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8 *Attorneys for Plaintiff*
9 *Bruce Gray*

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

12 BRUCE GRAY, an individual,

13
14 Plaintiff,

15 v.

16 ELYSIUM HEALTH, INC., a Delaware corporation;
and DOES 1 through 10, inclusive,

17 Defendants.
18

CASE NO.:

**COMPLAINT FOR VIOLATIONS OF
THE CALIFORNIA CONSUMER
LEGAL REMEDIES ACT, CAL. CIV.
CODE §§ 1750, ET SEQ.**

*(Filed with Plaintiff's CLRA Venue
Affidavit; Jury Trial Demanded)*

1 Plaintiff Bruce Gray (“Plaintiff”) complains and alleges as follows based on personal knowledge
2 as to himself, on the investigation of his counsel, and on information and belief as to all other matters.

3 **INTRODUCTION AND SUMMARY OF CLAIMS**

4 1. Elysium Health, Inc. (“Elysium” or “Defendant”) has aggressively employed deceptive
5 business practices with respect to its nutritional supplements, including by locking its customers into a
6 monthly subscription model that violates California’s Automatic Renewal Law (the “ARL”), Cal. Bus. &
7 Prof. Code §§ 17600, *et seq.*

8 2. The ARL requires companies like Elysium to, among other things, (a) clearly and
9 conspicuously explain the “automatic renewal offer terms,” (b) provide a “cost-effective, timely, and easy-
10 to-use mechanism for cancellation,” and (c) “provide an acknowledgment that includes the automatic
11 renewal offer terms or continuous service offer terms, cancellation policy, and information regarding how
12 to cancel in a manner that is capable of being retained by the consumer.” Elysium does none of these
13 things.

14 3. Plaintiff is a California consumer (as defined by California Civil Code § 1761(d)) who, on
15 June 28, 2021, purchased Elysium’s “Matter” from his home in Los Angeles, California. Plaintiff paid
16 \$50.00. After this initial transaction, however, Elysium enrolled Plaintiff in an automatic subscription
17 program, charging him another \$50.00 on July 26, 2021, without prior notice.

18 4. Worse, and on information and belief, because Plaintiff accidentally entered his address
19 incorrectly when making his purchase (on June 28, 2021), Elysium received notice that the “Matter”
20 Plaintiff ordered was returned as “undeliverable.” Even still, Elysium billed Plaintiff a second time on
21 July 26, 2021, without first making any attempt to contact him to make sure he received the first shipment,
22 or to verify the second order would ship to the correct address.

23 5. After two months, Plaintiff was left with two charges on his credit card for over \$100, no
24 products, and no apologies from Elysium. Elysium never even bothered to properly inform Plaintiff of
25 how to cancel the recurring charge Elysium was happy to take without providing any goods in return.

26 6. As a result of Elysium’s ARL violations, Plaintiff seeks actual, consequential, punitive,
27 and statutory damages, as well as mandatory attorneys’ fees and costs, against Defendants.

28 ///

1 **JURISDICTION AND VENUE**

2 7. Subject matter jurisdiction is proper in this Court because the amount in controversy is
3 within this Court’s jurisdictional limit.

4 8. This Court has personal jurisdiction over Elysium because Elysium conducts substantial
5 business in Los Angeles County, California.

6 9. Venue is proper in the Los Angeles County Superior Court pursuant to Code of Civil
7 Procedure, §§ 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this County.
8 Elysium conducted and continues to conduct business in this County as it relates to (a) the sale of its
9 products, and (b) its automatic renewal and continuous service offers.

10 10. Elysium has sufficient minimum contacts in the State of California or otherwise
11 purposefully avails itself of the California market. Exercising jurisdiction over Elysium would be
12 consistent with traditional notions of fair play and substantial justice.

13 **PARTIES**

14 11. Plaintiff is and at all relevant times mentioned was both a resident of Los Angeles County,
15 California and a “consumer,” as defined by Cal. Civ. Code § 1761(d) and Cal. Bus. & Prof. Code §
16 17601(d). Plaintiff’s CLRA Venue Affidavit is attached to this Complaint as **Exhibit A**.

17 12. Elysium is a Delaware corporation with its principal place of business in New York, New
18 York. Elysium is and at all relevant times mentioned was a “person,” as defined by Cal. Civ. Code §
19 1761(c). Elysium sells a number of dietary supplements on its website, including through subscription-
20 based offers.

21 **FACTUAL ALLEGATIONS**

22 13. On or about June 28, 2021—from his residence in Los Angeles, California, and through
23 Elysium’s website (<https://www.elysiumhealth.com/>)—Plaintiff purchased a product called “Matter.”

24 14. Elysium’s automatic renewal and continuous service offers are unlawful. Among other
25 things, Elysium (a) enrolls consumers in automatic renewal and continuous service subscriptions without
26 providing clear and conspicuous disclosures about the program or the associated charges; (b) charges
27 consumers’ credit and debit cards without first obtaining their “affirmative consent” to the charge; (c) fails
28 to provide a permanently retainable post-transaction acknowledgment that allows cancellation before

1 payment; and (d) fails to provide a cost-effective, timely, and easy-to-use mechanism for cancellation. As
2 a result of these ARL violations, Elysium has violated the CLRA. *See, e.g., King v. Bumble Trading, Inc.*,
3 393 F.Supp.3d 856, 870 (N.D. Cal. 2019).

4 15. Elysium has also violated the CLRA because (a) it “[u]ses[] deceptive representations . . .
5 in connection with [its] services” and “[a]dvertis[es] . . . [its] services with [the] intent not to sell them as
6 advertised.” *See* Cal. Civ. Code §§ 1770(a)(4) & (9).

7 16. Plaintiff paid \$50.00 for “Matter.” After this initial transaction, however, Elysium enrolled
8 Plaintiff in an automatic subscription program, charging him another \$50.00 on July 26, 2021.

9 17. Worse, and on information and belief, because Plaintiff accidentally entered his address
10 incorrectly when making his purchase (on June 28, 2021), Elysium received notice that the “Matter”
11 Plaintiff ordered was returned as “undeliverable.” Even still, Elysium billed Plaintiff a second time on
12 July 26, 2021, without first making any attempt to contact him to make sure he received the first shipment,
13 or to verify the second order would ship to the correct address.

14 18. The ARL requires companies like Elysium to clearly and conspicuously explain “automatic
15 renewal offer terms,” including by providing the following clear and conspicuous disclosures:

- 16 (a) that the subscription or purchasing agreement will continue until the consumer cancels;
- 17 (b) the description of the cancellation policy that applies to the offer;
- 18 (c) the recurring charges that will be charged to the consumer’s credit or debit card or payment
19 account with a third party as part of the automatic renewal plan or arrangement, and that
20 the amount of the charge may change, if that is the case, and the amount to which the
21 charge will change, if known;
- 22 (d) the length of the automatic renewal term or that the service is continuous, unless the length
23 of the term is chosen by the consumer; and
- 24 (e) the minimum purchase obligation, if any.

25 *See* Cal. Bus. & Prof. Code § 17601(b)(1) – (5).

26 19. None of the above disclosures were provided to Plaintiff.

27 20. Elysium also failed to provide a means for Plaintiff to cancel by using a “cost-effective,
28 timely, and easy-to-use mechanism for cancellation.” *Id.*, § 17602(b).

1 21. Critically, the ARL requires the automatic renewal offer terms must be presented to the
2 consumer both:

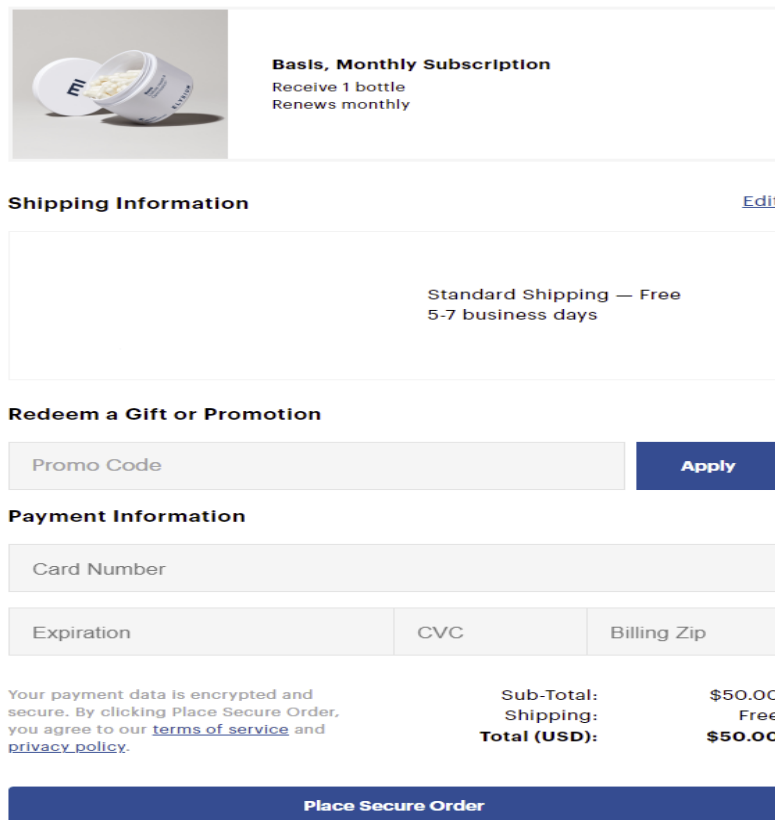
3 (a) before the purchasing contract is fulfilled, and in “visual proximity” to the request for
4 consent to the offer; and

5 (b) clearly and conspicuously, defined by the statute as one or more of the following:

- 6 i. in larger type than the surrounding text;
- 7 ii. in contrasting type, font, or color to the surrounding text of the same size; or
- 8 iii. set off from the surrounding text of the same size by symbols or other marks in a
9 manner that clearly calls attention to the language.

10 *See id.*, §§ 17602(a)(1) & 17601(c).

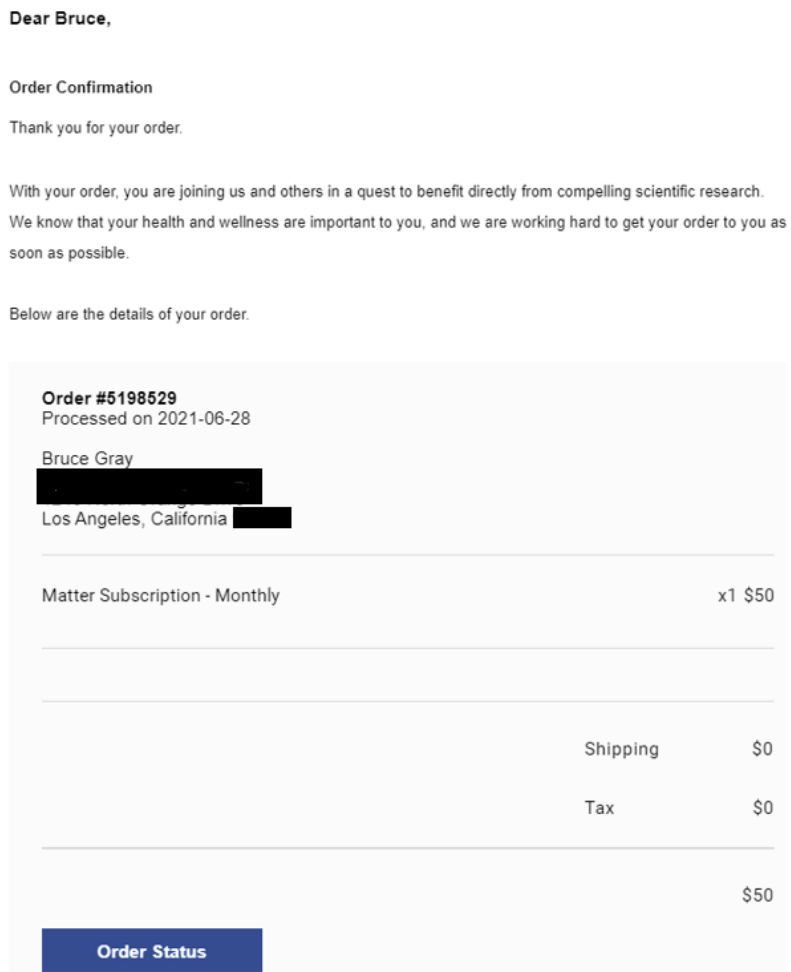
11 22. Elysium does not state the relevant terms in any clear or conspicuous manner (*e.g.*, bold
12 typeface, highlights, capitalization, or other easily deployed means of text modification for the automatic
13 renewal terms). In fact, as shown from the following screenshot, consumers are presented with only the
14 following at check out:



1 23. As shown from the screenshot of Elysium’s checkout page, Elysium does not disclose (a)
2 any description of the cancellation policy that applies to the offer; (b) that the recurring charges will be
3 charged to the consumer’s credit or debit card or payment account with a third party as part of the
4 automatic renewal plan; or (c) when the consumer will be charged. In Plaintiff’s case, he was billed on
5 June 28, 2021, then billed again—without notice—on July 26, 2021.

6 24. Additionally, Plaintiff did not receive a retainable acknowledgement (*e.g.*, e-mail)
7 compliant with the ARL. It is a violation of the ARL to “[f]ail to provide an acknowledgment that includes
8 the automatic renewal offer terms or continuous service offer terms, cancellation policy, and information
9 regarding how to cancel in a manner that is capable of being retained by the consumer.” Cal. Bus. & Prof.
10 Code § 17602(a)(3).

11 25. Instead, Elysium only e-mailed Plaintiff a receipt without any of the detail required by law,
12 as shown by the following (redacted) screenshot:



1 26. Elysium’s June 28, 2021 e-mail does not refer to the timing or amount of any recurring
2 charge; what amount would be automatically debited from Plaintiff’s account; the cancellation policy; or
3 information about how to cancel the service. Again, Plaintiff received no notice of when he would be
4 charged a second time, or how to cancel before being charged a second time.

5 27. Making matters worse, when Plaintiff did try to cancel the service online, he was unable
6 to do so. It was only after he e-mailed a customer service representative that Plaintiff was able to cancel
7 his subscription. By placing these hurdles in front of consumers, Elysium violates California law.

8 28. Critically, the ARL requires that “a consumer who accepts an automatic renewal or
9 continuous service offer online shall be allowed to terminate the automatic renewal or continuous service
10 exclusively online, which may include a termination email formatted and provided by the business that a
11 consumer can send to the business without additional information.” Cal. Bus. & Prof. Code § 17602(c).

12 29. The ARL also requires that “[a] business that makes an automatic renewal offer or
13 continuous service offer shall provide . . . [a] cost-effective, timely, and easy-to-use mechanism for
14 cancellation that shall be described in the acknowledgment specified in paragraph (3) of subdivision (a)
15 [the retainable acknowledgement requirement].”

16 30. Not only did Elysium’s confirmation e-mail fail to contain the automatic renewal terms,
17 cancellation policy, or other information on cancellation as required under the ARL, but Plaintiff was not
18 able to “terminate the automatic renewal or continuous service exclusively online.” *Id.* Instead, after
19 Elysium automatically charged Plaintiff again on July 26, 2021, Plaintiff attempted to cancel his service
20 online; however, Plaintiff was unable to do so. Elysium does not provide an “exclusively online” method
21 for cancellation or a “termination email formatted and provided by [Elysium] that a consumer [like
22 Plaintiff] can send to [Elysium] without additional information.” *Id.*

23 31. On information and belief, Elysium fails to provide an exclusively online method for
24 cancellation—or even a “cost-effective, timely, and easy-to-use mechanism for cancellation”—in order
25 to prevent consumers from cancelling their automatically renewing subscriptions (which offers a
26 predictable revenue stream for businesses like Elysium).

1 32. On information and belief, Plaintiff is one of many consumers who fell victim to Elysium's
2 illegal automatic renewals, as evidenced by several consumer complaints posted to the Better Business
3 Bureau ([https://www.bbb.org/us/ny/chinatown/profile/vitamins-and-supplements/elysium-health-inc-](https://www.bbb.org/us/ny/chinatown/profile/vitamins-and-supplements/elysium-health-inc-0121-163465/complaints)
4 [0121-163465/complaints](https://www.bbb.org/us/ny/chinatown/profile/vitamins-and-supplements/elysium-health-inc-0121-163465/complaints)):

5 **Complaint Type:** Problems with Product/Service **Status:** Resolved ?



6 07/27/2021

7 Elysium Health does not notify you in advance that a 6- or 12-month payment will be
8 charged. I do not want their product and it does not work. Had I know the annual charge
9 was coming up, I would have immediately canceled. Their policy prevents you from
10 getting any money back or even having your order canceled. It's a complete scam.
11 ***** By making it a "final sale,"
12 despite the fact that you still have to wait an entire year just to get all of the product they
13 charged you for, they can charge any credit card they have on file regardless of whether
14 or not the card owner wanted the product or even knew the subscription was due for
15 renewal. I want my order canceled. I want to be refunded the money for all of the product
16 I did not receive. Expecting customers to magically know that a bill is coming do when
17 there's no notification is utter nonsense.

18 **Complaint Type:** Billing/Collection Issues **Status:** Answered ?



19 11/06/2020

20 I have called several times, I have emailed several times about my account with this
21 company. I keep getting messages that my account is cancelled but I am being charged,
22 the most recent this morning. I am beyond frustrated NO ONE has gotten back to me

23 **Complaint Type:** Billing/Collection Issues **Status:** Resolved ?



24 10/22/2018

25 I ordered a six-month supply of Elysium's Basis supplement for \$540 billed to my credit
26 card in February 2018. They did not send the complete order the first time but amended it
27 a few months later. I sent an e-mail 4/**/18 to cancel the next prepaid order. F H*****
28 replied that the next order would not be renewed. I was concerned when I read in my
husband's Chemical & Engineering news on 8/**/2018 that this company had patent
problems and was not paying its supplier. I immediately sent another e-mail reminding the
sales department that I had cancelled the prepaid order on 4/**/18. Jonathan "confirmed"
that no more orders would process. I checked my credit card bill early September and
found that I was again billed for \$540 on 8/**/2018 despite my cancellation. I notified my
credit card company that I disputed the bill, filling out their online form. I have not heard
from them yet. I returned to sender the shipments received in September and October.
The latest one is still in the mailbox since it arrived yesterday.

1 **CAUSE OF ACTION**

2 **Violations of the California Consumer Legal Remedies Act,**

3 **Cal. Civ. Code §§ 1750, *et seq.* (ARL Violations)**

4 **(By Plaintiff Against Defendants)**

5 33. Plaintiff repeats and re-alleges the allegations contained in every preceding paragraph.

6 34. California enacted the ARL “to end the practice of ongoing charging of consumer credit or
7 debit cards or third party payment accounts without the consumers’ explicit consent for ongoing shipments
8 of a product or ongoing deliveries of service.” Cal. Bus. & Prof. Code § 17600.

9 35. Plaintiff is a “consumer” as defined by California Business & Professions Code §
10 17601(d). Elysium’s sales of its products on its website to Plaintiff were for an “automatic renewal”
11 within the meaning of California Business & Professions Code § 17601(a).

12 36. Defendants failed to clearly and conspicuously disclose (a) the nature of the subscription
13 agreement as one that will continue until the consumer canceled, (b) how to cancel the subscription, (c)
14 the recurring amounts that would be charged to the consumer’s payment account, (d) the length of the
15 automatic renewal term, or (e) any minimum purchasing obligation(s).

16 37. Nor did Defendants provide a written acknowledgment that provided the terms of the
17 automatic renewal of continuous service, the cancellation policy, and how to cancel.

18 38. Defendants have violated several of the ARL’s provisions:

19 (a) Defendants have violated Cal. Bus. & Prof. Code § 17602(a)(1) because their offer did not
20 “include a clear and conspicuous explanation of the price that will be charged . . .”;

21 (b) Defendants have violated Cal. Bus. & Prof. Code § 17602(a)(2) by charging consumers’
22 credit and debit cards without first obtaining their “affirmative consent” to the charge;

23 (c) Defendants have violated Cal. Bus. & Prof. Code § 17602(a)(3) by failing to provide a
24 permanently retainable post-transaction acknowledgment that allows cancellation before
25 payment; and

26 (d) Defendants have violated Cal. Bus. & Prof. Code § 17602(c) by failing to provide an
27 “exclusively online” basis to terminate the service, such as a formatted termination email
28 that a consumer can send without further information.

1 39. Defendants did not present the automatic renewal offer terms to the consumer both (a)
2 before the purchasing contract is fulfilled, and in “visual proximity” to the request for consent to the offer,
3 and (b) clearly and conspicuously. *See* Cal. Bus. & Prof. Code § 17602(a)(1).

4 40. In addition, Defendants do not provide a retainable acknowledgement (*e.g.*, email)
5 explaining or providing (a) the automatic renewal offer’s terms, (b) the cancellation policy, and (c)
6 information about how to cancel the subscription.

7 41. Nor do Defendants provide an “exclusively online” basis to terminate the subscription,
8 such as a formatted termination email that a consumer can send without further information.

9 42. Through their violations of the ARL, Defendants have violated the CLRA. *See King*, 393
10 F.Supp.3d at 870 (an ARL violation can form the basis for a CLRA claim); *see also Pluralsight*, 728 F.
11 App’x at 676–77 (“[Plaintiff’s] complaint alleges that Pluralsight violated the ARL by charging him
12 without first providing information on how to cancel the subscription. The record also indicates that
13 consumers signing up for trial subscriptions were not specifically given instructions on how to cancel
14 before payment. This amply satisfies the UCL requirement that an unlawful business practice be any
15 violation of ‘other laws.’”).

16 43. Pursuant to Cal. Civ. Code § 1782, on August 5, 2021, Plaintiff’s counsel notified
17 Defendants in writing (by certified mail, with return receipt requested) of the particular violations of the
18 CLRA and demanded that they correct or agree to correct the actions described in this Complaint,
19 including by giving notice to all affected consumers.

20 44. Defendants failed to respond appropriately to Plaintiff’s CLRA letter, nor did they agree
21 to rectify the problems associated with the actions described above and to give notice to all affected
22 consumers within 30 days of the date of the written notice, as prescribed by § 1782.

23 45. Plaintiff seeks actual, consequential, punitive, and statutory damages, as well as mandatory
24 attorneys’ fees and costs, against Defendants.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for relief and judgment in favor of himself as follows:

3 **On the First Cause of Action for Violations of the California Consumer Legal Remedies Act,**

4 **Cal. Civ. Code §§ 1750, et seq. (ARL Violations)**

5 1. For an injunction putting a stop to the illegal conduct described in this Complaint and
6 ordering Defendants to correct their illegal conduct and refrain from automatically charging consumers
7 without properly informing them in the future.

8 2. For an order awarding Plaintiff his actual, consequential, restitution, punitive, and statutory
9 damages, as appropriate. *See* Cal. Civ. Code § 1780(a)(1) – (5).

10 3. For pre- and post-judgment interest and costs of suit incurred.

11 4. For reasonable attorneys’ fees pursuant to the CLRA, which allows a prevailing plaintiff
12 to recover court costs and attorneys’ fees as a matter of right, *see* Cal. Civ. Code § 1780(e).

13 5. For such other and further relief as the Court may deem just and proper.

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff hereby demands a trial by jury.

16 DATED: September 22, 2021

KJC LAW GROUP, A.P.C.

17 By: /s/ Kevin J. Cole
Kevin J. Cole, Esq.

TAULER SMITH, LLP

19 By: /s/ Robert Tauler
Robert Tauler, Esq.

Attorneys for Plaintiff Bruce Gray

Ex. A

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12 BRUCE GRAY, an individual,

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14 Plaintiff,

15 v.

16 ELYSIUM HEALTH, INC., a Delaware corporation;
17 and DOES 1 through 10, inclusive,

18 Defendants.
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CASE NO.:

**PLAINTIFF BRUCE GRAY'S
CONSUMER LEGAL REMEDIES ACT
VENUE AFFIDAVIT PURSUANT TO
CAL. CIV CODE § 1780(D)**

1 I, BRUCE GRAY, declare as follows:

2 1. On or around June 28, 2021, I purchased Elysium Health, Inc.'s ("Elysium") "Matter" (the
3 "Product") from Elysium's website (<https://www.elysiumhealth.com/>).

4 2. At the time of my purchase and payment for this Product, I was in the County of Los
5 Angeles in the State of California (where I reside).

6 3. The transactions that are the subject of this action occurred in the County of Los Angeles
7 in the State of California.

8 I declare under penalty of perjury under the laws of the State of California that the foregoing is
9 true and correct, and that this declaration was executed on August 31st, 2021, in
10 the City of Vancouver, Washington.

11
12 By: 
13 Bruce Gray
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