Klein is a natural person domiciled in the State of Illinois, County of Cook.

5. Defendant R. M. & G. Products, Inc. is a corporation incorporated and existing under the laws of the State of Ohio with its principal place of business located at 2845 Interstate Parkway, Brunswick, Ohio 44212. In conjunction with Defendant Bernheim & Rice, Defendant R. M. & G. Products operates several retail websites selling golf related products under the brand

name "Medicus Golf." Defendant R. M. & G. Products does business in the State of Illinois and nationwide.

6. Defendant Bernheim & Rice, Inc. is a corporation incorporated and existing under the laws of the State of California with its principal place of business located at 170 Eucalyptus Ave, Vista, California 92084. In conjunction with Defendant R. M. & G. Products, Defendant Bernheim & Rice operates several retail websites selling golf related products under the brand name "Medicus Golf." Defendant Bernheim & Rice does business in the State of Illinois and nationwide.

Jurisdiction and Venue

7. The Court has personal jurisdiction over this action pursuant to 735 ILCS 5/2-209(a)(1) because Defendants do business in Illinois, Defendants committed tortious acts within Illinois, and Plaintiff Klein is domiciled in Illinois and Cook County.

8. Venue is proper because Defendants do business in Cook County and the cause of action arose, in substantial part, in Cook County.

Facts Common to All Counts

9. The Medicus brand name has long been associated with golf training tools, such as the "Medicus Dual-Hinge Driver," the "Medicus Dual 2000 5-Iron Trainer," as well as the "OverSpin Putter" and the "Medicus Power Meter." These products are sold through a series of retail websites operated by Defendants, as well as through third party retailers.

10. Several professional golfers and professional golf instructors, including Mark O'Meara, Hank Haney, Tommy Armour III, Jack Lumpkin, Chuck Evans, Bruce Fleisher, Kip Puterbaugh, Mike Bennett, and Andy Plummer are paid by Defendants to publically endorse Medicus products.

11. Medicus products are promoted in a variety of ways, including television commercials, online videos, email marketing, search engine marketing, and through a network of affiliate marketers.

12. The majority of advertising and marketing for Medicus products directs consumers to one of several retail websites operated by Defendants, including medicus.com, medicusdriver.com, medicuscorporation.com, overspingolf.com, medicuspowermeter.com, medicusnewsletter.com, mdgit.com, and drivethemax.com, among others.

13. On these websites, consumers are able to purchase a full range of Medicus products, including golf clubs, accessories, and instructional videos. In addition to the primary products, the Medicus websites also display a list of allegedly “free gifts” that accompany the purchase.

14. For example, two such “free gifts” include “Tour Partner Rewards” and “Medicus Video.”¹ They appear on the Medicus websites in a manner similar to the following:

Tour Partner Rewards

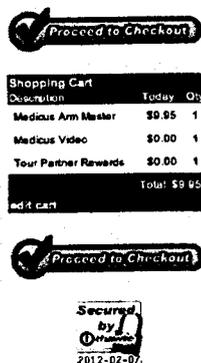
You'll also get a FREE 60 Day membership to Tour Partner Rewards, the program that gets you 50% off greens fees at over 1500 golf courses and let's you test and keep new golf products for FREE! **FREE!!!**

Watch it Instantly Online and get FREE Online Golf Lessons with Medicus Video

Plus, order now and you'll get free online golf lessons from Medicus Video. With hundreds of videos starring top pros and live interactive online golf lessons & instruction from the world's top coaches. Medicus Video will take your game to the next level... GUARANTEED! **FREE!!!**

¹ Other membership programs include “Golf Essentials” and “Golf Life.” Throughout this Complaint, “Medicus Membership Programs” shall include, but are not limited to, “Medicus Video,” “Tour Partner Rewards,” “Golf Essentials,” “Golf Life,” and any other recurring membership charge Defendants enroll their customers in following a purchase.

15. As with most retail websites, Medicus customers choose a product, add it to a virtual “shopping cart,” and proceed to checkout. For example, once a consumer adds a Medicus product to his or her cart, they are presented with a display in substantially the following form:



16. Once on the checkout page, the consumer again views a summary of their relevant charges appearing prominently at the top of the page, which appears in substantially the following form:

Shopping Cart	Today	Qty
Medicus Arm Master	\$9.95	1
Medicus Video	\$0.00	1
Tour Partner Rewards	\$0.00	1
		Subtotal: \$9.95
Shipping Option: FREE Medicus Bonus Shipping - \$0		
edit cart		Total: \$9.95

17. Below the summary, a consumer is prompted to provide shipping and payment information, at the bottom of which appears a “Submit” button that, when clicked, completes the purchase.

18. At no point during the entire transaction is a consumer prompted to agree to any Terms & Conditions or directed to read any additional restrictions on their purchase.

19. Unbeknownst to the consumer who submits payment information, far below the submit button, on the other side of a large graphic reading “Secured by thawte,” and out of sight of the consumer, is a miniscule statement fundamentally similar to the following:

*Void where prohibited. Other terms, conditions, and restrictions may apply. This offer is subject to change or termination without notice. For your Medicus Video pay \$0.00 today, try it for 62 days, and if you choose to keep it, make monthly payments of \$9.95. For your Tour Partner Rewards pay \$0.00 today, try it for 60 days, and if you choose to keep it, make monthly payments of \$9.95. Each shipment comes with a 30 day moneyback guarantee (less S&H where applicable) upon request for a refund and return of the product. There is no surcharge for orders shipping to the continental US. Orders shipping to Canada, AK, and HI will be charged a 9.91 surcharge. All other addresses will be charged a 9.91 surcharge per pound to be calculated after the order is placed. For any questions call customer service at (US/Canada) 1-800-772-4979 or (International) +1 760-479-6793.

20. These diminutively sized paragraphs are intentionally placed “below the fold,” meaning that in order to actually see them a consumer would need to scroll down to a part of the webpage that they are not directed to go to and have absolutely no reason to view. The font is intentionally small and displayed in a low contrast color to decrease the likelihood that it will be seen or read by a consumer.

21. Choosing to place relevant terms “below the fold” and in difficult to read font is comparable to holding a page of a contract under the table while the rest of the contract is signed, only to reveal post-signature that the hidden page was in fact part of the agreement. Obviously, a party conducting itself in such a manner could not enforce the hidden page. Defendants’ conduct here is no different.

22. Not only is the example above intentionally hidden from view and made difficult to read, but the example actually fails to disclose the true nature of the negative option program that Defendants enroll their customers in. These so called “disclosures” fail to even explain that a consumer will be charged automatically unless they take affirmative action to cancel.

23. Additionally, the prominent and repeated use of the word “FREE” (displayed in bold and all capital letters throughout Defendants’ websites), as well as listing the services as “free gifts” at a cost of “\$0.00” without any type of disclosure, disclaimer, or qualification, leads

consumers to reasonably believe that the extra items are in fact free. Defendants give consumers no reason to seek out additional information or suspect that they will be charged for additional unwanted products.

24. Even a consumer who is aware that the “free gifts” are not entirely free during the purchase process, would reasonably believe that they were receiving a “FREE 60 Day membership” that would expire after 60 days and that the membership would be continued only if he or she took action to do so.

25. Defendants intentionally combine all of these deceptive factors in order to induce consumers to submit payment information that will be charged later for undisclosed membership fees.

26. Even if a consumer purchases a product and immediately cancels the order, or purchases a product and then promptly returns it after receiving it, they are still enrolled in a Medicus Membership Program without authorization, and therefore charged on a monthly basis.

27. On information and belief, often times Defendants fail to even provide the deceptive disclosures identified above to their customers when promoting these so-called “free gifts.” Nevertheless, Defendants still automatically enroll those customers in a Medicus Membership Program following their transactions.

28. Regardless of the website upon which they are presented or the form they take, Defendants’ representations to consumers regarding the Medicus Membership Programs are the same: that with each purchase of a Medicus Golf product, the consumer will receive free access to numerous rewards, instructional videos, or other similar products. In reality, the additional products and services are anything but free, and each consumer is charged additional, undisclosed fees on a recurring basis.

29. When consumers try to contact Defendants to inquire about the charges and cancel the memberships, they are consistently unable to reach a live customer service representative and instead, are directed to a generic voice recording.

30. If a consumer is actually able to reach a live representative of Defendants and attempts to cancel their unauthorized enrollment in a Medicus Membership Program, Defendants consistently fail to do so (even though they represent the memberships will be cancelled), and continue to charge consumers on a monthly basis.

31. Likewise, customer service representatives regularly promise partial refunds to try to appease angry consumers, but the refunds are never actually processed. Thus, to stop future charges, consumers are forced to request a new credit or debit card number, or ask that their credit or debit card company block all future charges from Defendants.

Facts Specific to Plaintiff Robert Klein

32. In or around April 2011, Plaintiff Klein received several marketing emails from Defendants that promoted Medicus products. One such product was an instructional video featuring nationally known golf instructor Hank Haney. Plaintiff clicked on a link included in one of the emails and was directed to a Medicus website operated by Defendants.

33. Once there, Plaintiff added the Hank Haney video to his shopping cart and proceeded to check out. At no time did Defendants disclose to Klein that he would be charged on a recurring basis for any product other than the one time \$5.95 charge for the Hank Haney video. Plaintiff was unaware of the existence of a Medicus Membership Program offer at the time of his purchase and did not consent to be enrolled in any such program.

34. In purchasing the Hank Haney video from Defendants, Plaintiff relied on Defendants' statements and omissions indicating that he would only be charged one time for the

video and that no additional fees would be charged to him. Plaintiff would not have agreed to purchase the Hank Haney video had he known that in conjunction therewith, he would be enrolled in a Medicus Membership Program that he had not been made aware of.

35. In June 2011, a charge listed as "Medicus Video" appeared on Plaintiff's credit card in the amount of \$9.95. In July 2011, another charge for "Medicus Video" appeared on Plaintiff's credit card in the amount of \$9.95. Once Klein discovered these unauthorized charges, he contacted Medicus to inquire about them, to cancel all future charges, and to seek a refund for the charges.

36. A customer service representative informed Plaintiff that he had agreed to be enrolled in a Medicus Membership Program and the attendant charges at the time he purchased the Hank Haney video. Plaintiff steadfastly denied that he had agreed to be enrolled in or charged for any such membership program.

37. Ultimately, Defendants' customer service representative agreed to cancel all future charges and provide Plaintiff with a refund of just one of the charges. Notwithstanding, Defendants never processed the promised refund, nor did they cancel the Plaintiff's membership.

38. Instead, in August 2011, Defendants placed a charge on Plaintiff's credit card for \$0.99, and thereafter, placed yet another charge on his account for \$9.95.

39. Similarly, in September 2011, Defendants placed two charges on Plaintiff's account for \$9.95 and \$19.90.

40. Then, in each October and November 2011, Defendants again placed two additional charges on Plaintiff's account for \$9.95 and \$19.90.

41. Once Plaintiff realized he was again being charged without his authorization and despite Defendants representations that the charges would be canceled, he again contacted

Defendants to inquire about the charges, to again request that they be canceled, and to again request a refund.

42. Defendants' customer service representative informed Plaintiff that he had agreed to enroll in not one, but two monthly membership programs and to be charged on a recurring basis for those programs. Plaintiff disputed that he had agreed to any such enrollment or charges.

43. After Klein's continued protests, Defendants' customer service representative agreed to cancel the memberships and to provide Klein a refund for one month of charges. As before, Defendants did not provide Plaintiff with the promised refund and failed to cancel the memberships.

44. Instead, in each December 2011 and January 2012, Defendants placed two charges of \$9.95 and \$19.90 on Plaintiff's credit card account.

45. Believing that Defendants would never stop charging him, Klein contacted his credit card company and requested that all future charges from Defendants be blocked. Plaintiff's credit card company agreed to block Defendants' charges, provide him with a partial credit for the unauthorized charges, and conduct an investigation.

46. Yet, even after taking these drastic measures, Defendants again charged Plaintiff \$19.90 and \$9.95.

47. To date, Plaintiff has yet to receive a refund from Defendants and only a partial chargeback from his credit card of any of the membership fees Defendants charged and collected from him.

Class Allegations

48. Plaintiff brings this action pursuant to Illinois 735 ILCS § 5/2-801, on behalf of himself and a Class and two SubClasses, defined as follows:

The Medicus Class

All individuals who (i) made an online purchase from a website owned or operated by Defendants; (ii) were charged a fee for a Medicus Membership Program; and (iii) never utilized or otherwise took advantage of the Membership Program.

The Cancellation SubClass

All members of the Medicus Class who were charged a fee for a Medicus Membership Program after they contacted Defendants to affirmatively cancel their enrollment in any such Program.

The Illinois SubClass

All members of the Medicus Class who are domiciled in the State of Illinois.

The following persons are excluded from the Class and SubClasses: (1) any Judge or Magistrate presiding over this action and immediate members of his or her family; (2) Defendants and their directors, officers, and employees; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) all persons who have had their claims in this action finally adjudicated on the merits or otherwise released; and (5) the legal representatives, successors, or assigns of any such excluded persons. (The above-defined Class and SubClasses are referred to collectively herein as the "Classes.")

49. **Numerosity:** The exact number of members of the Classes is unknown and not available to Plaintiff, but the number of members and their geographic dispersion makes individual joinder impracticable. On information and belief, Defendants have deceived thousands of consumers who meet the requirements for membership in the Classes. Members of the Class and SubClasses can be identified through Defendants' records.

50. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and the Classes. Those questions predominate over any questions that may affect individual members of the Classes. Common questions for the Classes include, but are not limited to the following:

- a) Whether Defendants failed to disclose to Plaintiff and the Classes the material terms and/or existence of the Medicus Membership Programs;
- b) Whether Defendants' conduct described herein violated the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS § 505/1 *et seq.*);
- c) Whether Defendants' conduct described herein violated the Illinois Automatic Contract Renewal Act (815 ILCS 601/1 *et seq.*);
- d) Whether Defendants' conduct described herein constitutes a breach of contract;
- e) Whether Defendants have been unjustly enriched as a result of their conduct described herein;
- f) Whether Defendants' conduct described herein constitutes fraud in the inducement;
- g) Whether Defendants' conduct described herein constitutes fraud by omission.

With respect to the Cancellation SubClass, the following additional question is common to all members of the SubClass and predominates over any questions affecting only individual members of the SubClass:

a) Whether Defendants had in place adequate safeguards to ensure that consumers who requested that their memberships in a Medicus Membership Program be cancelled would not continue to be charged for such Program.

51. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Classes, and has retained counsel competent and experienced in class actions. Plaintiff has no interest antagonistic to those of the Class and SubClasses, and Defendants have no defenses unique to Plaintiff. Moreover, Plaintiff's claims are typical of the claims of the other members of the Classes, as Plaintiff and the other members sustained damages arising from Defendants' uniform wrongful conduct, based upon the same types of transactions that were made repeatedly with Plaintiff and the members of the Classes.

52. **Appropriateness:** This case is appropriate for certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy. The injuries suffered by the individual members of the Class and SubClasses are likely to have been relatively small compared to the burden and expense of individual prosecution of the litigation necessitated by Defendants' actions. Absent a class action, it would be difficult, if not impossible, for the individual members of the Class and SubClasses to obtain effective relief from Defendants. Even if members of the Classes themselves could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties and the Court and require duplicative consideration of the legal and factual issues presented herein. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single Court. Economies of time, effort, and expense will be fostered, and uniformity of decisions will be ensured.

COUNT I

Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act

(815 ILCS §§ 505/1, *et seq.*)

(On Behalf of Plaintiff and the Classes)

53. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

54. The Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”) (815 ILCS § 505/1, *et seq.*) protects both consumers and competitors by promoting fair competition in commercial markets for goods and services.

55. The ICFA prohibits any unlawful, unfair, or fraudulent business acts or practices including, the employment of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact.

56. As described herein, Defendants’ continued utilization of unlawful and unconscionable marketing practices, and their practice of charging members of the Classes’ credit and debit cards for Medicus Membership Programs without authorization, constitutes a deceptive act or practice in violation of the ICFA.

57. The price of a consumer product or service is a material term of any transaction as it is likely to affect a consumer’s choice of, or conduct regarding, whether to purchase a product or service. Any deception related to the price of a consumer product is materially misleading.

58. Defendants’ omission of the price and subscription terms of the Medicus Membership Programs, or the fact that Plaintiff and the Classes would be enrolled in or charged at all for the Programs, was likely to mislead a consumer acting reasonably under the circumstances and constitutes a deceptive and unfair trade practice in violation of the ICFA.

59. As described herein, Defendants failed to clearly and conspicuously disclose the existence and true nature of their Medicus Membership Programs by hiding any description of the Programs and related charges “below the fold,” and making the descriptions fundamentally difficult to read through the use of small fonts in low contrast colors.

60. Additionally, Defendants acted in a deceptive manner by repeatedly describing the Medicus Membership Programs as “FREE” and “free gifts” when they were, in fact, anything but free.

61. Defendants acted in a deceptive and unfair manner by continuing to charge members of the Cancellation SubClass after they affirmatively requested to cancel the Medicus Membership Programs.

62. Defendants intended that Plaintiff and members of the Classes would rely on their deceptive conduct and submit payment information based on Defendants’ false statements and omissions.

63. The injuries caused by Defendants’ conduct are not outweighed by any countervailing benefits to consumers or competition, and the Classes could not have reasonably avoided the injuries they sustained.

64. Further, in violation of the Automatic Contract Renewal Act (as described in Count II below), and the unlawful prong of the ICFA, Defendants placed charges for their Medicus Membership Programs on the credit and debit card accounts of Plaintiff and the Illinois SubClass on a recurring basis without providing clear and conspicuous notice of their intent to do so. A violation of the Automatic Contract Renewal Act constitutes an independent violation of the ICFA.

65. The unfair, unlawful, and deceptive conduct at issue in this Complaint and carried out by Defendants took place in the course of trade or commerce.

66. Plaintiff and members of the Classes suffered actual damages in the form of the monies charged and collected from them for the Medicus Membership Programs as a direct and proximate result of Defendants' conduct described herein.

67. Plaintiff, individually and on behalf of the Classes, seeks an order requiring Defendants to cease the challenged practices alleged herein and awarding damages, interest, and reasonable attorneys' fees, expenses, and costs to the extent allowable.

COUNT II

Violations of the Automatic Contract Renewal Act (815 ILCS § 601/1, et seq.) (On Behalf of Plaintiff and the Illinois SubClass)

68. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

69. The Automatic Contract Renewal Act ("ACRA") (815 ILCS § 601/1 et seq.) requires that an entity enrolling a consumer in an automatically renewing contract provide the renewal provision to the consumer in a clear and conspicuous manner. Failure to provide that provision in a clear and conspicuous manner deems the automatic renewal provision unenforceable by the party who prepared the contract or directed its preparation.

70. Defendants failed to notify Plaintiff and the other members of the Illinois SubClass of the recurring nature of the Medicus Membership Programs and related monthly charges in a clear and conspicuous manner.

71. Defendants intentionally concealed and misrepresented the nature of the charges, including the actual cost and how often they would be charged.

72. Defendants engaged in cramming, irrespective of the presence or absence of clear material disclosures related to the terms and conditions of the automatically renewing offer.

73. Defendants' violation of the ACRA constitutes an unlawful practice under the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS § 505/1 et seq.).

74. Plaintiff, individually and on behalf of the Class and the Illinois SubClass, seeks an order requiring Defendants to immediately cease the challenged practices alleged herein, declaring any automatic renewal provisions related to the Medicus Membership Programs unenforceable as against Plaintiff and the Illinois SubClass, and awarding damages, statutory interest, and reasonable attorney's fees, expenses, and costs to the extent allowable.

COUNT III

Negligent Misrepresentation **(On Behalf of Plaintiff and the Classes)**

75. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

76. Through their marketing materials and on their websites, Defendants represented to Plaintiff and members of the Classes that they would only be charged for the specific Medicus product they had selected.

77. Defendants affirmatively represented to Plaintiff and the Classes that any additional products or services in the form of the Medicus Membership Programs offered by Defendants were "free" and prominently displayed them as "free gifts."

78. Those statements were false, and at the time such false statements were made, Defendants knew or should have known of their falsity or, at the very least, they acted with negligence and carelessness in ascertaining the truth of those statements.

79. Contrary to Defendants' representations, the Medicus Membership Programs were not, in fact, free and Plaintiff and each member of the Classes were charged additional, undisclosed fees for the Programs, often on a recurring basis.

80. In the event that disclosures related to the terms of the Medicus Membership Programs were present on the websites visited by Plaintiff and the members of the Classes, Defendants concealed them from view and presented them in a small font and in a low contrast color that made them unlikely to be seen or understood by a consumer acting reasonably under the circumstances. Even when present, however, the terms failed to adequately describe the negative-option nature of enrollment in the Medicus Membership Programs and the actual cost to the consumer.

81. Defendants intended that Plaintiff and the members of the Classes rely on their misrepresentations and omissions when submitting their payment information.

82. Plaintiff and the members of the Classes justifiably relied on Defendants' misrepresentations by submitting the payment information to Defendants for the purchase of a product or service. Plaintiff and the members of the Classes would not have submitted their payment information to Defendants had they known that they would be charged the additional fees associated with enrollment in the Medicus Membership Programs.

83. As a direct and proximate result of Defendants' misrepresentations and omissions, Plaintiff and the members of the Classes suffered damages in the form of the Medicus Membership Program fees Defendants charged and collected from them.

84. Plaintiff, individually and on behalf of the Classes, seeks to recover all damages incurred as a result of Defendants' conduct described herein, as well as interest to the extent allowable.

COUNT IV

Fraud by Omission
(On Behalf of Plaintiff and the Classes)

85. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

86. As described with particularity herein, Defendants intentionally failed to disclose and/or concealed from Plaintiff and the members of the Classes all material terms associated with enrollment in the Medicus Membership Programs, or that they would be enrolled in and charged for the Programs at all.

87. Defendants intended that Plaintiff and the members of the Classes would rely upon those misrepresentations and omissions by agreeing to purchase a Medicus product and submitting their payment information to Defendants in order to do so.

88. Based upon Defendants' misrepresentations and omissions, Plaintiff and the members of the Classes reasonably believed that Defendants would only charge them for the Medicus products they had affirmatively selected to purchase.

89. In reliance upon those misrepresentations and omissions, Plaintiff and the members of the Classes agreed to purchase a Medicus product and submitted their payment information to Defendants in order to do so.

90. At the time Plaintiff and the members of the Classes submitted their payment information to Defendants, Defendants knew that they would charge and collect from Plaintiff and the members of the Classes recurring fees related to the Medicus Membership Programs.

91. Defendants also knew that Plaintiff and the members of the Classes were unaware that they would be charged such additional fees because Defendants had intentionally designed

their marketing materials and retail websites to mislead consumers and conceal the true nature of their purchases and the terms of the Medicus Membership Programs.

92. Defendants were under a duty to Plaintiff and the Classes to disclose their intention to charge them for Membership Programs on a monthly basis because:

- a. Defendants were in a superior position to know the true state of facts regarding what charges would be placed on Plaintiff's and the members of the Classes' accounts; and
- b. In light of Defendants' intentional concealment and/or failure to disclose the true nature and/or existence of the Medicus Membership Programs, Plaintiff and the members of the Classes could not reasonably have been expected to learn of or discover that Defendants would place charges on their accounts other than those they had explicitly authorized.

93. Defendants breached that duty by intentionally charging and collecting from Plaintiff and the members of the Classes undisclosed fees associated with the Medicus Membership Programs, often on a recurring basis.

94. The amounts that Plaintiff and members of the Classes would be charged was a material term of their retail sales contracts with Defendants because it directly affected their choice of, or conduct regarding, whether to proffer payment for Defendants' products and services.

95. Had Plaintiff and the Classes known that Defendants intended to enroll them in and charge them for the Medicus Membership Programs, they would not have submitted their payment information to Defendants.

96. As a direct and proximate result of Defendants' wrongful conduct described herein, Plaintiff and the Classes have suffered damages in the form of the Medicus Membership Program fees Defendants charged and collected from them.

97. Plaintiff, individually and on behalf of the Classes, seeks to recover all damages incurred as a result of Defendants' conduct described herein, as well as interest to the extent allowable.

COUNT V

Breach of Contract
(On Behalf of Plaintiff and the Classes)

98. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

99. Defendants on the one hand, and Plaintiff and the members of the Classes on the other hand, entered into valid and enforceable agreements whereby Plaintiff and the members of the Classes agreed to purchase products from Defendants for a set cost.

100. Plaintiff and the members of the Classes did not agree to be charged any additional fees, including any fees associated with enrollment in the Medicus Membership Programs.

101. At no point during their transactions with Defendants did Plaintiff and the members of the Classes affirmatively agree to Defendants' Terms & Conditions. Indeed, they could not have agreed to such Terms & Conditions because Defendants did not provide them a process by which to do so—for example, by including on the checkout pages of their websites a checkbox or “clickwrap” agreement typically used on retail websites. Thus, Defendants' Terms & Conditions are in no way a part the purchase agreements between Defendants and the members of the Classes.

102. Plaintiff and the members of the Classes performed all of their obligations under their agreements with Defendants.

103. Defendants materially breached their agreements with Plaintiff and the members of the Classes through their wrongful conduct alleged herein, including enrolling and charging them for the Medicus Membership Programs without authorization.

104. As a direct result of Defendants' breach of their agreements with Plaintiff and the Classes, Plaintiff and the other members of the Classes suffered damages in the form of the Medicus Membership Program fees Defendants charged and collected from them.

105. Plaintiff, individually and on behalf of the Classes, seeks to recover all damages incurred as a result of Defendants' breach of their retail purchase agreements, as well as interest to the extent allowable.

COUNT VI

Unjust Enrichment (in the alternative to breach of contract) **(On Behalf of Plaintiff and the Classes)**

106. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein, excluding paragraphs 98-105

107. In the event that purchase agreements between Plaintiff and the members of the Classes, on the one hand, and Defendants, on the other, are found to be invalid or unenforceable, Plaintiff and the Classes may be left without an adequate remedy at law.

108. Plaintiff and the members of the Classes conferred a monetary benefit on Defendants in the form of the unauthorized Medicus Membership Program fees Defendants charged and collected from them.

109. Defendants appreciate or have knowledge of such benefit.

110. Under principles of equity and good conscience, Defendants should not be permitted to retain the money belonging to Plaintiff and members of the Classes, which Defendants have unjustly received as a result of their wrongful actions described herein.

111. Plaintiff, individually and on behalf of the Classes, in the alternative to Count V, seeks restitution and disgorgement of all monies unjustly received and retained by Defendants as a result of their conduct described herein, as well as interest, to the extent allowable.

COUNT VII

Unjust Enrichment **(On Behalf of Plaintiff and the Cancellation SubClass)**

112. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

113. Plaintiff and members of the Cancellation SubClass each contacted Defendants and affirmatively requested to cancel their enrollment in the Medicus Membership Programs.

114. For their part, Defendants agreed to cancel Plaintiff's and the SubClass's memberships to the Programs and to cease charging and collecting membership fees from them.

115. At the time that Plaintiff and the SubClass members requested, and Defendants agreed, to cancel their enrollment in the Medicus Membership Programs, any prior contractual relationship between Plaintiff and the members of the Cancellation SubClass, on the one hand, and Defendants, on the other, related to enrollment in the Medicus Membership Programs was terminated.

116. Thereafter, Defendants knowingly and without authorization continued to charge and collect from the credit and debit card accounts of Plaintiff and the members of the Cancellation SubClass additional Medicus Membership Program fees.

117. As a result of Defendants' post-cancellation charges, and despite having no valid or legal basis to do so, Defendants unjustly received (and in some instances, continue to receive) monetary benefits in the form of Membership Program fees they have charged and collected from Plaintiff and the Cancellation SubClass members.

118. Defendants appreciate and/or have knowledge of those benefits.

119. Plaintiff and the Cancellation SubClass Members have no adequate remedy at law against Defendants.

120. Under principles of equity and good conscience, Defendants should not be permitted to retain the money belonging to Plaintiff and the members of the Cancellation SubClass that Defendants unjustly received as a result of their wrongful conduct described herein.

121. Plaintiff, individually and on behalf of the Cancellation SubClass, seeks restitution and disgorgement of all monies unjustly received and retained by Defendants as a result of their conduct described herein, as well as interest, to the extent allowable.

Request for Relief

WHEREFORE, Plaintiff Robert Klein, individually and on behalf of the members of the Class and SubClasses, respectfully requests that the Court grant the following relief:

a. Certify this case as a class action on behalf of the Class and SubClasses defined above, appoint Robert Klein as Class Representative, and appoint his undersigned counsel as Class Counsel;

b. Enter judgment against R. M. & G. Products, Inc. and Bernheim & Rice, Inc. on all counts of the Complaint;

c. Declare that Defendants' conduct, as set out above, constitutes violations of the Illinois Consumer Fraud Act (815 ILCS §§ 505/1, *et seq.*), violations of the Automatic Contract Renewal Act (815 ILCS §§ 601/1, *et seq.*), and constitutes negligent misrepresentation, fraud by omission, breach of contract, and unjust enrichment;

- d. Award Plaintiff, the Class, and SubClasses all actual damages caused by Defendants' unlawful conduct alleged herein;
- e. Award Plaintiff, the Class, and SubClasses civil penalties, statutory damages, increased damages, and/or punitive damages, to the maximum extent allowable under the law;
- f. Award Plaintiff, the Class, and SubClasses restitution and disgorge all monies unlawfully retained by Defendants as a result of their conduct described herein;
- g. Award Plaintiff, the Class, and SubClasses reasonable costs, expenses, and attorneys' fees;
- h. Award Plaintiff, the Class, and SubClasses pre- and post-judgment interest;
- i. Award such other and further relief as equity and justice may require.

Jury Demand

Plaintiff respectfully requests a trial by jury of all claims that can be so tried.

Respectfully submitted,

Dated: March 23, 2012

ROBERT KLEIN, individually, and on behalf of
all others similarly situated,

By: 
One of Plaintiff's Attorneys

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