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**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

TRACY DAVIS, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

BIRCHBOX, INC., a New York  
Corporation,

Defendant.

Case No. '15CV498 L KSC

**CLASS ACTION**

**COMPLAINT FOR:**

**(1) VIOLATION OF  
CALIFORNIA'S AUTOMATIC  
RENEWAL LAW (CAL. BUS.  
PROF. CODE §§ 17600-17604);  
(2) UCL VIOLATIONS (CAL.  
BUS. & PROF. CODE §§ 17200-  
17204); AND (3) INJUNCTIVE  
RELIEF AND RESTITUTION  
(CAL. BUS. & PROF. CODE  
§ 17535)**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Tracy Davis (“Plaintiff”), on behalf of herself and all others  
2 similarly situated, complains and alleges as follows:

3 **OVERVIEW OF CLAIMS**

4 1. Plaintiff brings this class action under Federal Rule of Civil  
5 Procedure 23 on behalf of herself and a class of others similarly situated  
6 consisting of all persons in California that, since at least four years prior to the  
7 filing of this complaint, and continuing through the present (the “Class Period”),  
8 purchased subscriptions for the monthly delivery of make-up and personal care  
9 products from Birchbox, Inc. Herein, Birchbox, Inc. is referred to as “Birchbox”  
10 or “Defendant.” The class of others similarly situated to Plaintiff are referred to  
11 herein as “Class Members.” The claims for damages, restitution, injunctive and/or  
12 other equitable relief, and reasonable attorneys’ fees and costs under California  
13 Business and Professions Code (hereinafter “Cal. Bus. & Prof. Code”) §§ 17602,  
14 17603, 17604, 17535, and 17200, *et seq.*, and California Code of Civil Procedure  
15 § 1021.5. Plaintiff and Class Members are consumers for purposes of Cal. Bus. &  
16 Prof. Code §§ 17600-17606.

17 2. During the Class Period, Defendant made automatic renewal or  
18 continuous service offers to consumers in and throughout California and (a) at the  
19 time of making the automatic renewal or continuous service offers, failed to  
20 present the automatic renewal offer terms, or continuous service offer terms, in a  
21 clear and conspicuous manner and in visual proximity to the request for consent to  
22 the offer before the subscription or purchasing agreement was fulfilled in violation  
23 of Cal. Bus. & Prof. Code § 17602(a)(1); (b) charged Plaintiff’s and Class  
24 Members’ credit or debit cards, or third-party account (hereinafter “Payment  
25 Method”), without first obtaining Plaintiff’s and Class Members’ affirmative  
26 consent to the agreement containing the automatic renewal offer terms or  
27 continuous service offer terms in violation of Cal. Bus. & Prof. Code  
28 § 17602(a)(2); and (c) failed to provide an acknowledgment that includes the

1 automatic renewal or continuous service offer terms, cancellation policy, and  
2 information regarding how to cancel in a manner that is capable of being retained  
3 by the consumer in violation of Cal. Bus. & Prof. Code § 17602(a)(3). As a  
4 result, all goods, wares, merchandise, or products sent to Plaintiff and Class  
5 Members under the automatic renewal or continuous service agreements are  
6 deemed to be an unconditional gift pursuant to Cal. Bus. & Prof. Code § 17603.

7 3. As a result of the above, Plaintiff, on behalf of herself and Class  
8 Members, seeks damages, restitution, declaratory relief, injunctive relief and  
9 reasonable attorneys' fees and costs pursuant to Cal. Bus. & Prof. Code §§ 17603,  
10 17203, 17204, and 17535 and California Code of Civil Procedure § 1021.5.

11 4. The "Class Period" is designated as the period from four years prior  
12 to the filing of this complaint through to the present. Defendant's violations of  
13 California's Business and Professions Code and unfair competition laws, as  
14 described more fully below, have been ongoing since four years prior to the filing  
15 of this complaint, and are continuing at present.

### 16 JURISDICTION

17 5. This Court has diversity jurisdiction over this matter pursuant to  
18 28 U.S.C. § 1332 in that Plaintiff is a resident and citizen of the State of California  
19 while Defendant is a corporation incorporated under the laws of the State of  
20 Delaware, and its principal place of business is in New York City. This Court has  
21 personal jurisdiction over Defendant because Defendant conducts business in the  
22 County of San Diego, State of California. Therefore, Defendant has sufficient  
23 minimum contacts with this state, and otherwise purposefully avails itself of the  
24 markets in this state through the promotion, sales, and marketing of its products in  
25 this state, to render the exercise of jurisdiction by this Court permissible under  
26 traditional notions of fair play and substantive justice.

**VENUE**

6. Venue as to Defendant is proper in the United States District Court for the Southern District of California, pursuant to 28 U.S.C. § 1391. Defendant is a Delaware corporation, and its principal place of business is in New York City. Defendant has made the automatic renewal or continuous service offers to thousands of persons within the County of San Diego. And many of the acts and transactions giving rise to this action occurred in this district because Defendant: (a) is authorized to conduct business in this district and has intentionally availed itself of the laws and markets within this district; (b) does substantive business within this district; and (c) is subject to personal jurisdiction in this district because it has availed itself of the laws and markets within this district.

**PARTIES**

7. Plaintiff Tracy Davis resides in Los Angeles, California. Plaintiff purchased a monthly subscription from Defendant in California during the Class Period. Following the purchase, Plaintiff's Payment Method was charged, and continues to be charged, every month on a recurring basis. During that time, Plaintiff was subject to Defendant's unlawful policies and/or practices set forth herein. Plaintiff and Class Members are consumers as defined under Cal. Bus. & Prof. Code §17601(d).

8. Defendant Birchbox, Inc. is a Delaware corporation with its principal place of business located at 28 E. 28th Street, New York, New York, 10016. Defendant operates and, at all times during the Class Period, has done business throughout California. Also during the Class Period, Defendant made, and continues to make, automatic renewal or continuous service offers to consumers in California. Defendant sells samples of make-up and personal care products on a monthly subscription basis to consumers throughout California. As of 2013, Defendant employs 250 people and has 800,000 subscribers. Defendant generates approximately \$125 million in annual sales.



1           13. Cal. Bus. & Prof. Code § 17601(a) defines the term “Automatic  
2 renewal” as a “plan or arrangement in which a paid subscription or purchasing  
3 agreement is automatically renewed at the end of a definite term for a subsequent  
4 term.”

5           14. Cal. Bus. & Prof. Code § 17601(b) defines the term “Automatic  
6 renewal offer terms” as “the following clear and conspicuous disclosures:  
7 (1) That the subscription or purchasing agreement will continue until the  
8 consumer cancels. (2) The description of the cancellation policy that applies to  
9 the offer. (3) The recurring charges that will be charged to the consumer’s credit  
10 or debit card or payment account with a third party as part of the automatic  
11 renewal plan or arrangement, and that the amount of the charge may change, if  
12 that is the case, and the amount to which the charge will change, if known.  
13 (4) The length of the automatic renewal term or that the service is continuous,  
14 unless the length of the term is chosen by the consumer. (5) The minimum  
15 purchase obligation, if any.”

16           15. Pursuant to Cal. Bus. & Prof. Code § 17601(c), “clear and  
17 conspicuous” or “clearly and conspicuously” mean “in larger type than the  
18 surrounding text, or in contrasting type, font, or color to the surrounding text of  
19 the same size, or set off from the surrounding text of the same size by symbols or  
20 other marks, in a manner that clearly calls attention to the language.”

21           16. Section 17603 of Cal. Bus. & Prof. Code provides: “In any case in  
22 which a business sends any goods, wares, merchandise, or products to a consumer,  
23 under a continuous service agreement or automatic renewal of a purchase, without  
24 first obtaining the consumer’s affirmative consent as described in Section 17602,  
25 the goods, wares, merchandise, or products shall for all purposes be deemed an  
26 unconditional gift to the consumer, who may use or dispose of the same in any  
27 manner he or she sees fit without any obligation whatsoever on the consumer’s  
28 part to the business, including, but not limited to, bearing the cost of, or

1 responsibility for, shipping any goods, wares, merchandise, or products to the  
2 business.”

3 **Defendant’s Business**

4 17. During the Class Period, Defendant offers, and has offered,  
5 subscription plans for the monthly delivery of beauty products, including sample  
6 make-up and personal care products through its website, www.Birchbox.com.  
7 Defendant’s subscriptions for its protection plans are automatic renewal and/or  
8 continuous service plans or arrangements for the purposes of Cal. Bus. & Prof.  
9 Code § 17601.

10 **Defendant’s Legal Agreement**

11 18. During the Class Period, buried at the very bottom of Defendant’s  
12 webpage, there was an inconspicuous hyperlink, in smaller font than the  
13 surrounding text, to a document called “Terms” (hereinafter the “Terms and  
14 Conditions”).

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FREE STANDARD SHIPPING ON ORDERS \$50+ LOGIN 0

BIRCHBOX SHOP

CHOOSE AN ADDITIONAL SAMPLE — PICK FROM 2 OF OUR SUMMER FAVORITES. [SUBSCRIBE NOW >](#)




OPEN FOR Beautiful

Welcome to the best way to shop for beauty and grooming products

[SUBSCRIBE](#) [SHOP](#)

### THE MONTHLY BOX

Get monthly deliveries of deluxe beauty, grooming, and lifestyle samples, tailored to your profile. Try cult brands, up-and-coming lines, and everything in between.




[SUBSCRIBE WOMEN'S](#) [SUBSCRIBE MEN'S](#)

Check out this month's buzz

### THE BIRCHBOX SHOP

Stock up on the best products, including customer favorites, exclusive launches—and of course everything in your monthly Birchboxes.



4,423 REVIEWS BEST SELLER

[SHOP WOMEN'S](#) [SHOP MEN'S](#)

### IDEAS & INSPIRATION

Dive into our original content, from product intel and how-to tutorials to trend stories and more.





See attached as Exhibits 1 and 2 true and correct screenshots of the above-shown webpage available at [www.Birchbox.com](http://www.Birchbox.com), and the Terms and Conditions, respectively.

19. Defendant's Terms and Conditions provided as follows:

Welcome to [www.Birchbox.com](http://www.Birchbox.com) (the "Site"). This Site is maintained and operated by Birchbox, Inc. ("Birchbox" or "Company"). By accessing, browsing or using this Site, you acknowledge that you have read, understood and agreed to be bound by these Terms of Use (these "Terms"). If you do not agree to these Terms, you should not use or access this Site. Birchbox reserves the right to revise these Terms at any time by updating this posting. You are encouraged to review these Terms each time you use the Site because your use of the Site after the posting of changes will constitute your acceptance of the changes. By agreeing to these Terms it also constitutes your agreement to the Rewards Points Terms and Conditions [(the "Rewards Points Terms")] and the Site Privacy Policy [(the "Privacy Policy")], which are incorporated herein. BY ACCESSING OR USING ANY PART OF THE SITE, YOU ACCEPT, WITHOUT LIMITATION OR QUALIFICATION, THESE TERMS. IF YOU DO NOT AGREE WITH ALL OF THE TERMS SET FORTH BELOW, YOU MAY NOT USE ANY PORTION OF THE SITE. PRICE INFORMATION FOUND ON THIS SITE IS SUBJECT TO CHANGE WITHOUT

1 NOTICE. BIRCHBOX RESERVES THE RIGHT TO CHANGE THESE  
TERMS & CONDITIONS OF USE AT ANY TIME WITHOUT NOTICE.

2 *See* Ex. 2, at p. 1.

3 20. Throughout the Terms and Conditions, Defendant used various  
4 methods, including capital letters, to draw the reader's attention to important  
5 language. For example, Defendant used all capital letters to exclude warranties:

6 **9. Disclaimers**

7 You assume all responsibility and risk with respect to your use of the Site.  
8 THE SITE, AND ALL CONTENT, MERCHANDISE, AND OTHER  
9 INFORMATION ON OR ACCESSIBLE FROM OR THROUGH THIS  
10 SITE OR A "LINKED" SITE ARE PROVIDED ON AN "AS IS" AND  
11 "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND,  
12 EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED  
13 TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS  
14 FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SECURITY  
15 OR ACCURACY. SPECIFICALLY, BUT WITHOUT LIMITATION,  
BIRCHBOX DOES NOT WARRANT THAT: (1) THE INFORMATION  
ON THIS SITE IS CORRECT, ACCURATE OR RELIABLE; (2) THE  
FUNCTIONS CONTAINED ON THIS SITE WILL BE  
UNINTERRUPTED OR ERROR-FREE; OR (3) DEFECTS WILL BE  
CORRECTED, OR THAT THIS SITE OR THE SERVER THAT MAKES  
IT AVAILABLE IS FREE OF VIRUSES OR OTHER HARMFUL  
COMPONENTS.

16 *See* Ex. 2, ¶ 9.

17 21. Defendant also used all capital letters to limit its liability:

18 **12. Limitation of Liability**

19 IN NO EVENT SHALL BIRCHBOX, ITS PARENT COMPANY,  
20 SUBSIDIARIES, AFFILIATES OR ANY OF THEIR RESPECTIVE  
21 OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS,  
22 SUBSIDIARIES, SUPPLIERS, AFFILIATES, OR THIRD PARTIES  
23 PROVIDING INFORMATION ON THIS SITE BE LIABLE TO ANY  
24 USER OF THE SITE OR ANY OTHER PERSON OR ENTITY FOR ANY  
25 DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE,  
26 CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING, BUT  
27 NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, LOSS OF  
28 DATA, OR LOSS OF USE) ARISING OUT OF THE USE OR  
INABILITY TO USE THE SITE, WHETHER BASED UPON  
WARRANTY, CONTRACT, TORT, OR OTHERWISE, EVEN IF  
BIRCHBOX HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN  
OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. IN NO  
EVENT SHALL THE TOTAL LIABILITY OF BIRCHBOX, ITS  
AFFILIATES OR ANY OF THEIR RESPECTIVE OFFICERS,  
DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS,  
SUBSIDIARIES, SUPPLIERS, AFFILIATES OR THIRD PARTIES  
PROVIDING INFORMATION ON THIS SITE TO YOU FOR ALL

DAMAGES, LOSSES, AND CAUSES OF ACTION RESULTING FROM YOUR USE OF THIS SITE, WHETHER IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE) OR OTHERWISE, EXCEED THE AMOUNT YOU PAID TO BIRCHBOX IN CONNECTION WITH THE EVENT GIVING RISE TO SUCH LIABILITY.

*See* Ex. 2, ¶ 12.

22. Defendant also used all capital letters in its venue provision:

**18. Governing Law**

The laws of the State of New York shall govern these Terms. YOU HEREBY EXPRESSLY CONSENT TO EXCLUSIVE JURISDICTION AND VENUE IN THE COURTS LOCATED IN NEW YORK COUNTY, NEW YORK FOR ALL MATTERS ARISING IN CONNECTION WITH THESE TERMS AND CONDITIONS OR YOUR ACCESS OR USE OF THE SITE.

*See* Ex. 2, ¶ 18.

23. Section 5 of the Terms and Conditions is entitled “The Monthly Subscription Contract Between You And Us.” Like all other title headings for all other sections of the Term and Conditions, the title heading for this section is in bold font.

24. Section 5 of the Terms and Conditions provides:

By purchasing a month to month subscription, you acknowledge that your subscription has an initial and recurring payment feature and you accept responsibility for all recurring charges prior to cancellation. Your subscription will be automatically extended for successive monthly periods, at the then-current subscription rate. To cancel your subscription at any time, you must logon to your account or email us and we will do it for you. If you cancel, you may use your subscription until the end of your then-current subscription term. Birchbox may submit periodic charges (e.g., monthly) without further authorization from you, until you provide prior notice that you have terminated this authorization or wish to change your payment method. Such notice will not affect charges submitted before Birchbox reasonably could act.

*See* Ex. 2, ¶ 5.

**Defendant’s Terms and Conditions Failed to Provide Clear and Conspicuous Disclosures as Required by Law**

25. Within the Terms and Conditions, Defendant failed to state in clear and conspicuous language, *i.e.*, in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off

1 from the surrounding text of the same size by symbols or other marks, in a manner  
2 that clearly calls attention to the language that:

- 3 (i) The subscription or purchasing agreement will continue until the  
4 consumer cancels.
- 5 (ii) Describes the cancellation policy that applies to the offer.
- 6 (iii) Recurring charges that will be charged to the consumer's Payment  
7 Method account with a third party as part of the automatic renewal  
8 plan or arrangement, and that the amount of the charge may change,  
9 if that is the case, and the amount to which the charge will change, if  
10 known.
- 11 (iv) The length of the automatic renewal term or that the service is  
12 continuous, unless the length of the term is chosen by the consumer.
- 13 (v) There is a minimum purchase obligation, if any.

14 (Hereinafter "automatic renewal offer and continuous service offer disclosure  
15 failures.")

16 26. Moreover, the disclosures that Defendant actually makes are  
17 contained in a vague and ambiguous document, the Terms and Conditions. These  
18 Terms and Conditions are accessible through an inconspicuous hyperlink buried at  
19 the bottom of the Birchbox webpage. The font of the hyperlink itself is smaller  
20 and lighter in color than the remainder of the website. In addition, the disclosures  
21 that are actually provided are hidden in the lengthy, five-page, densely-worded,  
22 single-spaced Terms and Conditions. And the disclosures are buried in the middle  
23 of the Terms and Conditions itself.

24 **Defendant Failed to Present the Automatic Renewal Offer Terms or**  
25 **Continuous Service Offer Terms in a Clear and Conspicuous Manner Before**  
26 **the Subscription or Purchasing Agreement was Fulfilled and in Visual**  
**Proximity to the Request for Consent to the Offer in Violation of Cal. Bus. &**  
**Prof. Code § 17602(a)(1)**

27 27. During the Class Period, Defendant made, and continues to make,  
28 an automatic renewal offer for its subscriptions plans to consumers in California,

1 including Plaintiff and Class Members. In order to purchase a subscription plan  
2 from Defendant's website, Plaintiff and Class Members clicked on the  
3 "Subscribe" hyperlink on Defendant's main webpage.

4       28.       The "Subscribe" hyperlink navigated Plaintiff and Class Members  
5 to a multi-page enrollment process, the first step of which is and was a webpage  
6 titled "Join Birchbox." This page directed Plaintiff and Class Members to select a  
7 subscription plan. But this page did not and does not contain automatic renewal  
8 offer terms or continuous service offer terms as defined in Cal. Bus. Prof. Code  
9 § 17601(b).

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29. After selecting a subscription plan, Plaintiff and Class Members are navigated to a webpage where they are directed to select a subscription length and click on the “Subscribe Now” hyperlink. This page did not and does not contain the automatic renewal offer terms or continuous service offer terms as defined in Cal. Bus. Prof. Code § 17601(b).

**THIS MONTH: BIRCHBOX TEAMS UP WITH jetBlue**  
Bringing you an exclusive travel giveaway inside the box!

**JOIN BIRCHBOX**  
Birchbox delivers high-end beauty, grooming, and lifestyle samples once a month, customized just for you.

**Select Your Subscription**

- Women's Subscription**  
\$10/month
  - Monthly for \$10/month
  - Yearly for \$110/year
- Men's Subscription**  
\$20/month

**SUBSCRIBE NOW**

**Limited Time Offers**

**WOMEN'S SUBSCRIPTION OFFER**  
Subscribe to Birchbox today and pick an extra sample to add to your first box. Choose from one of two of our favorite summery picks!

- Whish Shave Crave Shaving Cream in Grapefruit**  
CODE: SUMMERSHAVE
- Cynthia Rowley Beauty Creamy Lip Stain in Nude**  
CODE: SUMMERLIP

\*Additional sample choice is available for women's monthly resubscribe subscriptions and women's yearly subscriptions. Available through June 23, 2014 11:59 p.m. or while supplies last.

**MEN'S SUBSCRIPTION BONUS**  
Included with your Birchbox Men subscription is a one year subscription to Details magazine (\$30 value).  
Use code **DETAILSGIFT** at checkout.

\*Use promo code DETAILSGIFT to get your one-year subscription to DETAILS Magazine with your purchase of a monthly resubscribe or yearly Birchbox Men subscription. Simply enter the code and we'll take care of the rest. We'll share your name and address with DETAILS Magazine and your first issue will be delivered in 4-6 weeks. Click here for offer and refund details.

**Lift the Lid on This Month's Box**  
See What Some Subscribers Sampled

| Women's Box  |   |  | Men's Box   |  |   |
|--|---|--|---|--|---|
|  |   |  |   |  |   |
| Kérastase Crystalliste Bain<br>Cristal Thick-Cleanse<br>★★★★☆ (283)<br>\$38.00 | Kérastase Lait<br>Cristal Conditioner - Treat<br>★★★★☆ (176)<br>\$41.00 <b>Lowest Price</b> | Whish Shave Crave<br>Shaving Cream<br>★★★★☆ (1,639)<br>\$20.00 <b>Lowest Price</b><br>More Options Available | Cynthia Rowley<br>Beauty Eyeliner<br>★★★★☆ (1,447)<br>\$16.00 <b>Lowest Price</b><br>More Options Available | Pikl Beauty Shea<br>Butter Lip Balm<br>★★★★☆ (1,135)<br>\$8.00 <b>Lowest Price</b><br>More Options Available | Caudalie<br>Polyphenol C15<br>Overnight Detox Oil<br>★★★★☆ (1,174)<br>\$32.00 <b>Lowest Price</b> |

**ABOUT**  
BRANDS  
MOBILE APPS

**CAREERS**  
PRESS  
CONTACT

**RECEIVED A GIFT?**  
BLOG

**REFER FRIENDS, EARN POINTS!**  
Earn 50 Birchbox points for every friend that purchases a subscription.  
**INVITE FRIENDS**



1 See attached as Exhibit 4 a true and correct copy of the above-shown “Select Your  
2 Subscription” webpage.

3 30. The “Subscribe Now” hyperlink navigated Plaintiff and Class  
4 Members to a webpage where they are directed to insert their shipping details and  
5 click on a “checkout” hyperlink. This page did not and does not contain the  
6 automatic renewal offer terms or continuous service offer terms as defined in Cal.  
7 Bus. Prof. Code § 17601(b).

FREE STANDARD SHIPPING ON ORDERS \$50+ LOGIN 1

BIRCHBOX SHOP MAGAZINE BOX GIFT SUBSCRIBE Search Women CL

CHOOSE AN ADDITIONAL SAMPLE — PICK FROM 2 OF OUR SUMMER FAVORITES. SUBSCRIBE NOW >

### Shopping Cart

|  | Quantity | Price   | Total   |
|--|----------|---------|---------|
| Women's Monthly Rebillable Subscription<br>Shipping: June 28, 2014<br><a href="#">Remove</a> | 1        | \$10.00 | \$10.00 |

[CONTINUE SHOPPING](#) [UPDATE CART](#)

**PROMO CODES**  
Enter promo code  
 [APPLY](#)

**GIFT CARD**  
Enter the gift card code  
 [APPLY](#)  
[Check card balance](#)

**ESTIMATE SHIPPING**  
Country:   
Zip/Postal Code:  [GET QUOTE](#)

Subtotal: \$10.00  
Grand Total: \$10.00

[CHECK OUT](#)

ABOUT BRANDS MOBILE APPS CAREERS PRESS CONTACT RECEIVED A GIFT? BLOG REFER FRIENDS, EARN POINTS! Earn 50 Birchbox points for every friend that purchases a subscription. [INVITE FRIENDS](#)

USA TERMS PRIVACY MADE IN NYC © 2013 BIRCHBOX

21 See attached as Exhibit 5 a true and correct copy of the above-shown “Shopping  
22 Cart” webpage.

23 31. Plaintiff and Class Members were next navigated to a webpage  
24 where they were and are directed to create an account. This page did not and does  
25 not contain the automatic renewal offer terms or continuous service offer terms as  
26 defined in Cal. Bus. Prof. Code § 17601(b).

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FREE STANDARD SHIPPING ON ORDERS \$50+

**BIRCHBOX** SHOP MAGAZINE BOX GIFT SUBSCRIBE Search

CYNTHIA ROWLEY BEAUTY—SUMMER'S HOTTEST MAKEUP HAS ARRIVED. [SHOP NOW](#)

## Checkout

### Checkout Method

**Create an Account**  
Stay in touch and save time!

- Fast and easy check out
- Easy access to your order history
- Email updates from Birchbox

**CONTINUE**

**Login**  
Already have an account? Log in below

Email Address

Password

☒ Remember Me

**LOGIN**

[Forgot your password?](#)

**Billing Information**

**Shipping Information**

**Shipping Method**

**Payment Information**

**Order Review**

ABOUT CAREERS RECEIVED A GIFT? REFER FRIENDS, EARN POINTS!  
BRANDS PRESS BLOG Earn 50 Birchbox points for every friend that purchases a su  
MOBILE APPS CONTACT INVITE FRIENDS

f t p y t i Like and 1,877,931 others like this

USA TERMS PRIVACY MADE IN NYC © 2013 BIRCHBOX

23 See attached as Exhibit 6 a true and correct copy of the above-shown “Checkout”  
24 webpage. After creating a Birchbox account, Plaintiff and Class Members were  
25 and are navigated to a webpage where Plaintiff and Class Members are directed to  
26 enter their billing information. This page did not and does not contain the  
27 automatic renewal offer terms or continuous service offer terms as defined in Cal.  
28 Bus. Prof. Code § 17601(b).

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FREE STANDARD SHIPPING ON ORDERS \$50+

BIRCHBOX SHOP MAGAZINE BOX GIFT SUBSCRIBE

CHOOSE AN ADDITIONAL SAMPLE — PICK FROM 2 OF OUR SUMMER FAVORITES. SUBSCRIBE NOW >

### Checkout

Checkout Method

Billing Information

First Name \*

Last Name \*

Email Address \*

Company

30 characters max

Address 1 \*

30 characters max

City \*

Los Angeles

20 characters max

Zip/Postal Code \*

Telephone \*

10 characters max

Password \*

Confirm Password \*

☒ Ship to this address  
☐ Ship to a different address

Shipping address only applies to the full-size products in your order. Gift Subscriptions will ship to the address specified. Gift Cards are delivered by email.

CONTINUE

Shipping Information

Shipping Method

Payment Information

Order Review

ABOUT BRANDS MOBILE APPS CAREERS PRESS CONTACT RECEIVED A GIFT? BLOG REFER FRIENDS, EARN POINTS! Earn 50 Birchbox points for every friend that purchases a subscription. INVITE FRIENDS

USA TERMS PRIVACY MADE IN NYC © 2013 BIRCHBOX

23 See attached as Exhibit 7 a true and correct copy of the above-shown “Billing  
24 Information” webpage.

25 32. Plaintiff and Class Members were and are navigated to a checkout  
26 page, where they are provided with Birchbox’s shipping policy. This page did not  
27 and does not contain the automatic renewal offer terms or continuous service offer  
28 terms as defined in Cal. Bus. Prof. Code § 17601(b).

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20 See attached as Exhibit 8 a true and correct copy of the above-shown “Shipping  
21 Information” webpage.

22 33. Plaintiff and Class Member were, and are navigated to a webpage  
23 on which they are directed to insert their payment method and click on a button  
24 labeled “Continue.” This page did not, and does not contain the automatic  
25 renewal offer terms or continuous service offer terms as defined in Cal. Bus. Prof.  
26 Code § 17601(b).

The screenshot displays the Birchbox checkout process. At the top, a banner offers 'FREE STANDARD SHIPPING ON ORDERS \$50+'. The Birchbox logo is prominent, with navigation links for SHOP, MAGAZINE, BOX, and GIFT. A 'SUBSCRIBE' button is also visible. Below the navigation bar, a yellow banner encourages users to 'CHOOSE AN ADDITIONAL SAMPLE — PICK FROM 2 OF OUR SUMMER FAVORITES. SUBSCRIBE NOW >'. The main section is titled 'Checkout' and contains several tabs: 'Checkout Method', 'Billing Information', 'Shipping Information', 'Shipping Method', and 'Payment Information'. The 'Payment Information' tab is active, showing a 'Credit Card' section with fields for 'Credit Card Type', 'Credit Card Number', 'Expiration Date', and 'Card Verification Number'. A 'CONTINUE' button is located below these fields. At the bottom of the form, there is an 'Order Review' section. The footer includes links for ABOUT, BRANDS, MOBILE APPS, CAREERS, PRESS, CONTACT, RECEIVED A GIFT?, and BLOG. A 'REFER FRIENDS, EARN POINTS!' section offers a reward for referrals, with an 'INVITE FRIENDS' button. Social media icons for Facebook, Twitter, Instagram, and LinkedIn are also present.

See attached as Exhibit 9 a true and correct copy of the above-shown “Payment Information” webpage.

34. Plaintiff and Class Members were and are navigated to a page on where they are directed to review their order and click on the button labeled “Place Order,” after which Defendant charged and continues to charge Plaintiff and Class Members’ payment method on a monthly basis thereafter. These pages did not and do not contain the automatic renewal offer terms or continuous service offer terms as defined in Cal. Bus. Prof. Code § 17601(b).

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FREE STANDARD SHIPPING ON ORDERS \$50+

LOG IN 1

BIRCHBOX SHOP MAGAZINE BOX GIFT [Subscribe](#) Search Women

CYNTHIA ROWLEY BEAUTY - SUMMER'S HOTTEST MAKEUP HAS ARRIVED. [SHOP NOW](#)

### Checkout

Checkout Method


Billing Information

Shipping Information

Shipping Method

Payment Information

Order Review

|   | Quantity | Price   | Total   |
|---|----------|---------|---------|
|  Women's Monthly Rebillable Subscription<br>Shipping: <span style="background-color: black; color: black;">[REDACTED]</span> | 1        | \$10.00 | \$10.00 |

Subtotal \$10.00

Shipping & Handling (Standard Shipping - Standard) \$0.00

Grand Total \$10.00

[PLACE ORDER](#)

I agree to the [Terms & Conditions](#)

Forgot an item? [Edit Your Cart](#)









ABOUT BRANDS MOBILE APPS

CAREERS PRESS CONTACT

RECEIVED A GIFT? BLOG

REFER FRIENDS, EARN POINTS!  
Earn 50 Birchbox points for every friend that purchases a subscription.

[INVITE FRIENDS](#)

USA TERMS PRIVACY MADE IN NYC © 2013 BIRCHBOX

20 See attached as Exhibit 10 a true and correct copy of the above-shown “Place  
21 Order” webpage.

22 35. In violation of Cal. Bus. & Prof. Code § 17602(a)(1), Defendant  
23 thus made, and continues to make, an automatic renewal or continuous service  
24 offer to consumers, including Plaintiff and Class Members in California, yet  
25 failed, and continues to fail, to present the automatic renewal offer terms, or  
26 continuous service offer terms, in a clear and conspicuous manner and in visual  
27 proximity to the request for consent to the offer before the subscription or  
28 purchasing agreement was and is fulfilled.

**Defendant Failed to Obtain Affirmative Consent to the Terms and Conditions Containing the Automatic Renewal Offer Terms**

36. Furthermore, and in addition to the above, throughout the Class Period, after clicking on the “Place Order” hyperlink, Plaintiff’s and Class Members’ Payment Method were, and are, charged the monthly subscription amount. Thereafter, Defendant charged, and continues to charge, Plaintiff’s and Class Members’ Payment Method on a monthly basis, and as such, is an automatic renewal plan within the meaning Cal. Bus. & Prof. Code. § 17601(a). Furthermore, the Birchbox subscription continues until cancelled, and therefore is, and was, a continuous service plan or arrangement as defined by Cal. Bus. & Prof. Code § 17601(e).

37. As a result of the above (including the automatic renewal offer and continuous service offer disclosure failures referred to above), prior to charging Plaintiff’s and Class Members’ Payment Method, Defendant failed, and continues to fail, to obtain Plaintiff’s and Class Members’ affirmative consent to the Terms and Conditions containing the automatic renewal offer terms or continuous service offer terms. Defendant failed, and continues to fail, to include the Terms and Conditions or provide a hyperlink to the Terms and Conditions on the webpage in which Defendant collected Plaintiff’s and Class Members’ Payment Method information.

38. As a result of the above, Defendant violated Cal. Bus. & Prof. Code § 17602(a)(2). As such, all goods, wares, merchandise, or products, sent to Plaintiff and Class Members under the automatic renewal or continuous service agreement are deemed to be an unconditional gift pursuant to Cal. Bus. & Prof. Code § 17603, and Plaintiff and Class Members may use or dispose of the same in any manner they see fit without any obligation whatsoever on their part to Defendant, including, but not limited to, bearing the cost of, or responsibility for, shipping any goods, wares, merchandise, or products to the business.



**Defendant Failed to Provide an Acknowledgment as Required by Cal. Bus. & Prof. Code § 17602(a)(3)**

39. Furthermore, and in addition to the above, after Plaintiff and Class Members subscribed to one of Defendant's subscription plans, Defendant sent, and continues to send, Plaintiff and Class Members an email. But that email failed, and continues to fail, to provide an acknowledgement that includes the automatic renewal or continuous service offer terms, cancellation policy, and information on how to cancel in a manner that is capable of being retained by Plaintiff and Class Members, in violation of Cal. Bus. & Prof. Code § 17602(a)(3). Moreover, Defendant failed to provide Plaintiff and Class Members with an acknowledgement regarding how to cancel the subscription and allow Plaintiff and Class Members to cancel before payment.

**CLASS ACTION ALLEGATIONS**

40. Plaintiff brings this action, on behalf of herself and all others similarly situated, as a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure. The proposed Class (the "Class") that Plaintiff seeks to represent is composed of and defined as:

All persons in California that, during the four years prior to the filing of this Complaint, and continuing through the present, purchased subscriptions from Birchbox, Inc.

41. This action has been brought and may properly be maintained as a class action because there is a well-defined community of interest in the litigation, the proposed class is easily ascertainable, and Plaintiff is a proper representative of the Class:

a. Numerosity: The potential members of the Class as defined are so numerous and so diversely located throughout California that joinder of all the members of the Class is impracticable. The Class Members are dispersed throughout California. Joinder of all members of the proposed class is therefore not practicable.

1           b.     Commonality: There are questions of law and fact common to  
2 the Plaintiff and the Class that predominate over any questions affecting only  
3 individual members of the Class. These common questions of law and fact  
4 include, without limitation:

- 5                   i.     Whether Defendant failed to present the automatic  
6 renewal offer terms, or continuous service offer terms,  
7 in a clear and conspicuous manner before the  
8 subscription or purchasing agreement was fulfilled and  
9 in visual proximity to the request for consent to the offer  
10 in violation of Cal. Bus. & Prof. Code § 17602(a)(1);
- 11                  ii.    Whether Defendant charged Plaintiff's and Class  
12 Members' Payment Method for an automatic renewal or  
13 continuous service without first obtaining the Plaintiff's  
14 and Class Members' affirmative consent to the Terms  
15 and Conditions containing the automatic renewal offer  
16 terms or continuous service offer terms in violation of  
17 Cal. Bus. & Prof. Code § 17602(a)(2);
- 18                  iii.   Whether Defendant failed to provide an  
19 acknowledgement that included the automatic renewal  
20 or continuous service offer terms, cancellation policy,  
21 and information on how to cancel in a manner that is  
22 capable of being retained by Plaintiff and Class  
23 Members, in violation of Cal. Bus. & Prof. Code §  
24 17602(a)(3);
- 25                  iv.    Whether Defendant's Terms and Conditions contained  
26 the automatic renewal offer terms and/or continuous  
27 service offer terms as defined by Cal. Bus. & Prof. Code  
28 § 17601;

- 1 v. Whether Cal. Bus. & Prof. Code § 17603 provides for  
2 restitution for money paid by Plaintiff and Class  
3 Members in circumstances where the goods and services  
4 provided by Defendant is deemed an unconditional gift;
- 5 vi. Whether Plaintiff and Class Members are entitled to  
6 and/or restitution under Cal. Bus. & Prof. Code  
7 §§ 17200-17203;
- 8 vii. Whether Plaintiff and Class Members are entitled to  
9 injunctive relief under Cal. Bus. & Prof. Code § 17535;
- 10 viii. Whether Plaintiff and Class Members are entitled to  
11 attorneys' fees and costs under California Code of Civil  
12 Procedure § 1021.5; and
- 13 ix. The proper formula(s) for calculating and/or restitution  
14 owed to Class Members.

15 c. Typicality: Plaintiff's claims are typical of the claims of the  
16 Class. Both Plaintiff and Class Members were deprived of property rightly  
17 belonging to them, arising out of and caused by Defendant's common course of  
18 conduct in violation of law as alleged herein, in similar ways.

19 d. Adequacy of Representation: Plaintiff is a member of the  
20 Class and will fairly and adequately represent and protect the interests of the Class  
21 Members. Plaintiff's interests do not conflict with those of Class Members.  
22 Counsel who represent Plaintiff are competent and experienced in litigating large  
23 class actions, and will devote sufficient time and resources to the case and  
24 otherwise adequately represent the Class.

25 e. Superiority of Class Action: A class action is superior to other  
26 available means for the fair and efficient adjudication of this controversy.  
27 Individual joinder of all Class Members is not practicable, and questions of law  
28 and fact common to the Class predominate over any questions affecting only

individual members of the Class. Plaintiff and Class Members have suffered losses, or may suffer losses in the future, by reason of Defendant's unlawful policies and/or practices of not complying with Cal. Bus. & Prof. Code §§ 17600-17606. Certification of this case as a class action will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Certifying this case as a class action is superior because it allows for efficient and full restitution to Class Members, and will thereby effectuate California's strong public policy of protecting the California public from violations of its laws. If this action is not certified as a class action, it will be virtually impossible, as a practical matter, for many or most Class Members to bring individual actions to recover monies due from Defendant due to the relatively small amounts of such individual recoveries relative to the costs and burdens of litigation.

#### **FIRST CAUSE OF ACTION**

#### **FAILURE TO PRESENT THE AUTOMATIC RENEWAL OFFER TERMS OR CONTINUOUS SERVICE OFFER TERMS CLEARLY AND CONSPICUOUSLY AND IN VISUAL PROXIMITY TO THE REQUEST FOR CONSENT OFFER (CAL. BUS. & PROF. CODE § 17602(a)(1))**

42. The allegations of Paragraphs 1 through 41 are realleged and incorporated herein by reference, and Plaintiff alleges this cause of action on behalf of herself and the above-described class of similarly situated Class Members.

43. Cal. Bus. Prof. Code § 17602(a)(1) provides:

(a) It shall be unlawful for any business making an automatic renewal or continuous service offer to a consumer in this state to do any of the following:

(1) Fail to present the automatic renewal offer terms or continuous service offer terms in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the request for consent to the offer.

1           44. Defendant failed to present the automatic renewal offer terms, or  
 2 continuous service offer terms, in a clear and conspicuous manner and in visual  
 3 proximity to the request for consent to the offer before the subscription or  
 4 purchasing agreement was fulfilled.

5           45. As a result of Defendant's violations of Cal. Bus. & Prof. Code  
 6 § 17602(a)(1), Defendant is subject under Cal. Bus. & Prof. Code § 17604 to all  
 7 civil remedies that apply to a violation of Article 9, of Chapter 1, of Part 3, of  
 8 Division 7 of the Cal. Bus. & Prof. Code.

9           46. Plaintiff, on behalf of herself and Class Members, request relief as  
 10 described below.

## 11           **SECOND CAUSE OF ACTION**

### 12           **FAILURE TO OBTAIN THE CONSUMER'S AFFIRMATIVE CONSENT** 13           **BEFORE THE SUBSCRIPTION IS FULFILLED** 14           **(CAL. BUS. & PROF. CODE §§ 17602(a)(2) and 17603)**

15           47. The allegations of Paragraphs 1 through 46 are realleged and  
 16 incorporated herein by reference, and Plaintiff alleges this cause of action on  
 17 behalf of herself and the above-described class of similarly situated Class  
 18 Members.

19           48. Cal. Bus. & Prof. Code § 17602(a)(2) provides:

20           (a) It shall be unlawful for any business making an automatic renewal or  
 21 continuous service offer to a consumer in this state to do any of the  
 22 following:

23           ...

24           (2) Charge the consumer's credit or debit card or the consumer's  
 25 account with a third party for an automatic renewal or continuous  
 26 service without first obtaining the consumer's affirmative consent to  
 27 the agreement containing the automatic renewal offer terms or  
 28 continuous service offer terms.

29           49. Defendant charged, and continues to charge, Plaintiff's and Class  
 30 Members' Payment Method for an automatic renewal or continuous service  
 31 without first obtaining Plaintiff's and Class Members' affirmative consent to the

1 Terms and Conditions containing the automatic renewal offer terms or continuous  
2 service offer terms.

3 50. As a result of Defendant's violations of Cal. Bus. & Prof. Code §  
4 17602(a)(2), Defendant is liable to provide restitution to Plaintiff and Class  
5 Members under Cal. Bus. & Prof. Code § 17603.

6 51. Plaintiff, on behalf of herself and Class Members, requests relief as  
7 described below.

### 8 **THIRD CAUSE OF ACTION**

#### 9 **FAILURE TO PROVIDE ACKNOWLEDGMENT WITH AUTOMATIC** 10 **RENEWAL TERMS AND INFORMATION REGARDING** 11 **CANCELLATION POLICY** 12 **(CAL. BUS. & PROF. CODE § 17602(a)(3))**

13 52. The allegations of Paragraphs 1 through 51 are realleged and  
14 incorporated herein by reference, and Plaintiff alleges this cause of action on  
15 behalf of herself and the above-described class of similarly-situated Class  
16 Members.

17 53. Cal. Bus.& Prof. Code § 17602(a)(3) provides:

18 (a) It shall be unlawful for any business making an automatic renewal or  
19 continuous service offer to a consumer in this state to do any of the  
20 following:

21 ...

22 (3) Fail to provide an acknowledgment that includes the automatic  
23 renewal or continuous service offer terms, cancellation policy, and  
24 information regarding how to cancel in a manner that is capable of  
25 being retained by the consumer. If the offer includes a free trial, the  
26 business shall also disclose in the acknowledgment how to cancel and  
27 allow the consumer to cancel before the consumer pays for the goods  
28 or services.

54. Defendant failed to provide an acknowledgement that includes the  
automatic renewal or continuous service offer terms, cancellation policy, and  
information on how to cancel in a manner that is capable of being retained by  
Plaintiff and Class Members.





1 Plaintiff and Class Members. Defendant has profited from its unlawful, unfair,  
2 and/or fraudulent acts and practices in the amount of those business expenses and  
3 interest accrued thereon.

4         61. Plaintiff and similarly situated Class Members are entitled to  
5 restitution pursuant to Cal. Bus. & Prof. Code §§ 17203 and 17208 for all monies  
6 paid by Class Members under the subscription agreements from four years prior to  
7 the filing of this complaint to the date of such restitution, at rates specified by law.  
8 Defendant should be required to disgorge all the profits and gains it has reaped  
9 and restore such profits and gains to Plaintiff and Class Members, from whom  
10 they were unlawfully taken.

11         62. Plaintiff and similarly situated Class Members are entitled to  
12 enforce all applicable penalty provisions pursuant to Cal. Bus. & Prof. Code  
13 § 17202.

14         63. Plaintiff has assumed the responsibility of enforcement of the laws  
15 and public policies specified herein by suing on behalf of herself and other  
16 similarly situated Class Members. Plaintiff's success in this action will enforce  
17 important rights affecting the public interest. Plaintiff will incur a financial  
18 burden in pursuing this action in the public interest. An award of reasonable  
19 attorneys' fees to Plaintiff is thus appropriate pursuant to California Code of Civil  
20 Procedure § 1021.5.

21         64. Plaintiff, on behalf of herself and Class Members, request relief as  
22 described below.

23  
24  
25  
26  
27  
28

**FIFTH CAUSE OF ACTION**

**INJUNCTIVE RELIEF AND RESTITUTION  
(CAL. BUS. & PROF. CODE § 17535)**

65. The allegations of Paragraphs 1 through 64 are realleged and incorporated herein by reference, and Plaintiff alleges this cause of action on behalf of herself and the above-described class of similarly-situated Class Members.

66. Cal. Bus. & Prof. Code § 17535 allows “any person who has suffered injury in fact and has lost money or property” to prosecute a civil action for violation of the UCL. Such a person may bring such an action on behalf of herself or herself and others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

67. Since four years prior to the filing of this complaint, and continuing to the present, Defendant has committed unlawful, unfair, and/or fraudulent business acts and practices as defined by the UCL, by violating Cal. Bus. & Prof. Code § 17602.

68. As a direct and proximate result of Defendant’s unlawful, unfair, and/or fraudulent acts and practices described herein, Defendant has received and continues to hold unlawfully obtained property and money belonging to Plaintiff and Class Members in the form of payments made for a paid subscription to Defendant’s protection plans by Plaintiff and Class Members. Defendant has profited from its unlawful, unfair, and/or fraudulent acts and practices in the amount of those business expenses and interest accrued thereon.

69. Plaintiff and similarly situated Class Members are entitled to injunctive relief and/or restitution pursuant to Cal. Bus. & Prof. Code § 17535 for all monies paid by Class Members under the subscription agreements from four years prior to the filing of this complaint to the date of such restitution, at rates specified by law. Defendant should be required to disgorge all the profits and

1 gains it has reaped and restore such profits and gains to Plaintiff and Class  
2 Members, from whom they were unlawfully taken.

3 70. Plaintiff and similarly situated Class Members are entitled to  
4 enforce all applicable penalty provisions pursuant to Cal. Bus. & Prof. Code  
5 § 17202.

6 71. Plaintiff has assumed the responsibility of enforcement of the laws  
7 and public policies specified herein by suing on behalf of herself and other  
8 similarly situated Class Members. Plaintiff's success in this action will enforce  
9 important rights affecting the public interest. Plaintiff will incur a financial  
10 burden in pursuing this action in the public interest. Therefore, an award of  
11 reasonable attorneys' fees to Plaintiff is appropriate pursuant to California Code  
12 of Civil Procedure §1021.5.

13 72. Plaintiff, on behalf of herself and similarly situated Class  
14 Members, request relief as described below.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff requests the following relief:

17 A. That the Court determine that this action may be maintained as a  
18 class action under Federal Rule of Civil Procedure 23, and define the Class as  
19 requested herein;

20 B. That the Court find and declare that Defendant has violated Cal. Bus.  
21 & Prof. Code § 17602(a)(1) by failing to present the automatic renewal offer  
22 terms, or continuous service offer terms, in a clear and conspicuous manner and in  
23 visual proximity to the request for consent to the offer before the subscription or  
24 purchasing agreement was fulfilled;

25 C. That the Court find and declare that Defendant has violated Cal. Bus.  
26 & Prof. Code § 17602(a)(2) by charging Plaintiff's and Class Members' Payment  
27 Method without first obtaining their affirmative consent to the Terms and  
28

1 Conditions containing the automatic renewal offer terms or continuous service  
2 terms;

3 D. That the Court find and declare that Defendant has violated Cal. Bus.  
4 & Prof. Code § 17602(a)(3) by failing to provide an acknowledgement that  
5 includes the automatic renewal or continuous service offer terms, cancellation  
6 policy, and information on how to cancel in a manner that is capable of being  
7 retained by Plaintiff and Class Members;

8 E. That the Court find and declare that Defendant has violated the UCL  
9 and committed unfair and unlawful business practices by violating Cal. Bus. &  
10 Prof. Code § 17602;

11 F. That the Court award to Plaintiff and Class Members damages and  
12 full restitution in the amount of the subscription payments made by them pursuant  
13 to Cal. Bus. & Prof. Code § 17603, in an amount to be proved at trial;

14 G. That Defendant be ordered to pay restitution to Plaintiff and the Class  
15 due to Defendant's UCL violations, pursuant to Cal. Bus. & Prof. Code §§ 17200-  
16 17205 in the amount of their subscription agreement payments;

17 H. That the Court find that Plaintiff and Class Members are entitled to  
18 injunctive relief pursuant to Cal. Bus. & Prof. Code § 17535;

19 I. That Plaintiff and the Class be awarded reasonable attorneys' fees  
20 and costs pursuant to California Code of Civil Procedure § 1021.5, and/or other  
21 applicable law; and

22 J. That the Court award such other and further relief as this Court may  
23 deem appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiff, on behalf of herself and the Class Members, hereby demands a jury trial on all causes of action and claims with respect to which they have a right to jury trial.

Dated: March 4, 2015

Respectfully submitted,

**BERMAN DEVALERIO**

By: /s/ Todd A. Seaver  
Todd A. Seaver

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*Attorneys for Plaintiff and the Putative Class*

**LIST OF EXHIBITS**

| <b><u>EXHIBIT</u></b>                                      | <b><u>PAGE</u></b> |
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| 3 Birchbox.com Website, Join Birchbox page.....            | 41                 |
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| 5 Birchbox.com Website, Shopping Cart page.....            | 43                 |
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## **EXHIBIT 1**




FREE STANDARD SHIPPING ON ORDERS \$50+

BIRCHBOX™ SHOP MAGAZINE BOX GIFT SUBSCRIBE

Search All Q

CHOOSE AN ADDITIONAL SAMPLE -- PICK FROM 2 OF OUR SUMMER FAVORITES. [SUBSCRIBE NOW >](#)



Welcome to the best way to shop for beauty and grooming products

[SUBSCRIBE](#) [SHOP](#)

## THE MONTHLY BOX

Get monthly deliveries of deluxe beauty, grooming, and lifestyle samples, tailored to your profile. Try cult brands, up-and-coming lines, and everything in between.



[SUBSCRIBE WOMEN'S](#)

[Check out this month's buzz](#)



[SUBSCRIBE MEN'S](#)

[Check out this month's buzz](#)

## THE BIRCHBOX SHOP

Stock up on the best products, including customer favorites, exclusive launches—and of course everything in your monthly Birchboxes.






[SHOP WOMEN'S](#)



[SHOP MEN'S](#)

## IDEAS & INSPIRATION

Dive into our original content, from product intel and how-to tutorials to trend stories and more.

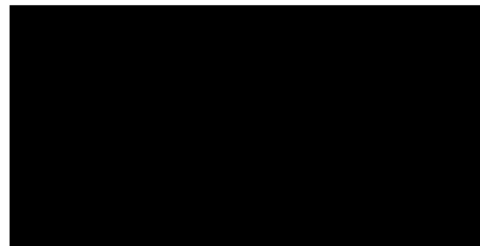




How Many Products Does it Take to Get the No-Makeup Look?

8 Easy Ways to Hack Your Shave

READ THE MAGAZINE

READ THE GUIDE



## CATCH US ON THE SMALL SCREEN?

We're thrilled to debut our first TV commercial. Take a look--and if you like what you see, you can shop all the products and looks right here.

SHOP THE LOOKS

### PEOPLE ARE TALKING ABOUT US

*"Birchbox [is] revolutionizing how you shop -- and helps you discover your favorite quality beauty [& grooming] products by delivering samples right to your door."*

- Entrepreneur

ABOUT  
BRANDS  
MOBILE APPS

CAREERS  
PRESS  
CONTACT

RECEIVED A GIFT?  
BLOG

REFER FRIENDS, EARN POINTS!  
Earn 50 Birchbox points for every friend that purchases a subscription.

INVITE FRIENDS



USA \* TERMS PRIVACY MADE IN NYC © 2013 BIRCHBOX

## **EXHIBIT 2**

[SUBSCRIBE \(/SHOP/JOIN?REF=MAIN-NAV\)](#)

**ABOUT**

[What is Birchbox?](#)

[\(/about/birchbox\)](#)

[Meet the Team \(/about/team\)](#)

**CAREERS**

[Life @ Birchbox \(/about/careers\)](#)

[Tech \(/about/tech\)](#)

[Openings \(/about/openings\)](#)

[Press \(/about/press\)](#)

[FAQ \(/about/faq\)](#)

[Contact Us \(/about/contact-us\)](#)

[Terms \(/about/terms-conditions\)](#)

[Rewards \(/about/reward-points-terms\)](#)

[Privacy \(/about/privacy-policy\)](#)

## Terms and Conditions

[CHOOSE AN ADDITIONAL SAMPLE](#) — [PICK FROM 2 OF OUR SUMMER FAVORITES.](#) [SUBSCRIBE NOW >](#)

[\(/shop/join\)](#)

Welcome to [www.birchbox.com](#) (the “Site”). This Site is maintained and operated by Birchbox Inc. (“Birchbox” or “Company”).

By accessing, browsing or using this Site, you acknowledge that you have read, understood and agreed to be bound by these Terms of Use (these “Terms”). If you do not agree to these Terms, you should not use or access this Site. Birchbox reserves the right to revise these Terms at any time by updating this posting. You are encouraged to review these Terms each time you use the Site because your use of the Site after the posting of changes will constitute your acceptance of the changes. By agreeing to these Terms it also constitutes your agreement to the [Rewards Points Terms and Conditions \(/about/reward-points-terms\)](#), and the Site [Privacy Policy \(/about/privacy-policy\)](#), which are incorporated herein.

BY ACCESSING OR USING ANY PART OF THE SITE, YOU ACCEPT, WITHOUT LIMITATION OR QUALIFICATION, THESE TERMS. IF YOU DO NOT AGREE WITH ALL OF THE TERMS SET FORTH BELOW, YOU MAY NOT USE ANY PORTION OF THE SITE. PRICE INFORMATION FOUND ON THIS SITE IS SUBJECT TO CHANGE WITHOUT NOTICE. BIRCHBOX RESERVES THE RIGHT TO CHANGE THESE TERMS & CONDITIONS OF USE AT ANY TIME WITHOUT NOTICE.

We grant you a personal, limited, non-transferable non-exclusive, license to access and use the Site. We reserve the right, in our sole discretion and without notice to you, to revise the products and services available on the Site and to change, suspend or discontinue any aspect of the Site and we will not be liable to you or to any third party for doing so. We may also impose rules for and limits on use of the Site or restrict your access to part, or all, of the Site without notice or penalty. Your continued use of the Site will constitute your acceptance of any such changes.

### 1. Use of the Site

You may use the Site only for your own noncommercial personal use and in compliance with these Terms. You are responsible for your own communications, including the transmission, uploading or posting of information and are responsible for the consequences of such communications to the Site. Any other use of the Site requires the prior written consent of Birchbox. You may not otherwise copy, modify, or distribute the contents of this Site without the express written permission of Birchbox. You may not modify, publish, transmit, participate in the transfer or sell, create derivative works from, or in any way exploit, any of the content, in whole or in part, found on the Site.

We require all Members to agree not to use the Site, and specifically prohibit any use of the Site, for any of the following purposes:

- Posting, communicating or transmitting any material that infringes on any intellectual property, publicity or privacy right of another person or entity
- Posting any information which is untrue, inaccurate or not your own
- Engaging in conduct that would constitute a criminal offense or give rise to civil liability or otherwise violate any law or regulation
- Attempting to interfere in any way with the Site’s or Birchbox’s network security, or attempting to use the Site’s service to gain unauthorized access to any other computer system

You may not use spiders, robots, data mining techniques or other automated devices or programs to catalog, download or otherwise reproduce, store or distribute content available on the Site. Further, you may not use any such automated means to manipulate the Site, such as automating what are otherwise

malicious or otherwise abusive. You may not take any action to interfere with, disrupt, the Site or any other user's use of the Site, including, without limitation, via means of overloading, "flooding", "mailbombing" or "crashing" the Site, circumventing security or user authentication measures or attempting to exceed the limited authorization and access granted to you under these Terms. You may not frame portions of the Site within another web site. You may not resell use of, or access to, the Site to any third party without our prior written consent.

## 2. Registration and Passwords

In order to access certain services on the Site, you will be required to provide specific information. All information about you must be truthful, and you may not use any aliases or other means to mask your true identity. Any access codes or passwords provided should be safeguarded at all times. You are responsible for the security of your access codes and passwords and will be solely liable for any use or unauthorized use under such access codes or passwords. We may suspend or terminate your access at any time with or without notice. To understand how we use information collected from you, please read our Privacy Policy.

## 3. Additional Terms and Conditions

You agree that additional terms and conditions may apply to specific products, orders or your use of certain portions of the Site, including with respect to ordering, shipping and return policies, review guidelines and membership reward programs (Rewards T&Cs Link) ("Additional Terms"), which Additional Terms are made part of these Terms by reference. If there is a conflict between these Terms and the Additional Terms, the Additional Terms shall control.

## 4. Membership

The Site is available to registered users who are 13 years and older and who have not been suspended or removed by Birchbox for any reason (a "Member"). We reserve the right to revoke your membership for any reason at any time including as a result of a violation of these Terms of the Privacy Policy, without notice. Membership is void where prohibited by law.

## 5. The Monthly Subscription Contract Between You And Us

By purchasing a month to month subscription, you acknowledge that your subscription has an initial and recurring payment feature and you accept responsibility for all recurring charges prior to cancellation. Your subscription will be automatically extended for successive monthly periods, at the then-current subscription rate. To cancel your subscription at any time, you must logon to your account or email us and we will do it for you. If you cancel, you may use your subscription until the end of your then-current subscription term. Birchbox may submit periodic charges (e.g., monthly) without further authorization from you, until you provide prior notice that you have terminated this authorization or wish to change your payment method. Such notice will not affect charges submitted before Birchbox reasonably could act.

For multiple month subscriptions (3, 6, & 12 months), your subscription will not be renewed after your then-current term expires. If you cancel your subscription, you will not be eligible for a prorated refund of any portion of the subscription fee paid for the then-current subscription period. We reserve the right to revoke your subscription at any time as a result of a violation of these Terms or the Privacy Policy. Membership is void where prohibited by law.

## 6. Product Information; Limitation on Quantities

Excluding any content which may be submitted by Members from time to time, we strive to ensure that the information on the Site is complete and reliable. Certain information may contain pricing errors, typographical errors and other errors or inaccuracies which we may correct without liability. We also reserve the right to limit quantities purchased by Members and to revise, suspend, or terminate an event or promotion at any time without notice (including after an order has been submitted and/or acknowledged). We do not guarantee that all products described on our Site will be available.

## 7. Proprietary Rights

You acknowledge and agree that the content (whether or not content that may be submitted by Members), materials, text, images, videos, graphics, trademarks, logos, button icons, music, software and other elements available on the Site are the property of Birchbox or our licensors and are protected by copyright, trademark and/or other proprietary rights and laws. You agree not to sell, license, rent, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit, modify or create derivative works from any content or materials on the Site. Birchbox and the Birchbox logo are registered trademarks, and Discover Beauty Better is a trademark, of Birchbox, Inc. All other trademarks are the property of their respective owners. All of our Site's content is Copyright 2012 Birch box, Inc. All rights reserved. **Except as expressly set forth in these Terms, no license is granted to you and no rights are conveyed by virtue of accessing or using the Site. All rights not granted under these Terms are reserved by Birchbox.**

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## 10. Taxes

Your total price will include the price of the product plus any applicable sales tax; such state and local sales tax is based on the shipping address and the sales tax rate in effect at the time you purchase the product. We will charge tax only in states where the goods sold over the internet is taxable.

## 11. Indemnification

You agree to indemnify, hold harmless, and defend Birchbox, its parent, subsidiaries, divisions, and affiliates, and their respective officers, directors, employees, agents and affiliates from any and all claims, liabilities, damages, costs and expenses of defense, including attorneys' fees, in any way arising from or related to your use of the Site, your violation of these Terms or the Privacy Policy, content posted to the Site by you, or your violation of any law or the rights of a third party.

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### **13. International Use**

We control and operate the Site from the United States. We make no representation that materials on the Site are appropriate or available for use outside the United States. If you choose to access this Site from outside the United States, you do so at your own initiative and are responsible for compliance with local laws, if and to the extent local laws are applicable.

### **14. Risk of Loss**

Any merchandise purchased from our Site will be shipped by a third party carrier. As a result, title and risk of loss for such merchandise will pass to you upon our delivery to the carrier.

### **15. Copyright Infringement; Notice and Take Down Procedures**

Birchbox specifically prohibits the posting of any content that violates or infringes the copyright rights and/or other intellectual property rights (including rights of privacy and publicity) of any person or entity. If you believe that any material contained on this Site infringes your copyright or other intellectual property rights, you should notify us of your copyright infringement claim in accordance with the following procedure. Birchbox will process notices of alleged infringement which it receives and will take appropriate action as required by the Digital Millennium Copyright Act ("DMCA"). The DMCA requires that notifications of claimed copyright infringement should be sent to the following address:

Birchbox Inc.  
230 Park Avenue South  
12th Floor  
New York, NY 10003

Telephone: (877) 487-7272

To be effective, the notification must be in writing and contain the following information (DMCA, 17 U.S.C. §512(c)(3)):

- Physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material;
- Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted;



- As a result, the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

To contact us with any questions or concerns in connection with these Terms or the Site, or to provide any notice under these Terms, please contact us.

## 16. Severability

If any part of these Terms shall be held or declared to be invalid or unenforceable for any reason by any court of competent jurisdiction, such provision shall be ineffective but shall not affect any other part of these Terms, and in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

## 17. Waiver; Remedies

The failure of Birchbox to partially or fully exercise any rights or the waiver of Birchbox of any breach of these Terms and Conditions by you shall not prevent a subsequent exercise of such right by Birchbox or be deemed a waiver by Birchbox of any subsequent breach by you of the same or any other term of these Terms. The rights and remedies of Birchbox under these Terms and any other applicable agreement between you and Birchbox shall be cumulative, and the exercise of any such right or remedy shall not limit Birchbox's right to exercise any other right or remedy.

## 18. Governing Law

The laws of the State of New York shall govern these Terms. YOU HEREBY EXPRESSLY CONSENT TO EXCLUSIVE JURISDICTION AND VENUE IN THE COURTS LOCATED IN NEW YORK COUNTY, NEW YORK FOR ALL MATTERS ARISING IN CONNECTION WITH THESE TERMS AND CONDITIONS OR YOUR ACCESS OR USE OF THE SITE.

**Questions:** Should you have any questions regarding these Terms you may contact us at [info@birchbox.com](mailto:info@birchbox.com) (<mailto:info@birchbox.com>).

[ABOUT \(/ABOUT\)](#)

[BRANDS \(/SHOP/BRANDS\)](#)

[MOBILE APPS \(/MOBILE\)](#)

[CAREERS \(/ABOUT/CAREERS\)](#)

[PRESS \(/ABOUT/PRESS\)](#)

[CONTACT](#)

[\(/ABOUT/CONTACT-US\)](#)

[RECEIVED A GIFT?](#)

[\(/GIFT/CLAIM\)](#)

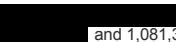
[BLOG](#)

[\(HTTP://BLOG.BIRCHBOX.COM/\)](#)

### REFER FRIENDS, EARN POINTS!

Earn 50 Birchbox points for every friend that purchases a subscription.

INVITE FRIENDS  
(/SHOP/REFERRAL/INDEX?  
REF=FOOTER)

Like  and 1,081,395 others like this

USA ▼

[TERMS \(/ABOUT/TERMS-CONDITIONS\)](#)

[PRIVACY \(/ABOUT/PRIVACY-POLICY\)](#)

[MADE IN NYC \(HTTP://NYTM.ORG/MADE/\)](#)

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### **EXHIBIT 3**

FREE STANDARD SHIPPING ON ORDERS \$50+

LOGIN 0

BIRCHBOX

SHOP

MAGAZINE

BOX

GIFT

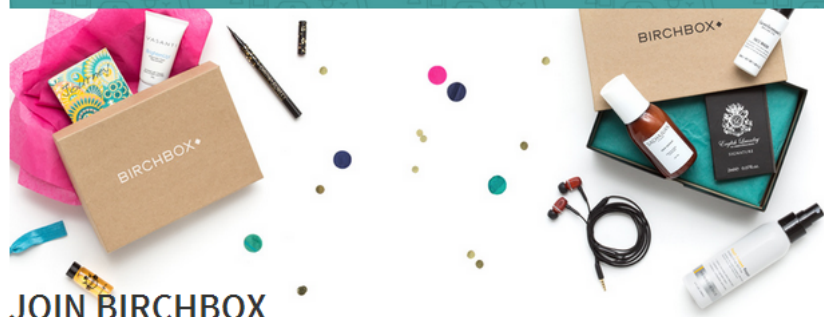
SUBSCRIBE

Search

Women

## THIS MONTH: BIRCHBOX TEAMS UP WITH jetBlue

Bringing you an exclusive travel giveaway inside the box!



## JOIN BIRCHBOX

Birchbox delivers high-end beauty, grooming, and lifestyle samples once a month, customized just for you.

## Select Your Subscription



Women's Subscription  
\$10/month



Men's Subscription  
\$20/month

## Limited Time Offers

## WOMEN'S SUBSCRIPTION OFFER

Subscribe to Birchbox today and pick an extra sample to add to your first box. Choose from one of two of our favorite summery picks!



Whish Shave Crave  
Shaving Cream in Grapefruit  
CODE: SUMMERSHAVE

OR



Cynthia Rowley Beauty  
Creamy Lip Stain in Nude  
CODE: SUMMERLIP

\*Additional sample choice is available for women's monthly resubscribe subscriptions and women's yearly subscriptions. Available through June 23, 2014 11:59 p.m. or while supplies last.

## MEN'S SUBSCRIPTION BONUS



Included with your Birchbox Man subscription is a one year subscription to Details magazine (\$10 value).\*

Use code DETAILSGIFT at checkout.

\*Use promo code DETAILSGIFT to get your one-year subscription to DETAILS Magazine with your purchase of a monthly resubscribe or yearly Birchbox Man subscription. Simply enter the code and we'll take care of the rest. We'll share your name and address with DETAILS Magazine and your first issue will be delivered in 4-6 weeks. Click here for offer and refund details.

## Lift the Lid on This Month's Box

### See What Some Subscribers Sampled

Women's Box

Men's Box



Kérastase  
Cristalliste Bain  
Cristal Thick -  
Cleanse  
★★★★☆ (203)  
\$38.00



Kérastase Lait  
Cristal Conditioner -  
Treat  
★★★★☆ (276)  
\$41.00 SHIPS FREE

EXCLUSIVE



Whish Shave Crave  
Shaving Cream  
★★★★☆ (13,839)  
\$20.00  
More Options Available

EXCLUSIVE



Cynthia Rowley  
Beauty Eyeliner  
★★★★☆ (10,487)  
\$16.00 SHIPS FREE  
More Options Available



PIXI Beauty Shea  
Butter Lip Balm  
★★★★☆ (11,135)  
\$8.00  
More Options Available



Caudalie  
Polyphenol C15  
Overnight Detox Oil  
★★★★☆ (1,174)  
\$52.00 SHIPS FREE

ABOUT  
BRANDS  
MOBILE APPS

CAREERS  
PRESS  
CONTACT

RECEIVED A GIFT?  
BLOG

REFER FRIENDS, EARN POINTS!

Earn 50 Birchbox points for every friend that purchases a subscription.

INVITE FRIENDS



USA

TERMS

PRIVACY

MADE IN NYC

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**EXHIBIT 4**

FREE STANDARD SHIPPING ON ORDERS \$50+

LOGIN 0

BIRCHBOX

SHOP

MAGAZINE

BOX

GIFT

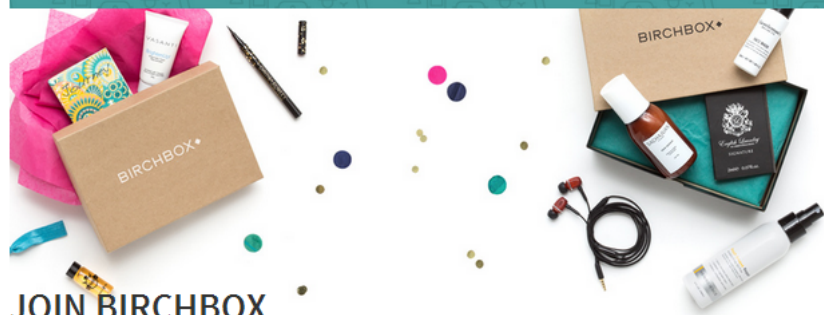
SUBSCRIBE

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Women

THIS MONTH: BIRCHBOX TEAMS UP WITH jetBlue

Bringing you an exclusive travel giveaway inside the box!



## JOIN BIRCHBOX

Birchbox delivers high-end beauty, grooming, and lifestyle samples once a month, customized just for you.

## Select Your Subscription



Women's Subscription  
\$10/month

☒ Monthly for \$10/month

☐ Yearly for \$110/year



Men's Subscription  
\$20/month

SUBSCRIBE NOW

## Limited Time Offers

## WOMEN'S SUBSCRIPTION OFFER

Subscribe to Birchbox today and pick an extra sample to add to your first box. Choose from one of two of our favorite summery picks!



Whish Shave Crave  
Shaving Cream in Grapefruit  
CODE: **SUMMERSHAVE**

OR



Cynthia Rowley Beauty  
Creamy Lip Stain in Nude  
CODE: **SUMMERLIP**

\*Additional sample choice is available for women's monthly reusable subscriptions and women's yearly subscriptions. Available through June 23, 2014 11:59 p.m. or while supplies last.

## MEN'S SUBSCRIPTION BONUS



Included with your Birchbox Man subscription is a one year subscription to Details magazine (\$10 value).\*

Use code **DETAILSGIFT** at checkout.

\*Use promo code DETAILSGIFT to get your one-year subscription to DETAILS Magazine with your purchase of a monthly reusable or yearly Birchbox Man subscription. Simply enter the code and we'll take care of the rest. We'll share your name and address with DETAILS Magazine and your first issue will be delivered in 4-6 weeks. [Click here](#) for offer and refund details.

## Lift the Lid on This Month's Box

### See What Some Subscribers Sampled

Women's Box

Men's Box



Kérastase  
Cristalliste Bain  
Cristal Thick-  
Cleanse  
★★★★☆ (203)  
\$38.00



Kérastase Laït  
Cristal Conditioner -  
Treat  
★★★★☆ (276)  
\$41.00 **SHIPS FREE**



Whish Shave Crave  
Shaving Cream  
★★★★☆ (13,839)  
\$20.00 **SHIPS FREE**  
More Options Available



Cynthia Rowley  
Beauty Eyelliner  
★★★★☆ (10,487)  
\$16.00 **SHIPS FREE**  
More Options Available



PIXI Beauty Shea  
Butter Lip Balm  
★★★★☆ (11,335)  
\$8.00 **SHIPS FREE**  
More Options Available



Caudalie  
Polyphenol C15  
Overnight Detox Oil  
★★★★☆ (1,174)  
\$52.00 **SHIPS FREE**

Ex. 4  
42

ABOUT  
BRANDS  
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CAREERS  
PRESS  
CONTACT

RECEIVED A GIFT?  
BLOG

REFER FRIENDS, EARN POINTS!  
Earn 50 Birchbox points for every friend that purchases a subscription.

INVITE FRIENDS



and 1,080,208 others


## **EXHIBIT 5**

FREE STANDARD SHIPPING ON ORDERS \$50+
LOGIN 1

BIRCHBOX
SHOP
MAGAZINE
BOX
GIFT
SUBSCRIBE

CHOOSE AN ADDITIONAL SAMPLE -- PICK FROM 2 OF OUR SUMMER FAVORITES. SUBSCRIBE NOW>

### Shopping Cart

|   | Quantity | Price   | Total   |
|---|----------|---------|---------|
|  <div> Women's Monthly Rebillable Subscription <div>Shipping: <span></span></div> <div>Remove</div> </div> | 1        | \$10.00 | \$10.00 |

CONTINUE SHOPPING

UPDATE CART

**PROMO CODES**  
Enter promo code  


APPLY

**GIFT CARD**  
Enter the gift card code  


APPLY

Check card balance

**ESTIMATE SHIPPING**  
Country  
United States

Zip/Postal Code  


GET QUOTE

Subtotal \$10.00  
Grand Total \$10.00

CHECK OUT

ABOUT  
BRANDS  
MOBILE APPS

CAREERS  
PRESS  
CONTACT

RECEIVED A GIFT?  
BLOG

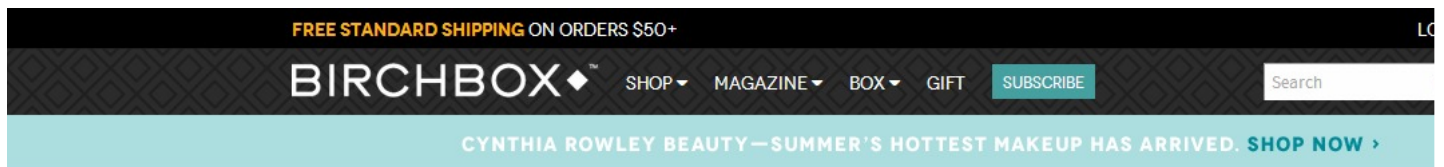
REFER FRIENDS, EARN POINTS!  
Earn 50 Birchbox points for every friend that purchases a subscription.

INVITE FRIENDS

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## **EXHIBIT 6**



## Checkout

### Checkout Method

#### Create an Account

Stay in touch and save time!

- Fast and easy check out
- Easy access to your order history
- Email updates from Birchbox

**CONTINUE**

#### Login

Already have an account? Log in below

Email Address

Password

☒ Remember Me

**LOGIN**

[Forgot your password?](#)

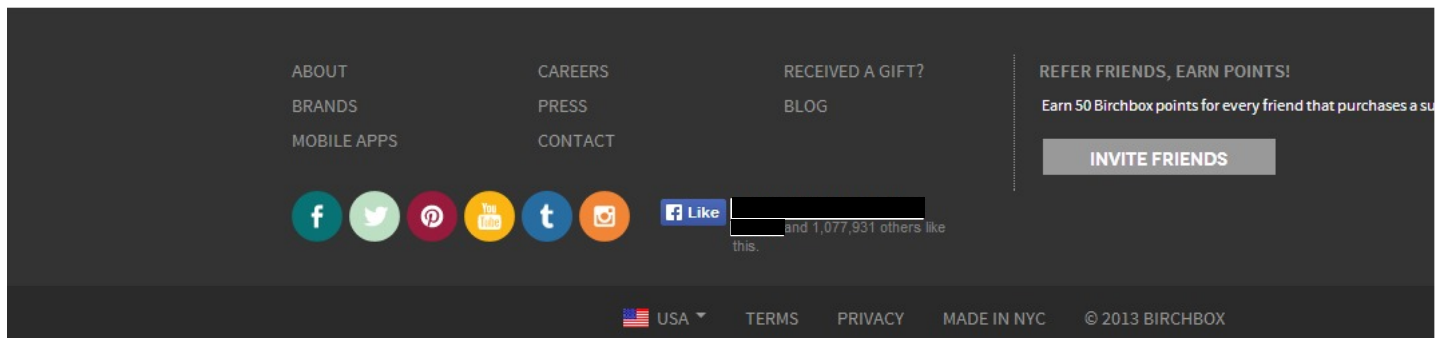
### Billing Information

### Shipping Information

### Shipping Method

### Payment Information

### Order Review



**EXHIBIT 7**

## Checkout

### Checkout Method

### Billing Information

First Name \*

Last Name \*

Email Address \*

Company

30 characters max

Address 1 \*

30 characters max

City \*

 Los Angeles

20 characters max

Zip/Postal Code \*

Telephone \*

19 characters max

Password \*

Confirm Password \*

☒ Ship to this address

☐ Ship to a different address

Shipping address only applies to the full-size products in your order. Gift Subscriptions will ship to the address specified. Gift Cards are delivered by email.



### Shipping Information

### Shipping Method

### Payment Information

### Order Review

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BRANDS  
MOBILE APPS






CAREERS  
PRESS  
CONTACT

RECEIVED A GIFT?  
BLOG

REFER FRIENDS, EARN POINTS!  
Earn 50 Birchbox points for every friend that purchases a subscription.











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**EXHIBIT 8**

FREE STANDARD SHIPPING ON ORDERS \$50+

LOG IN  1

**BIRCHBOX** 

SHOP  MAGAZINE  BOX  GIFT  [SUBSCRIBE](#)

Women 


CHOOSE AN **ADDITIONAL SAMPLE** -- PICK FROM 2 OF OUR SUMMER FAVORITES. [SUBSCRIBE NOW >](#)

Checkout Method

Billing Information

Shipping Information

Shipping Method

☒ Standard \$0.00
 

CONTINUE

**Birchbox Shipping Policy** [Learn more](#)

- Delivery estimates apply only to in-stock, full-size products.
- Next-Day and 2nd-Day Shipping are unavailable for P.O. box, APO/FPO, and non-Continental US addresses, and for orders containing (but not limited to) nail polish, perfume and aerosols.
- Standard shipping takes between 2-10 days.

Payment Information

Order Review

ABOUT

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MOBILE APPS

CAREERS

PRESS

CONTACT

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BLOG

REFER FRIENDS, EARN POINTS!

Earn 50 Birchbox points for every friend that purchases a subscription.

[INVITE FRIENDS](#)









and 1,231,315 others

 USA \*

[TERMS](#)

[PRIVACY](#)


[MADE IN NYC](#)

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**EXHIBIT 9**



FREE STANDARD SHIPPING ON ORDERS \$50+

LOGIN  1

BIRCHBOX

SHOPMAGAZINEBOXGIFT

SUBSCRIBE

Search

Women

CHOOSE AN ADDITIONAL SAMPLE -- PICK FROM 2 OF OUR SUMMER FAVORITES. [SUBSCRIBE NOW >](#)

Checkout

Checkout Method

Billing Information

Shipping Information

Shipping Method

Payment Information

Credit Card

Credit Card Type \*

Credit Card Number \*

Expiration Date \*

Card Verification Number \*

What is this?

CONTINUE

Order Review

ABOUT

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MOBILE APPS

CAREERS

PRESS

CONTACT

RECEIVED A GIFT?

BLOG

REFER FRIENDS, EARN POINTS!

Earn 50 Birchbox points for every friend that purchases a subscription.

INVITE FRIENDS





and 1,081,313 others

Like this.

USA

TERMS


PRIVACY


MADE IN NYC


© 2013 BIRCHBOX

**EXHIBIT 10**

FREE STANDARD SHIPPING ON ORDERS \$50+

LOGIN  1

**BIRCHBOX**  SHOP MAGAZINE BOX GIFT [SUBSCRIBE](#)

Search Women 

CYNTHIA ROWLEY BEAUTY—SUMMER'S HOTTEST MAKEUP HAS ARRIVED [SHOP NOW >](#)

## Checkout

Checkout Method


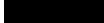
Billing Information

Shipping Information

Shipping Method

Payment Information

Order Review

|  | Quantity | Price   | Total   |
|--|----------|---------|---------|
|  Women's Monthly Rebillable Subscription<br>Shipping:  | 1        | \$10.00 | \$10.00 |
| Subtotal   |          |         | \$10.00 |
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## CIVIL COVER SHEET 15CV498 L KSC

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

TRACY DAVIS

(b) County of Residence of First Listed Plaintiff Los Angeles  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See Attachment

**DEFENDANTS**

BIRCHBOX, INC.

County of Residence of First Listed Defendant New York  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☒ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

| CONTRACT   | TORTS  | FORFEITURE/PENALTY   | BANKRUPTCY  | OTHER STATUTES  |  |
|--|--|--|---|---|--|
| <input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input checked="" type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 690 Other<br><b>LABOR</b><br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Management Relations<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 751 Family and Medical Leave Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Employee Retirement Income Security Act<br><b>IMMIGRATION</b><br><input type="checkbox"/> 462 Naturalization Application<br><input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><b>PROPERTY RIGHTS</b><br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 840 Trademark<br><b>SOCIAL SECURITY</b><br><input type="checkbox"/> 861 HIA (1395ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))<br><b>FEDERAL TAX SUITS</b><br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act<br><input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 896 Arbitration<br><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision<br><input type="checkbox"/> 950 Constitutionality of State Statutes |
| <b>REAL PROPERTY</b><br><input type="checkbox"/> 210 Land Condemnation<br><input type="checkbox"/> 220 Foreclosure<br><input type="checkbox"/> 230 Rent Lease & Ejectment<br><input type="checkbox"/> 240 Torts to Land<br><input type="checkbox"/> 245 Tort Product Liability<br><input type="checkbox"/> 290 All Other Real Property   | <b>CIVIL RIGHTS</b><br><input type="checkbox"/> 440 Other Civil Rights<br><input type="checkbox"/> 441 Voting<br><input type="checkbox"/> 442 Employment<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 445 Amer. w/Disabilities - Employment<br><input type="checkbox"/> 446 Amer. w/Disabilities - Other<br><input type="checkbox"/> 448 Education   | <b>PRISONER PETITIONS</b><br><b>Habeas Corpus:</b><br><input type="checkbox"/> 463 Alien Detainee<br><input type="checkbox"/> 510 Motions to Vacate Sentence<br><input type="checkbox"/> 530 General<br><input type="checkbox"/> 535 Death Penalty<br><b>Other:</b><br><input type="checkbox"/> 540 Mandamus & Other<br><input type="checkbox"/> 550 Civil Rights<br><input type="checkbox"/> 555 Prison Condition<br><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement                                |   |   |  |

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. § 1332(d), Cal. Bus. & Prof. Code § 17600 et seq., § 17200 et seq., and § 17535

Brief description of cause:

Violation of California's (1) Automatic Purchase Renewal Statute and (2) Unfair Competition Law

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Roger T. Benitez

DOCKET NUMBER 3:15-cv-00214-BEN-BGS

DATE

03/04/2015

SIGNATURE OF ATTORNEY OF RECORD

/s/ Todd A. Seaver

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**ATTACHMENT TO CIVIL COVER SHEET**

**PLAINTIFFS**

**Attorneys**

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