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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES

12 ALIN POP, Individually and on
13 Behalf of All Others Similarly Situated,

14 Plaintiffs,
15 vs.

16 CURATED BUSINESSES PTY LTD, an
Australian Corporation,
17 SCOTT DISICK, an individual,
KIMBERLY KARDASHIAN WEST, an
18 individual,
and DOES 1-10, inclusive,

19 Defendants

Case No. **22STCV30245**

CLASS ACTION

COMPLAINT FOR

- (1) Negligent Misrepresentation;**
- (2) Operation Of Illegal Florida Game Promotions;**
- (3) Operation Of Illegal Florida Lotteries;**
- (4) Violations Of Florida’s Deceptive and Unfair Trade Practices Act;**
- (5) Violation Of California’s Consumers Legal Remedy Act;**
- (6) Violations Of California’s Unlawful Business Practices Act;**
- (7) Unjust Enrichment;**
- (8) Aiding and Abetting.**

DEMAND FOR JURY TRIAL

1 Comes now, above-named the Plaintiff, on behalf of himself and those similarly
2 situated, with the following Complaint. The following allegations are based upon personal
3 knowledge as to Plaintiff's own facts, upon investigation by Plaintiff's counsel and upon
4 information and belief where facts are solely in possession of Defendants.

5 NATURE OF THE ACTION

6 1. In this action, the named Plaintiff and those similarly situated seek damages,
7 declaratory judgment, permanent injunctive relief, disgorgement of ill-gotten monies,
8 attorney's fees and costs, and other relief from the Defendants, CURATED BUSINESSES
9 PTY LTD, SCOTT DISICK, and KIMBERLY KARDASHIAN WEST for operating an
10 illegal lottery, promoting an illegal lottery, unjust enrichment, misrepresentation, violations
11 of the FTC Act, 15 U.S.C. § 45(a), of Florida Unfair and Deceptive Practices Act
12 ("FDUTPA"), violations of the California Unlawful Business Practices Act, California
13 Unfair Competition Law, and violation of the Consumer Legal Remedies Act.

14 PARTIES, JURISDICTION, AND VENUE

15 2. The named Plaintiff, ALIN POP ("Pop"), is a citizen of Florida who resides
16 in Pinellas County, Florida and is otherwise *sui juris*.

17 3. Pop found out about the lottery and entered the Defendants' lottery in Florida
18 and his story is typical for thousands of people from Florida that entered the Defendants'
19 illegal giveaways.

20 4. Pop participated in the lottery organized by Defendants in California and his
21 story is typical for hundreds of thousands of people that participated in the Defendants'
22 illegal giveaways organized in California.

23 5. Defendant CURATED BUSINESSES PTY LTD ("Curated") is a citizen of
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1 Australia which regularly transacts business in California over the internet and actively
2 solicits businesses in Florida and California for internet lotteries as set forth in this
3 Complaint.

4 6. Defendant SCOTT DISICK (“Disick”) is a citizen of California who resides
5 in Los Angeles County, California and is otherwise *sui juris*. Disick is also transacting
6 business in Florida over the internet and actively soliciting business in Florida.

7 7. Defendant KIMBERLY KARDASHIAN WEST (“Kim K.”) is a citizen of
8 California who resides in Los Angeles County, California and is otherwise *sui juris*. Kim K.
9 is also transacting business in Florida over the internet and actively soliciting business in
10 Florida.

11 8. The true names and capacities, whether individual, corporate, associate or
12 otherwise, of defendants Does 1 through 10, inclusive, and each of them, are unknown to
13 Pop, who therefore sues said defendants by such fictitious names under California Code of
14 Civil Procedure, section 474.

15 9. Pop is informed and believes and thereon alleges that each of the defendants
16 designated herein as a fictitiously named defendant is, in some manner responsible for the
17 events and happenings herein referred to and caused the damages to the Pop as herein
18 alleged or is in some way liable to Pop. When Pop ascertains the true names and capacities
19 of Does 1 through 10, it will ask leave of this Court to amend its complaint to include the
20 true names and capacities of said defendants.

21 10. Pop is informed and believes and thereon alleges that, at all times herein
22 mentioned, Defendants, and each of them, were the agents, servants, employees, and/or
23 joint ventures of their co-Defendants, when acting as a principal, were negligent and reckless
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1 in the selection and hiring of each and every other Defendants as an agent, servant,
2 employee, corporate officer, and/or joint venture, and that each and every Defendant
3 ratified the acts of the co-Defendants.

4 11. Venue as to Defendants is proper in this judicial district, pursuant to
5 California Business and Professions Code section 17203 and Cal. Code Civ. Proc. §§ 395(a),
6 395.5. Defendants reside, maintain an office, transact business, have an agent, or are
7 otherwise found in the County of Los Angeles.

8 INTRODUCTORY STATEMENT

9 12. Being “rich and famous” does not translate anymore in being charitable,
10 compassionate, or kindhearted. Just a short 20 years ago, Oprah was giving away cars and
11 cash.¹ But today’s entertainment tycoons seem to only care about becoming richer and
12 living an even more opulent lifestyle, while duping their fans and admirers.² Now, in just
13 a short 20 years, the famous Kardashians and their associates **pretend** to give away cars
14 and cash.

15 13. For those who “want to win \$100,000, two first class tickets to Los Angeles
16 and a 3-night hotel stay in Beverly Hills, and shop like Kim Kardashian,” Defendants have
17 a solution: participate to a lottery. “It is our biggest prize ever,” states Kim K., referring to
18 a series of lotteries that she organized and promoted together with her family and her close
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21 ¹On September 13, 2004, to celebrate the 19th season of the Oprah Winfrey Show, Oprah
22 gave all 276 members of her studio audience a brand-new car and coined the phrase “You got a
23 car!” History.com Editors, *Oprah gives away nearly 300 new cars* (2010), [https://www.history.com/
24 this-day-in-history/oprah-gives-away-nearly-300-new-cars](https://www.history.com/this-day-in-history/oprah-gives-away-nearly-300-new-cars) (last visited Feb 15, 2022).

² Soteriou, S., 2022. *Here’s The Full Story Behind Those Bizarre Giveaways the Kardashians Keep
Doing On Instagram*. BuzzFeed. [https://www.buzzfeednews.com/
24 article/stephaniesoteriou/kim-kardashian-instagram-giveaway-full-story](https://www.buzzfeednews.com/article/stephaniesoteriou/kim-kardashian-instagram-giveaway-full-story) (last visited March 21, 2022).

1 friends.

2 14. *Make friends with the stars and follow the same people that the famous Scott Disick*
3 *follows, while earning a chance to shop like the rich,* was the message sent to hundreds of millions
4 of Instagram users by no other than the social media mega influencer, Kim Kardashian.

5 15. In order to win you have to “follow everyone Disick is following,” and, very
6 important, “make your profile public.”



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14 Screenshot from <https://www.instagram.com/letthelordbewithyou/> (Nov. 17, 2021)

15 16. But the reality is much grimmer. Kim K. and Disick are not giving away
16 anything. As part of this transaction, they are cashing in indecent amounts of money. They
17 are teaming up and, together with an Australian company (Curated), they are selling the
18 personal information of their followers.

19 17. Kim K. and Disick found a way to add to their impressive wealth by selling
20 personal information of their followers and duping their followers into allowing advertisers
21 post on their Instagram feed.

22 18. In just 3 days, without much effort, by perpetuating this scam, Kim K and
23 Disick are earning more money than the average American family earns in 3 years.

1 19. In fact, this is a family business, as not only Kim K. and Disick were involved
2 in this confidence scheme in the last 2 years, but also their friends and relatives: Kendal
3 Jenner, Kris Jenner, Kylie Jenner, Khloe Kardashian, Kourtney Kardashian, Sofie Richie
4 and Gretchen Christine Rossi promoted so called "giveaways," allegedly promoted by
5 Defendant Curated Businesses Pty Ltd (the promoter), a company registered in Australia
6 and licensed to run lotteries there (but not anywhere else).

7 20. The license that Curated has in Australia does not cover organizing lotteries
8 outside Australian territory, in the United States, or specifically in Florida and California.
9 And, no doubt, if the so-called "cash giveaways" are considered full scale lotteries in
10 Australia, they are lotteries, regardless of where the participants reside.

11 21. Even if the Defendants claim that lotteries are organized by the promoter in
12 Australia, often, the participants must enter through on an Instagram account belonging to
13 Disick, a person residing in California. The named Plaintiff entered the lottery that was
14 promoted by Kim K, a California resident and took place on Disick's account. The Plaintiff
15 understood this lottery to be in fact organized by Disick and promoted by Curated and Kim
16 K.

17 **SOCIAL MEDIA**

18 22. Social media emerged in the last years as a main source of information and
19 communication³ for billions of users.

20 23. There were an estimated 157 million Instagram users in the United States in
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23 ³ Fink, T., 2021. *Drivers of User Engagement in Influencer Branding*. [S.l.]: Springer
24 Fachmedien Wiesbaden, p.2.

1 2021⁴, while the platform engaged last year over 2 billion monthly users⁵.

2 24. In the last three years, Instagram has become one of the most popular ways
3 to influence consumer behavior on social media. Since 2017, Instagram has grown
4 tremendously, adding 100 million users every few months⁶. Around seven-in-ten Americans
5 ages 18 to 29 (71%) say they use Instagram.⁷

6 25. Having an Instagram account allows the user to watch news, interact with
7 friends, send and receive messages, video chat, shop and check-out, all without leaving the
8 app or opening a web browser.⁸

9 26. By following any particular Instagram profile, a user allows such account to
10 send updates, posts and stories **directly** into the user's Instagram feed, bypassing the spam
11 filters and privacy settings.

12 27. Also, by following a profile, the user allows direct messages from that profile
13 to appear directly in the user's Instagram inbox⁹, bypassing all spam or privacy filters.

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16 ⁴ Statista. 2021. *Leading countries based on Instagram audience size as of October 2021*:
17 <http://www.statista.com/statistics/578364/countries-with-most-instagram-users/> (last visited
18 Feb 11 2022).

19 ⁵ Rodriguez, S., 2021. *Instagram surpasses 2 billion monthly users while powering through a year*
20 *of turmoil*, <https://www.cnbc.com/2021/12/14/instagram-surpasses-2-billion-monthly-users.html>
21 (last visited Feb 11, 2022).

22 ⁶ Farhad Manjoo, *Why Instagram Is Becoming Facebook's Next Facebook* The New York Times,
23 April 26, 2017, [https://www.nytimes.com/2017/04/26/technology/why-instagram-is-becoming-
24 facebook-next-facebook.html](https://www.nytimes.com/2017/04/26/technology/why-instagram-is-becoming-facebook-next-facebook.html) (last visited June 17, 2020).

25 ⁷ Schaeffer, K., 2022. *7 Facts About Americans and Instagram*. Pew Research Center.
26 <https://pewrsr.ch/3FqryHE> (last visited Feb 11, 2022).

27 ⁸ Josh Constine, *Instagram launches SHOPPING checkout, charging sellers a fee*. TechCrunch.
28 <https://techcrunch.com/2019/03/19/instagram-checkout> (last visited September 7, 2021) and
29 Instagram. (n.d.). *Introducing Instagram video chat & more*. Instagram Blog.
30 [https://about.instagram.com/blog/announcements/introducing-instagram-video-chat-and-
31 more](https://about.instagram.com/blog/announcements/introducing-instagram-video-chat-and-more). (last visited September 7, 2021).

32 ⁹ Messages from accounts followed by a user are displayed in the user's inbox, while all the

1 28. Given the enormous reach of the social media platforms, and in an effort to
2 curb online behavior that ignores the law and uses the lack of enforcement as an excuse for
3 violating laws across jurisdictions, the FTC has published guidelines for influencers
4 regarding proper advertising practices¹⁰.

5 29. Indeed, the rapid growth of social media platforms allowed for lack of
6 regulation and oversight. Some 80% of social media users said they were concerned about
7 advertisers and businesses accessing the data they share on social media platforms, and 64%
8 said the government should do more to regulate advertisers¹¹.

9 30. In an ever-fast race to reach as many followers as possible and to quickly
10 monetize their presence on Instagram, some “influencers” have resorted to using loop
11 giveaways, “follow for follow” schemes, purchasing likes, or other similar “black hat”
12 methods, that are both illegal and a violation of Instagram policies¹², to artificially increase
13 the number of followers to their account.

14 31. Some unscrupulous “influencers” are acting as advertisers for hire, making it
15 a habit of posting fake reviews for sponsored products or failing to disclose the fact that they

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19 other messages have to be approved before appearing in inbox. See Instagram. (n.d.). *Introducing*
Features <https://help.instagram.com/1750528395229662> (last visited September 7, 2021).

20 ¹⁰ Federal Trade Commission. 2019. *Disclosures 101 for Social Media Influencers*. Available at:
https://www.ftc.gov/system/files/documents/plain-language/1001a-influencer-guide-508_1.pdf
(last visited Feb. 25, 2022).

21 ¹¹ Raine, L., 2022. *Americans’ complicated feelings about social media in an era of privacy concerns*.
22 [http://www.pewresearch.org/fact-tank/2018/03/27/americans-complicated-feelings-about-](http://www.pewresearch.org/fact-tank/2018/03/27/americans-complicated-feelings-about-social-media-in-an-era-of-privacy-concerns/)
[social-media-in-an-era-of-privacy-concerns/](http://www.pewresearch.org/fact-tank/2018/03/27/americans-complicated-feelings-about-social-media-in-an-era-of-privacy-concerns/) (last visited Feb. 15, 2022).

23 ¹² “Creators and publishers can only monetize content consumed by their natural, authentic
24 audience. This means creators and publishers may not engage in any behavior that artificially
boosts views or engagement.” Instagram Terms and Conditions, <https://help.instagram.com/116947042301556>. (last visited May 22, 2020).

1 were paid to create content displayed on their profile. More than often, these “influencers”
2 would advertise everything from alcohol to cannabinoids, from political ideas to
3 pornographic websites, to giveaways, as long as they are paid the obscene amounts they are
4 demanding.

5 32. In fact, the Defendants are involved in these unscrupulous methods of
6 “trading” followers. Defendants run illegal lotteries, ignore the FTC Guidelines, and omit
7 crucial and required information from their posts in order to convince unsuspecting
8 Instagram users to take part in their games of chance.

9 THE GIVEAWAYS

10 33. The giveaways satisfy the definition of a lottery under Australian, California,
11 and Florida law: there is a prize (of over US\$100,000), the element of chance (one lucky
12 winner is allegedly chosen at random) and consideration (users have to invest their time and
13 provide access to their Instagram feed, which allows advertisements from over seventy
14 advertisers to take over their accounts). The Plaintiff is one of the thousands of users that
15 entered this lottery.

16 34. The Defendants use fabulous cash prizes as incentives and run these so called
17 “cash giveaways” by asking users to like a plethora of unrelated accounts to enter in a game
18 of chance and win prizes with a total value of tens or hundreds of thousands of dollars. The
19 Plaintiff is one of these users.

20 35. While broadly disliked by the Instagram users¹³, the “giveaways” are in fact,
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23 ¹³ See Instagram. (n.d.). *What are recommendations on Instagram?* <https://help.instagram.com/313829416281232> (last visited Sep. 7, 2021).
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1 illegal lotteries.

2 36. These are not the typical “giveaways” where an internet user should enter an
3 email address for a chance to win a t-shirt. There are high-stakes lotteries with prizes rivaling
4 the ones offered by state lotteries. In order to win hundred of thousands of dollars in prizes,
5 the participants have to invest time and offer unfettered access to their social media data.

6 37. Despite being compensated for organizing and promoting the “giveaways,”
7 none of the Defendants in this case use the “paid partnership” tag required by the FTC when
8 promoting them. While some of them are using confusing tags like “#curatedpartner,” they
9 fail to be compliant with the FTC Rules found in 16 C.F.R. § 255.5 and the FTC guidelines
10 regarding advertising on social media.¹⁴

11 38. The named Plaintiff and thousands of similarly situated individuals
12 participate in these games of chance without receiving any basic information like the odds
13 of winning, how and when the drawing is done, who provides the prize, etc. They invest
14 their time and put in the effort to participate in these lotteries at the expense of forgone
15 alternatives and other opportunities.

16 39. Apparently, the winners are selected in Australia, while the lotteries
17 (recognized as such by the Defendants) are clearly aimed towards the United States. Unlike
18 other “giveaways” organized by foreign companies using local influencers and the local
19 currency, in this case, both the organizers and promoters are located in California, the prize
20 is listed US Dollars and the “winners” get to shop in Los Angeles, CA (no visa requirements
21 mentioned in the post). In fact, the so-called “winners,” posted on the Curated website are
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24 ¹⁴ Federal Trade Commission, *supra* note 11.

1 mainly from the United States.

2 40. Falsely trying to define themselves as legit and genuine, the Defendants are
3 also stating that they are donating funds to American charities. On information and belief,
4 little or no money reached the charities mentioned by the Defendants in their posts.

5 41. The Defendants are not screening the accounts that benefit from an artificial
6 increase in their followers, allowing Plaintiffs' data to be used by anybody willing to pay
7 their price. The so-called "giveaway sponsors," the beneficiaries of fake engagement, the
8 entities paying for the data and for the work performed by the Instagram users, have access
9 not only to the Plaintiff's Instagram feed, but they are also able to bypass the spam filters
10 and send messages directly in the Plaintiff's inbox.

11 42. The Defendants pocket most of the money they receive in exchange for the
12 user's data as well as the user's time and effort in following hundreds of accounts, and offer
13 lottery tickets in exchange for these personal services provided (the work and the user's data).

14 43. Invariably, even after investing their resources in following hundreds of
15 unrelated profiles and having their accounts invaded by strangers that the Plaintiffs would
16 not have followed other than to participate in the Defendants' giveaway, the Plaintiffs are
17 not winning anything, don't know who the winners are (except for some Instagram profiles,
18 often set as "private" by the time the "winner" is made public), while the Defendants
19 continue to make hundreds of thousands, if not millions of dollars perpetuating this scheme.

20 44. The Plaintiffs are getting their personal Instagram accounts "invaded" by
21 hundreds of advertisers, some of which are soliciting the Plaintiffs with potentially offensive
22 and unwanted content. The Plaintiffs' information is shared by these advertisers without
23 their knowledge or consent. The persistence and frequency of some advertisers amounts to
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1 hounding.

2 45. Personal social networking is a window to the world. As very well stated by
3 the FTC, social networking “enables people to stay up to date and share personal content
4 with friends and family and is an integral part of the daily lives of millions of Americans.”
5 Therefore, “personal social networking gives people a personalized social space in which
6 they can share content with their personal connections.” Complaint in *Federal Trade*
7 *Commission v. Facebook Inc.*, Case No. 1:20-cv-03590-CRC. U.S District Court, District of
8 Columbia.

9 46. As a result of participation in the Defendants’ “giveaways,” the Plaintiffs’
10 “personalized space” was invaded by advertisers providing persistent and unwanted content
11 as an intentional interference with the Plaintiffs’ interest in solitude.

12 THE FOLLOWERS

13 47. While Facebook and Instagram brought a multitude of cases against
14 companies selling fake followers¹⁵ this underground industry reinvented itself with yet
15 another illegal way of getting unwarranted engagement. Instead of having the “boots” doing
16 the work, the new actors require that actual Instagram users do the work for them in
17 exchange for a lottery ticket.

18 48. Indeed, the Defendants sell followers by the thousands. Anyone who needs
19 to have another 500k followers for their account, so their message goes louder and further,

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23 ¹⁵ See, for example *Facebook Inc. et al v. Laila Abou Trabi et al*, Case No. 3:20-cv-07348, U.S
24 District Court, Northern District of California. See also *Facebook Inc. et al v. Nikolay Holper*, Case No.
3:20-cv-06023-JCS, U.S District Court, Northern District of California.

1 can pay US\$25,000.00 and gets to harass 500,000 or more people, that have no interest in
2 their account or their products. For only a US\$ 0.05 to US\$ 0.10 per follower, anyone can
3 get as many as they can afford.

4 49. But the Defendants cannot do all that work by themselves, they cannot follow
5 on behalf of other people, and cannot click the follow button hundreds of millions of times.
6 They are “delegating” this job to their fans and Instagram followers that, in turn, start
7 clicking and clicking, being unaware that they are allowing all these shady accounts¹⁶ to
8 enter their daily life, to send them messages, to post in their feed.

9 50. The giveaways are organized by Scott Disick on his Instagram account and
10 by Curated on their Instagram account. The influencers that promote these games of chance
11 include Kimberly Kardashian West, along with others such as Kendal Jenner, Kris Jenner,
12 Kylie Jenner, Khloe Kardashian, Kimberly Kardashian West, Kourtney Kardashian, Sofie
13 Richie, Gretchen Christine Rossi and Christine Quinn.

14 **THE BENEFIT CONFERRED TO DEFENDANTS**

15 51. One of the main indicators of social media influence is the number of
16 followers on an Instagram account and it is one of the most important metrics that business
17 and followers use in evaluating an accounts influence.

18 52. Fake followers undermine the influencer economy and erode consumer and
19 business trust in the information provided by otherwise scrupulous influencers.

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22 ¹⁶ *Forbes* found that a now-famous anti-vaccine militant used Instagram giveaways in order
23 to boost his social media reach. See. Weimer, J., 2021. *Gucci Bags, An Instagram Giveaway and a*
24 *Misinformation-Happy Doctor*. (online) *Forbes*. <https://www.forbes.com/sites/jacksonweimer/2021/10/06/how-instagram-celebrity-giveaways-help-spread-covid-19-conspiracies/> (last visited November 8, 2021).

1 53. Given the lack of legal enforcement in the social media field, Defendants
2 decided to take advantage of unscrupulous successful “influencers” that would like to appear
3 bigger than they really are and promote their products to thousand more unsuspecting
4 potential buyers.

5 54. Defendants are “selling” followers. Each time enough buyers are willing to
6 purchase for the price they offer, Defendants organize a lottery to make sure the work is
7 done by innocent Instagram users. And the reward in exchange for the work done by the
8 Instagram users and aggravation related to having their Instagram invaded by strangers is a
9 lottery ticket. Kim K and Disick promoted a lottery with a jackpot of \$120,000. In the end,
10 like Alexander Hamilton said: “Everybody, almost, can and will be willing to hazard a
11 trifling sum for the chance of a considerable gain.”¹⁷

12 55. Defendants are running their illegal lotteries on a recurring basis and such
13 lotteries are being promoted by Curated and alternatively by each of the other Defendants.
14 However, all the new lotteries are also mentioning past lotteries in order to convince
15 Instagram users that these games of chance are reliable and legitimate. The website
16 maintained by Curated, shows that more than one Kardashian promoted these lotteries:



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¹⁷ “Idea Concerning a Lottery, [January 1793],” *Founders Online*, National Archives, <https://founders.archives.gov/documents/Hamilton/01-13-02-0291>. [Original source: *The Papers of Alexander Hamilton*, vol. 13, November 1792–February 1793, ed. Harold C. Syrett. New York: Columbia University Press, 1967, pp. 518–521.]

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2 Screenshot from <https://www.curatedbusinesses.com> (Feb. 15, 2022)

3 **THE NAMED PLAINTIFF**

4 56. On or around April 2020, Pop saw that Kim K. is organizing a “giveaway”
5 with total prizes of US\$120,000 in partnership with Disick.

6 57. This “giveaway” was hosted by Scott Disick on his Instagram account. The
7 post also mentioned Curated as “promoter.” *Could this be our best prize EVER?* is rhetorically
8 asking Disick in his post, referring to the past giveaways organized by him and other
9 Defendants.

10 58. In order to check if the lottery is legitimate, Pop visited Curated website and
11 also reviewed what he believed to be the honest opinion of various famous influencers, most
12 of them related or friends of Disick and Kim K. The opinions expressed by influencers, all
13 named as defendants in this lawsuit, induced Pop to enter the lottery.

14 59. It clearly and reasonably appeared to Pop that this is just one in a series of
15 lotteries organized and promoted by: Curated Businesses Pty Ltd, Scott Disick, Kendal
16 Jenner, Kris Jenner, Kylie Jenner, Khloe Kardashian, Kimberly Kardashian West,
17 Kourtney Kardashian, Sofie Richie, Gretchen Christine Rossi.

18 60. Pop was able to see posts and testimonials from all the above Defendants
19 advertising the giveaways, and such posts and testimonials induced him to participate in the
20 “giveaway.” Most of the defendants organized and advertised more than just one lottery.

21 61. All of the influencers Pop saw promoting these lotteries were stating that the
22 “giveaways” are a straightforward way of earning some money, some of them even
23 mentioning that it takes only 90 seconds to enter.

1 62. To participate in said game of chance, Pop was required to, and indeed did,
2 follow all the profiles that the Defendants requested that he follows. Also, as requested, Pop
3 changed his privacy setting and allowed his profile to be public until the prize was awarded.
4 It took much longer than 90 seconds (it took approximately 3 minutes) to follow all the
5 accounts in the list and Pop did it only to participate in defendant’s lotteries, not because he
6 found anything particularly of interest in those accounts.

7 63. Pop did not receive the alleged right to enter into the lottery without
8 consideration. By following all those unrelated accounts and changing the privacy settings
9 of his Instagram to “public,” Pop provided the Defendants and the accounts he followed
10 access to his data. Data is has recently become one of the most important commodities in
11 the world.¹⁸

12 64. Right after following them, each of those accounts started to send unsolicited
13 updates and advertising for products unrelated to Pop’s interests in Pop’s Instagram feed.
14 Since Disick’s post about the lottery required that participants follow these accounts and
15 “are made PUBLIC” until the prize is awarded, Pop had no choice but see how his
16 Instagram feed is taken over by strangers that he had no interest in.

17 65. Further, because of his participation in the Defendants’ lotteries, Pop’s
18 Instagram account started to become the target of unsolicited direct messages and in-feed
19 posts, many of them considered offensive by Pop, and most of them containing unwanted
20 content.

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23 ¹⁸ Michelle Evans, *Why Data Is The Most Important Currency Used In Commerce Today*,
24 Forbes, Mar 12, 2018. <https://www.forbes.com/sites/michelleevans1/2018/03/12/why-data-is-the-most-important-currency-used-in-commerce-today/?sh=26c5e72954eb> (last visited April 14, 2021).

1 66. Little did Pop knew Defendants received direct cash or other benefits for each
2 person on the list that Pop and the class members similarly allowed to post on their feed.

3 67. In fact, each time Pop clicked on the “Follow” button for one of the
4 advertisers on the list, Pop was supposed to gain the chance to win a money prize but instead,
5 the Defendants became richer at the expense of Pop and thousands of others in his position.

6 68. Pop was never contacted back with the results of the lottery and he never
7 received any prize. Not only did Pop spend time following 75 unrelated accounts, he had to
8 continue to parse through his feed and these accounts to determine who had won the lottery,
9 and how and when the prize was awarded. During all this time Pop’s privacy settings were
10 set to “public.” Disick deleted any reference to this giveaway a few days after he originally
11 posted it.

12 69. The named Plaintiff researched the profiles of all these influencers and their
13 statements about the giveaways in order to decide and participate in the giveaway.

14 70. The “endorsements” provided by each of the Defendants made it clear that
15 all these celebrities are involved in organizing the giveaway rather than being just paid
16 spokespersons.

17 71. The named Plaintiff relied in good faith on the representations made by the
18 above influencers in order to decide to participate in the giveaways.

19 72. The named Plaintiff is a resident of Florida and the Defendants specifically
20 directed their lotteries to Florida residents as at least two of the alleged “winners” of these
21 illegal lotteries publicly state that they are from Florida.

22 73. In fact, the actual website where Disick advised the participants to look for
23 “previous winners” states that at least two such “previous winners” are from Florida:
24



Screenshot from <https://www.curatedbusinesses.com/pages/winners-2020> (Feb. 15, 2022)



Screenshot from <https://www.curatedbusinesses.com/pages/winners-2019-all> (Feb. 15, 2022)

74. The Defendants knew that significant numbers of their followers are from Florida and knowingly advertised the lotteries in Florida. Florida and California are, in fact the geographical territories with the most alleged winners in the entire world.

75. The Defendants received money or other benefits from the influencers on the list of accounts to follow (“beneficiaries”). They failed to disclose their commercial interest in giveaways and promoted content that they knew (or should have known) was inaccurate.

76. Defendants engaged in deceptive and unfair acts in the conduct of their commercial activity in both Florida and California.

1 77. While all the Defendants are making millions of dollars, the Plaintiff lost his
2 time in order to enter in the lottery, to research Instagram profiles, and to constantly looked
3 for the winner. The Plaintiff also expended time to try and unfollow some of the accounts
4 once he discovered that the giveaways are scams, without much success.

5 78. The Plaintiff also had to provide his personal information to Defendants
6 through following them on Instagram and changing his privacy settings to “public.” In doing
7 so, he provided the Defendants with a very valuable commodity.

8 **CLASS ACTION ALLEGATIONS**

9 79. The Plaintiffs incorporate by reference all previous paragraphs of this
10 Complaint as if fully re-written herein.

11 80. Pop brings this action on behalf of himself, and all others similarly situated as
12 a class action pursuant to Cal. Code Civ. Proc. § 382.

13 81. Pop seeks to represent two classes composed of and defined as follows:

14 82. California Class: All Instagram users that entered the Defendants’ Instagram
15 giveaways.

16 83. Florida Subclass: All Florida residents that entered the Defendants’ Instagram
17 giveaways in Florida

18 84. The action has been brought and may be properly maintained as a class action
19 under the provisions of Cal. Code Civ. Proc. § 382, because there is a well-defined
20 community of interest in the litigation and the proposed classes are easily ascertainable.

21 85. The potential members of each Class as defined are so numerous that joinder
22 of all the members of either Class is impracticable. The number of members in each Class is
23 great, but not so great as to make the class unmanageable. It therefore is impractical to join
24

1 each Class member as a named plaintiff. Accordingly, utilization of a class action is the most
2 economically feasible means of determining the merits of this litigation.

3 86. Despite the size of the proposed Classes, the Class and Subclass members are
4 readily ascertainable through an examination of the records that the Defendants are required
5 by law to keep. Likewise, the dollar amount owed to each Class member is readily
6 ascertainable by an examination of those same records and other third party's records.

7 87. There are questions of law and fact common to the Class and Subclass that
8 predominate over any questions affecting only individual Class members. These common
9 questions of law and fact include, without limitation: are the giveaways illegal lotteries
10 barred by statute both in Florida and California, and are the giveaways done in violation of
11 unfair competition and other consumer protection statutes in Florida and California?

12 88. There is a well-defined community of interest in the questions of law and fact
13 common to the Class members for each Class and Subclass.

14 89. The claims of the named Plaintiff are typical of the claims of each Class and
15 Subclass, which claims all arise from the same general operative facts, namely, the
16 Defendants operated and nationally advertised lotteries that are illegal both in California
17 and Florida. Plaintiff and all members of the Classes sustained injuries and damages arising
18 out of and caused by the Defendants' common course of conduct in violation of laws,
19 regulations that have the force and effect of law, and statutes as alleged herein. Plaintiff has
20 no conflict of interest with the other Class members and is able to represent the Class
21 members' interests fairly and adequately.

22 90. Plaintiff will fairly and adequately represent and protect the interests of the
23 members of each Class. Counsel who represents Plaintiff are competent and experienced in
24

1 the litigation of large class actions. Counsel is national law firm with experienced attorney
2 licensed both in Florida and California. Neither Plaintiff nor his counsel have any conflict
3 with either Class or Subclass.

4 91. A class action is superior to other available means for the fair and efficient
5 adjudication of this controversy. Individual joinder of all Class or Subclass members is not
6 practicable, and questions of law and fact common to the Class and Subclass predominate
7 over any questions affecting only individual members of the Class. Each member of the
8 Class has been damaged and is entitled to recovery by reason of the Defendants' illegal acts.
9 Class action treatment will allow those similarly situated persons to litigate their claims in
10 the manner that is most efficient and economical for the parties and the judicial system.
11 Plaintiff is unaware of any difficulties that are likely to be construed in the management of
12 this action that would preclude its maintenance as a class action. The disposition of all
13 claims of the members of the Class in a class action, rather than in individual actions,
14 benefits the parties and the Court. The interest of the Class Members in controlling the
15 prosecution of separate claims against the Defendants is small when compared with the
16 efficiency of a class action.

17 92. California law applies to every member of the California Class regardless
18 where in the United States the Class member reside. California law may be constitutionally
19 applied to the claims that the California Class members have against the Defendants.
20 California has a significant contact with the claims and applying California law is not
21 arbitrary or unfair. Also, most, or all of the Defendants permanently reside in California and
22 the challenged conduct emanate out of California.

23 93. Florida law applies to the members of the Florida Subclass since they are
24

1 residing in Florida and entered the “giveaways” in Florida. Applying Florida protection
2 statutes to the members of the Florida Subclass is not arbitrary or unfair.

3 **FIRST CAUSE OF ACTION**
4 **Negligent Misrepresentation**
5 **(Common Law)**
6 **(Against all Defendants)**

7 94. The Plaintiffs incorporate by reference paragraphs 1-93 of this Complaint as
8 if fully re-written herein. The named Plaintiff asserts this count on his own behalf and on
9 behalf of the California Class, as defined above and pursuant to Cal. Code Civ. Proc. § 382.

10 95. In convincing the Plaintiffs to participate in cash giveaways, the Defendants
11 made representation that they knew to be false, or negligently failed to examine the veracity
12 of the affirmations.

13 96. To wit, the Defendants promoted their illegal lotteries on Instagram, as bona
14 fide “giveaways,” inviting participants to get involved in this process. The Defendants
15 negligently failed to disclose any financial compensation they received to promote and
16 organize the lotteries. The Plaintiffs relied on the representations and believed this process
17 to be fair and legal. As such, they participated in the lotteries.

18 97. As a result of the Defendants’ negligent misrepresentations, the members of
19 the California Class suffered injuries, including but not limited to loss of time and emotional
20 anguish generated by the intrusion upon their seclusion.

21 98. Due to the Defendants’ conduct, Plaintiff is entitled to damages according to
22 proof, but in no event less than \$1,700,000.00

23 **SECOND CAUSE OF ACTION**
24 **Operation Of Illegal Florida Game Promotions With Prizes In Excess Of \$5,000**
Violation of § 849.094, Fla. Stat and § 501.211 Fla. Stat
(Against all Defendants)

1
2 99. The Plaintiffs incorporate by reference paragraphs 1-93 of this Complaint as
3 if fully re-written herein. The named Plaintiff asserts this count on his own behalf and on
4 behalf of the Florida Subclass, as defined above, and pursuant to Cal. Code Civ. Proc. § 382.

5 100. There is no doubt that the Defendants are organizing a lottery aimed at
6 Florida Instagram users, where the prize is over US\$100,000.00. In fact, the Defendants
7 have a lottery license in Australia, but holding such license does not render the Defendants
8 compliant with the requirements of § 849.094, Fla. Stat.

9 101. The lotteries organized and promoted by the Defendants provide for a prize,
10 offered on a basis of chance, in exchange for allowing a high number of Instagram
11 advertisers to place content in the participant's feed.

12 102. This lottery is aimed at Florida participants since it is promoted on Instagram
13 to Florida users. In fact, two of the few alleged winners to date are located in Florida, and
14 Florida seems to be among the few geographical areas with more than one "winner."

15 103. The Defendants used misleading statements and failed to disclose the
16 financial interests of the spokespeople in violation of § 849.094(2)(d).

17 104. The Defendants failed to make public and file with the Florida Department
18 of Agriculture and Consumer Services a copy of the rules and regulations of the game
19 promotion and a list of all prizes and prize categories offered at least seven (7) days before
20 the commencement of the game promotion in violation of § 849.094(3).

21 105. The Defendants failed to establish a trust account, in a national or state-
22 chartered financial institution, with a balance sufficient to pay or purchase the total value of
23 all prizes offered, in violation of § 849.094(4)(a).

24 106. The Defendants failed to provide the Florida Department of Agriculture and

1 Consumer Services or publicly publish a certified list of the names and addresses of all
2 persons, whether from Florida or from another state, who have won prizes which have a
3 value of more than \$25, the value of such prizes, and the dates when the prizes were won,
4 in violation of § 849.094(5).

5 107. The Defendants also failed to comply or blatantly violated other subsections
6 of § 849.094 Fla. Stat. by organizing and promoting games of chance in Florida with total
7 prizes in excess of \$5,000.

8 108. A violation of § 849.094, Fla. Stat., or soliciting another to commit an act that
9 violates the section, also constitutes a deceptive and unfair trade practice. § 849.094(11), Fla.
10 Stat. Therefore, Plaintiffs assert these claims under FDUTPA, § 501.211 Fla. Stat.

11 109. As a person aggrieved by the statutory violation, the named Plaintiff is also
12 entitled to a declaratory judgment that Defendants' acts and practices violate the law.

13 110. Due to Defendants' conduct, Plaintiffs are entitled to damages, injunctive
14 relief and attorney's fees and costs, according to proof.

15 **THIRD CAUSE OF ACTION**
16 **Operation Of Illegal Florida Lotteries**
17 **Violations of § 849.09, Fla. Stat enforced by § 72.104, Fla. Stat.**
(Against all Defendants)

18 111. The Plaintiffs incorporate by reference paragraphs 1-93 of this Complaint as
19 if fully re-written herein. The named Plaintiff asserts this count on his own behalf and on
20 behalf of the Florida Subclass, as defined above, and pursuant to Cal. Code Civ. Proc. § 382.

21 112. The Defendants are organizing lotteries in Florida in violation of § 849.09 Fla.
22 Stat. by promoting and conducting an illegal lottery in Florida.

1 113. The lottery in which the named Plaintiff participated was not an isolated
2 incident. The Defendants are organizing the lotteries on a recurring basis, at least twice a
3 year in a well-established and predictable pattern, intending all along to commit these acts
4 while maintaining control over the entities involved and benefiting from this illegal activity.

5 114. Such lotteries provide for a prize, offered on a basis of chance, in exchange
6 for allowing Instagram advertisers to place content in the participant's feed.

7 115. Pursuant to § 772.103, Fla. Stat., a pattern of violations of § 849.09, Fla. Stat.,
8 is declared unlawful. As the Defendants are in violation of § 849.09, Fla. Stat., and the
9 Plaintiffs were injured by the violation, each Plaintiff in the Florida Subclass is entitled to
10 minimum damages of \$200.00 as per Fla. Stat. § 772.104.

11 116. Due to Defendants' conduct, Plaintiffs are entitled to damages according to
12 proof, but in no event less than \$20,000,000.00 from each defendant.

13 **FOURTH CAUSE OF ACTION**
14 **Violation of Florida's Deceptive and Unfair Trade Practices Act**
15 **Violations of § 5(a) of 15 U.S.C. § 45(a) as violations of § 501.211 Fla. Stat**
(Against all Defendants)

16 117. The Plaintiffs incorporate by reference paragraphs 1-93 of this Complaint as
17 if fully re-written herein. The named Plaintiff asserts this count on his own behalf and on
18 behalf of the Florida Subclass, as defined above, and pursuant to Cal. Code Civ. Proc. § 382.

19 118. For a fee, the Defendants provided Instagram users with the means and
20 instrumentalities for the commission of deceptive acts and practices.

21 119. Therefore, the Defendants' acts and practices constitute deceptive acts or
22 practices in violation of Section 5(a) of 15 U.S.C. § 45(a).

1 120. Violations of 5(a) of 15 U.S.C. § 45(a) represent per se violations of the
2 Florida's Deceptive and Unfair Trade Practices Act (FDUTPA) as interpreted by the FTC.

3 121. The Defendants engaged in a deceptive act or unfair practice, by engaging in
4 various statutory violations and failure to disclose material connections.

5 122. Such practices as the ones employed by the Defendants are illegal, unethical,
6 unscrupulous, and likely to mislead any consumer acting reasonably in the circumstances,
7 to the Subclass members' detriment.

8 123. The Defendants' engagement in these unfair practices caused the Plaintiffs to
9 suffer a loss.

10 124. In the alternative, pursuant to § 501.211(1), Fla. Stat., as the Plaintiffs are
11 aggrieved by the above-mentioned violation of FDUTPA, they are entitled to obtain a
12 declaratory judgment that the Defendants' practice violates the law and to enjoin the
13 defendants as they have violated, are violating, and it is likely to violate the Act in the future.

14 125. The Plaintiffs also request injunctive relief. Absent injunctive relief by this
15 Court, the Defendants are likely to continue to injure consumers, reap unjust enrichment,
16 and harm the class members.

17 126. The Plaintiff also requests attorney fees pursuant to § 501.2105, Fla. Stat.

18 **FIFTH CAUSE OF ACTION**
19 **Violation Of the Consumers Legal Remedy Act. Cal. Civ. Code. §§ 1750, et seq.**
20 **(Against all Defendants)**

21 127. The Plaintiffs incorporate by reference paragraphs 1-93 of this Complaint as
22 if fully re-written herein. The named Plaintiff asserts this count on his own behalf and on
23 behalf of the California Class, as defined above and pursuant to Cal. Code Civ. Proc. § 382.
24

1 128. Defendants are each a "person" within the statutory meaning of Cal. Civ.
2 Code § 1761(c).

3 129. By offering the right to participate in the lottery (lottery tickets) in exchange
4 for the consumer data and for the time and effort expended in following numerous Instagram
5 profiles, Defendants provided "goods" (lottery tickets) within the meaning of Cal. Civ. Code
6 §§ 1761(a), 1770.

7 130. In the alternative, if the right to participate in the lottery does not constitute a
8 "good" under Cal. Civ. Code §1761(a), it constitutes a "service" under Cal. Civ. Code
9 §1761(b).

10 131. Pop and members of the California Class are "consumers" within the meaning
11 of Cal. Civ. Code §§ 1761(d), 1770, and have engaged in a "transaction" within the meaning
12 of Cal. Civ. Code §§ 1761(e), 1770.

13 132. As set forth herein, Defendants' acts and practices, undertaken in transactions
14 intended to result and which did result in the transfer of consumer data to Defendants in
15 exchange for the right to participate in the lottery, violate §1770 of the Consumers Legal
16 Remedies Act in that:

17 133. Defendants passed off the goods and services (lottery tickets) of Curated as
18 the goods and services of another;

19 134. Defendants misrepresented the source, sponsorship, approval, or certification
20 of the goods or services;

21 135. Defendants misrepresented the affiliation, connection, or association with, or
22 certification by, another;

1 136. Defendants represented that the goods or services have sponsorship, approval,
2 characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person
3 has a sponsorship, approval, status, affiliation, or connection that the person does not have;

4 137. Defendants advertised goods or services with intent not to sell them as
5 advertised; and

6 138. Defendants represented that the lottery confers or involves rights, remedies,
7 or obligations that it does not have or involve, or that are prohibited by law.

8 139. Pursuant to the provision of Cal. Civ. Code §1780, Plaintiffs seek an order
9 enjoining Defendants from the unlawful practices described herein, a declaration that
10 Defendants' conduct violates the Consumers Legal Remedies Act, and attorneys' fees and
11 costs of litigation.

12 **SIXTH CAUSE OF ACTION**
13 **Violations Of California's Unlawful Business Practices Act, Cal. Bus. & Prof. Code §**
14 **17200. et. seq**
(Against All Defendants)

15 140. The Plaintiffs incorporate by reference paragraphs 1-93 of this Complaint as
16 if fully re-written herein. The named Plaintiff asserts this count on his own behalf and on
17 behalf of the California Class, as defined above, and pursuant to Cal. Code Civ. Proc. § 382.

18 **Unfair And Fraudulent Competition**

19 141. Defendant has engaged in unfair competition within the meaning of Cal. Bus.
20 & Prof. Code §§17200, et seq., because Defendants' conduct is unlawful, unfair, and/or
21 fraudulent, as herein alleged.

1 142. Representative Plaintiff, the Class Members, and Defendants are each a
2 "person" or "persons" within the meaning of § 17201 of the California Unfair Competition
3 Law ("UCL").

4 143. For a fee, the Defendants provided Instagram users with the means and
5 instrumentalities for the commission of deceptive acts and practices.

6 144. Defendants advertised the giveaways without properly disclosing their
7 financial interest and such acts and practices constitute deceptive acts or practices in
8 violation of Section 5(a) of 15 U.S.C. § 45(a).

9 145. A violation of Section 5(a) of 15 U.S.C. § 45(a) represents a per se violation
10 of the California Unfair Competition Law ("UCL").

11 **Unlawful Competition**

12 146. The UCL is, by its express terms, a cumulative remedy, such that remedies
13 under its provisions can be awarded in addition to those provided under separate statutory
14 schemes and/or common law remedies. Plaintiffs hereby incorporate by reference all prior
15 causes of action into this cause of action.

16 147. Further, the acts of Defendants are unlawful as they violate the following
17 section of the California Penal Code:

18 148. The acts of Defendants constitute an illegal lottery as defined by section 319
19 of the California Penal Code;

20 149. The acts of Defendants constitute the illegal aid or assistance in a lottery as
21 defined by section 322 of the California Penal Code;

22 150. The acts of Defendants constitute an illegal endless chain scheme as defined
23 by section 327 of the California Penal Code.

1 157. It is an equitable principle that no one should be allowed to profit from his
2 own wrong, therefore it would be inequitable for the Defendants to retain said benefit, reap
3 unjust enrichment.

4 158. Since the Defendants unjustly enriched themselves at the expense of the
5 Instagram users in the California Class. the Plaintiffs request the disgorgement of these ill-
6 gotten money.

7 159. Due to Defendants' conduct, Plaintiff is entitled to damages according to
8 proof, but in no event less than \$5,000,000.00

9 **EIGHTH CAUSE OF ACTION**
10 **Aiding and Abetting**
11 **(Common Law, in the Alternative)**
12 **(Against all Defendants)**

13 160. The Plaintiffs incorporate by reference paragraphs 1-93 of this Complaint as
14 if fully re-written herein. As set forth above, the Plaintiff asserts this count on her own behalf
15 and on behalf of all other similarly situated Instagram users, members of the California
16 Class.

17 161. Under California law, liability may be imposed on one who aids and abets the
18 commission of a tort or statutory violation.

19 162. By promoting an illegal lottery on their social media platforms, the
20 Defendants provided assistance to the lottery organizers. Such assistance was a substantial
21 factor in the commission of torts and statutory violations.

22 163. Plaintiff and the Class members seek to enjoin further unlawful, unfair, and
23 illegal acts or practices and for all other relief allowed under California law.

24 **PRAYER FOR RELIEF**

164. WHEREFORE, the Plaintiff Alin Pop, respectfully requests that judgment be

1 entered in his favor and in favor of those similarly situated as follows:

- 2 i) Certifying and maintaining this action as a class action, with named Plaintiff
- 3 as designated class representative and with his counsel appointed as class counsel;
- 4 ii) Declaring Defendants in violation of each of the counts set forth above;
- 5 iii) Awarding Plaintiff and those similarly situated statutory, compensatory, and
- 6 treble damages;
- 7 iv) Awarding Plaintiff and those similarly situated liquidated damages;
- 8 v) Order the disgorgement of ill-gotten monies;
- 9 vi) Awarding the named Plaintiff a service award;
- 10 vii) Awarding attorneys' fees;
- 11 viii) Awarding costs; and
- 12 ix) Awarding such other and further relief as the Court may deem just and proper.

13 **JURY DEMAND**

14 Plaintiff, individually and on behalf of the putative Class, demands a trial by jury on
15 all issues so triable.

16 DATED: September 14, 2022

17 Respectfully Submitted,

18 **PRACTUS LLP**

19 /s/ Bernard Kornberg

20 Bernard J. Kornberg
21 Steven E. Young
22 Bogdan Enica (*pro hac vice* forthcoming)

23 *Counsel for the Plaintiff and the Putative Class*

24