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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MATTHEW LOPEZ, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

CASKERS, LLC, a Delaware limited
liability company; and DOES 1 – 10,
inclusive,

Defendants.

Case No. '16CV0837 LAB RBB

CLASS ACTION COMPLAINT FOR:

1. VIOLATIONS OF CALIFORNIA'S
AUTOMATIC RENEWAL LAW
(BUSINESS AND PROFESSIONS
CODE §§ 17600-17604); and
2. VIOLATIONS OF CALIFORNIA'S
UNFAIR COMPETITION LAW
(BUSINESS AND PROFESSIONS
CODE §§ 17200-17204).

1 Plaintiff Matthew Lopez (“Plaintiff”), on behalf of himself and all others similarly
2 situated, complains and alleges as follows:

3 INTRODUCTION & OVERVIEW OF CLAIMS

4 1. Plaintiff brings this class action on behalf of himself and a class of others
5 similarly situated consisting of all persons in California who, within the applicable
6 statute of limitations period, purchased subscriptions for any products (such as
7 Defendant’s “Explorer” alcohol subscription program) from Caskers, LLC (“Caskers”
8 or “Defendant”). The class of others similarly situated to Plaintiff is referred to herein
9 as “Class Members.” The claims for damages, restitution, injunctive and/or other
10 equitable relief, and reasonable attorneys’ fees and costs arise under California
11 Business and Professions Code (hereinafter “Cal. Bus. & Prof. Code”) §§ 17602,
12 17603, and 17604) and 17200, *et seq.*, and California Code of Civil Procedure § 1021.5.
13 Plaintiff and Class Members are consumers for purposes of Cal. Bus. & Prof. Code §§
14 17600-17606.

15 2. During the Class Period, Defendant made automatic renewal or continuous
16 service offers to consumers in and throughout California and (a) at the time of making
17 the automatic renewal or continuous service offers, failed to present the automatic
18 renewal offer terms or continuous service offer terms, in a clear and conspicuous
19 manner and in visual proximity to the request for consent to the offer before the
20 subscription or purchasing agreement was fulfilled in violation of Cal. Bus. & Prof.
21 Code § 17602(a)(1); (b) charged Plaintiff’s and Class Members’ credit or debit cards,
22 or third-party account (hereinafter “Payment Method”) without first obtaining
23 Plaintiff’s and Class Members’ affirmative consent to the agreement containing the
24 automatic renewal offer terms or continuous service offer terms in violation of Cal.
25 Bus. & Prof. Code § 17602(a)(2); and (c) failed to provide an acknowledgment that
26 includes the automatic renewal or continuous service offer terms, cancellation policy,
27 and information regarding how to cancel in a manner that is capable of being retained
28 by the consumer in violation of Cal. Bus. & Prof. Code § 17602(a)(3). As a result, all

1 goods, wares, merchandise, and/or products sent to Plaintiff and Class Members under
2 the automatic renewal of continuous service agreements are deemed to be an
3 unconditional gift pursuant to Cal. Bus. & Prof. Code § 17603.

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

8 **JURISDICTION AND VENUE**

9 4. This Court has diversity jurisdiction over this class action pursuant to 28
10 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005 because the
11 amount in controversy exceeds five million dollars (\$5,000,000.00), exclusive of
12 interest and costs, and is a class action in which some members of the class are citizens
13 of different states than Defendant. *See* 28 U.S.C. § 1332(d)(2)(A).

14 5. This Court also has personal jurisdiction over Defendant because
15 Defendant currently does business in this state.

16 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because
17 Defendant is subject to personal jurisdiction in this District and a substantial portion of
18 the conduct complained of herein occurred in this District.

19 **PARTIES**

20 7. Plaintiff purchased a subscription plan from Defendant in California
21 during the Class Period. Plaintiff and Class Members are consumers as defined under
22 Cal. Bus. & Prof. Code § 17601(d).

23 8. Defendant Caskers, LLC is a Delaware limited liability company.
24 Defendant operates throughout California and the United States and has done business
25 throughout California at all times during the Class Period. Also during the Class
26 Period, Defendant made, and continues to make, automatic renewal or continuous
27 service offers to consumers in California. Defendant operates a website which markets
28 alcohol subscriptions.

9. The true names and capacities of the Defendants sued herein as DOES 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

10. At all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and/or scope of said agency and/or employment with the full knowledge and consent of each of the Defendants. Each of the acts and/or omissions complained of herein were alleged and made known to, and ratified by, each of the other Defendants (Caskers, LLC and DOE Defendants will hereafter collectively be referred to as “Defendant”).

FACTUAL BACKGROUND

California Business Professions Code §§ 17600-17606

11. On December 1, 2010, sections 17600-17606 of the Cal. Bus. & Prof. Code came into effect. The Legislature’s stated intent for this Article was to end the practice of ongoing charges to consumers’ Payment Methods without consumers’ explicit consent for ongoing shipments of a product or ongoing deliveries of service. *See* Cal. Bus. & Prof. Code § 17600.

12. Cal. Bus. & Prof. Code § 17602(a) makes it unlawful for any business making an automatic renewal or continuous service offer to a consumer in this state to do any of the following:

- i) 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.
- ii) Charge the consumer’s credit or debit card or the consumer’s account with a third party for an automatic renewal or

continuous service without first obtaining the consumer's affirmative consent to the agreement containing the automatic renewal offer terms or continuous service offer terms.

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

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

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

15. Pursuant to Cal. Bus. & Prof. Code § 17601(c), “clear and conspicuous” or “clearly and conspicuously” means “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 from the surrounding text of the same size by symbol ls or other marks, in a manner that clearly calls attention to the language.”

16. Section 17602(b) provides: “A business making automatic renewal or continuous service offers shall provide a toll-free telephone number, electronic mail address, a postal address only when the seller directly bills the consumer, or another

1 cost-effective, timely, and easy-to-use mechanism for cancellation that shall be
2 described in the acknowledgment specified in paragraph (3) of subdivision (a).”

3 17. Section 17603 of Cal. Bus. & Prof. Code provides: “In any case in which a
4 business sends any goods, wares, merchandise, or products to a consumer, under a
5 continuous service agreement or automatic renewal of a purchase, without first
6 obtaining the consumer’s affirmative consent as described in Section 17602, the goods,
7 wares, merchandise, or products shall for all purposes be deemed an unconditional gift
8 to the consumer, who may use or dispose of the same in any manner he or she sees fit
9 without any obligation whatsoever on the consumer’s part to the business, including,
10 but not limited to, bearing the cost of, or responsibility for, shipping any goods, wares,
11 merchandise, or products to the business.”

12 **Defendant’s Business**

13 18. Defendant offers subscriptions for alcohol deliveries. Some of
14 Defendant’s alcohol delivery plans constitute automatic renewal and/or continuous
15 service plans or arrangement for the purposes of Cal. Bus. & Prof. Code § 17601.

16 **Defendant’s Terms of Service**

17 19. During the Class Period, Defendant’s webpage, found at
18 www.caskers.com, contained a document entitled “Terms of Service.” This is a lengthy
19 document that fails to set forth in specific terms, the information concerning the
20 recurring nature of Defendant’s subscription programs and the manner in which the
21 subscriptions may be modified or cancelled. Additionally, and more importantly, the
22 terms are not set forth where a prospective subscriber finalizes a purchase. Indeed, that
23 page does not note that the subscription will be renewed automatically until canceled.

24 **Defendant’s Terms of Service Fail to Provide Clear and Conspicuous Disclosures**
25 **As Required by Law.**

26 20. Within the Terms of Service, Defendant failed to state in clear and
27 conspicuous language (*i.e.*, in larger type than the surrounding text, or in contrasting
28 type, font, or color to the surrounding text of the same size, or set off from the

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

- i) The subscription or purchasing agreement will continue until the consumer cancels;
- ii) Describes the cancellation policy that applies to the offer;
- iii) Recurring charges that will be charged to the consumer's Payment Method account with a third party as part of the automatic renewal plan or arrangement, and that the amount of the charge may change, if that is the case, and the amount to which the charge will change, if known; and
- iv) The length of the automatic renewal term or that the service is continuous unless the length of the term is chosen by the consumer.

Defendant Failed to Present the Automatic Renewal Offer Terms or Continuous Service Offer Terms in a Clear and Conspicuous Manner Before 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).

21. During the Class Period, Defendant made, and continues to make, an automatic renewal offer for its subscriptions plans to consumers throughout California, including Plaintiff and Class Members. On the pages of Defendant's website where the potential subscriber ultimately is invited to "add to cart" and "place my order", the automatic renewal offer terms or continuous service offer terms as defined by Cal. Bus. & Prof. Code § 17601(b) are not included.

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[MY ACCOUNT](#) | [INVITE FRIENDS](#) | [CART \(0\)](#)

[SPIRITS](#) [CLUBS](#) [ACCESSORIES](#) [PRIVATE CASK](#) [CONCIERGE](#)

[Whiskey](#) [Vodka](#) [Select](#) [Office](#)

Search

WELCOME TO THE WHISKEY CLUB

Choose Your Adventure

OPTION NO. 1
EXPLORER
THE WHISKEY CLUB

Receive one club package every quarter, with 3 full-size bottles of whiskeys.

QUARTERLY: \$159.99
\$159.99
per Package

ADD to CART

OPTION NO. 2
ENTHUSIAST
THE WHISKEY CLUB

Receive two club packages, one per quarter, for a total of 6 bottles of whiskey.

SEMIANNUALLY: \$309.98
\$154.99
per Package

ADD to CART

OPTION NO. 3
CONNOISSEUR
THE WHISKEY CLUB

Receive four club packages, one per quarter, for a total of 12 bottles of whiskey.

ANNUALLY: \$599.96
\$149.99
per Package

ADD to CART

Plus, free shipping on all club packages. The next package ships in December.

Plans automatically renew. You can cancel at any time.

HOW IT WORKS

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<p>QUARTERLY: \$189.99 \$159.99 per Package</p> <p>ADD to CART</p>	<p>SEMIANNUALLY: \$309.98 \$154.99 per Package</p> <p>ADD to CART</p>	<p>ANNUALLY: \$309.98 \$149.99 per Package</p> <p>ADD to CART</p>
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Plus, free shipping on all club packages. The next package ships in December.

Plans automatically renew. You can cancel at any time.

HOW IT WORKS



STEP No. 1 Select a Club

Discover new full-size spirits, delivered to your door every three months.



STEP No. 2 Sip & Enjoy

Enjoy your spirits and learn the story with our custom tasting cards and notes.



STEP No. 3 Love the Perks

Receive exclusive perks, including early-access to limited availability items and free shipping.

*Have questions? Find answers in our **FAQ***

Note: we are unfortunately unable to ship Caskers Clubs to the following states: AL, AK, AR, CO, DE, FL, HI, IA, ID, IL, IN, LA, MA, MD, MI, MS, MN, NC, ND, PA, SD, TN, UT, VA, WA, or WI.

OUR PRODUCTS
SPIRITS
CLUBS
ACCESSORIES
GIFT CARDS

OUR COMPANY
OUR STORY
CONTACT US
JOIN OUR TEAM
FEEDBACK

INFORMATION
INVITE A FRIEND
FOR OFFICES
SHIPPING
FAQ



All sales are solicited, offered, accepted, made and delivered by licensed parties or retailers who receive all orders.

Copyright 2012 - 2015 Caskers, LLC. All rights reserved. | [Terms](#) | [Privacy](#)

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The screenshot shows the 'REVIEW YOUR PURCHASE' page on the Caskers website. The header includes the Caskers logo, navigation links (SPIRITS, CLUBS, ACCESSORIES, PRIVATE CASK, CONCIERGE), and a search bar. Below the header, there are tabs for CART, CHECKOUT, and SUBSCRIPTIONS. A message states: 'Awesome! Thanks for joining. You're all set to start enjoying great spirits at member prices.' The page is divided into four main sections: BILLING ADDRESS, PAYMENT INFORMATION, SHIPPING DETAILS, and MESSAGE & GIFT OPTIONS. The BILLING ADDRESS section includes fields for first and last name, company, address, address 2, zip code, city, state, and telephone, with a checkbox for 'Ship to billing address'. The PAYMENT INFORMATION section has a radio button for 'Credit Card', a 'NEW CREDIT CARD' section with fields for name on card, card number, expiration date, and security code, and a checkbox to 'Save my credit card information'. The SHIPPING DETAILS section shows 'Standard Shipping - \$0.00'. The MESSAGE & GIFT OPTIONS section has a text area for a personal message and a checkbox for a gift bag. On the right, a 'SUMMARY of YOUR ORDER' box shows the item 'Caskers Whiskey Club - Explorer' for \$159.99, with a subtotal and total of \$159.99, and a 'PLACE MY ORDER' button. Below the summary are fields for coupon and gift card codes with 'APPLY' buttons. The footer contains links for 'OUR PRODUCTS', 'OUR COMPANY', and 'INFORMATION'.

22. As a result, prior to charging Plaintiff and Class Members, Defendant failed, and continues to fail, to obtain Plaintiff's and Class Members' affirmative consent to any language containing any automatic renewal offer terms or continuous service offer terms as defined by Cal. Bus. & Prof. Code § 17601(b).

23. Because of Defendant's failure to gather affirmative consent to the automatic renewal terms, all services provided 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

1 Members may use or dispose of the same in any manner they see fit without any
2 obligation whatsoever on their part to Defendant, including, but not limited to, bearing
3 the cost of, or responsibility for, Defendant's services and products.

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

6 24. Furthermore, and in addition to the above, after Plaintiff and Class
7 Members subscribed to one of Defendant's subscription plans, Defendant sent to
8 Plaintiff and Class Members documents entitled "Yes! Your Caskers Order is
9 Confirmed", but has failed, and continues to fail, to provide an acknowledgement that
10 includes the automatic renewal or continuous service offer terms, cancellation policy,
11 and information on how to cancel in a manner that is capable of being retained by
12 Plaintiff and Class Members in violation of Cal. Bus. & Prof. Code § 17602(a)(3).
13 Moreover, Defendant failed to provide Plaintiff and Class Members with an
14 acknowledgement regarding how to cancel the subscription and allow Plaintiff and
15 Class Members to cancel before payment, as required by Cal. Bus. & Prof. Code §
16 17602(b).

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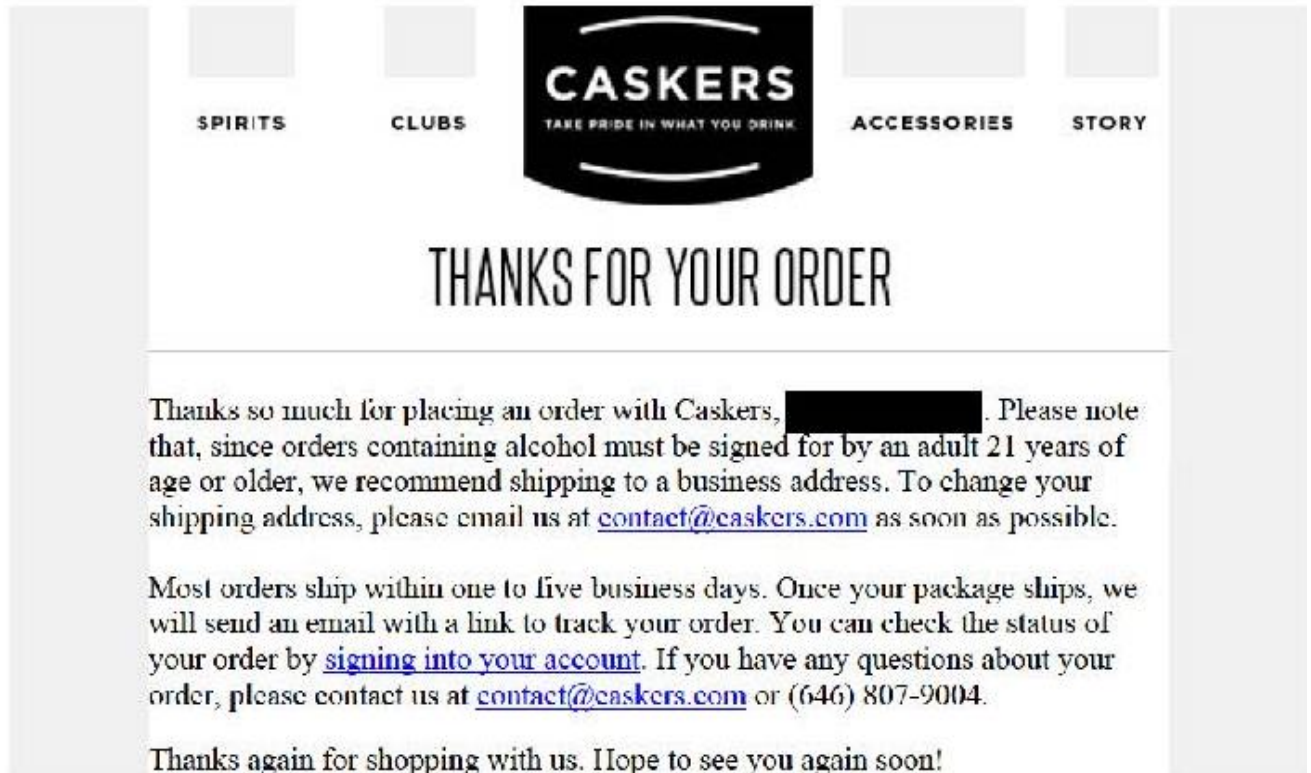
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1 [REDACTED]
2 From: Caskers <contact@caskers.com>
3 Date: [REDACTED]
4 Subject: Yes! Your Caskers Order is Confirmed
5 To: [REDACTED]



Order Confirmation No. [REDACTED]		
Placed on [REDACTED]		PM EST
ITEM(S)	QUANTITY	SUBTOTAL
 Caskers Vodka Club - Explorer SKU: [REDACTED]	1	\$119.99
Subtotal		\$119.99
Tax		\$10.50
Total		\$130.49
 SHIPPING DETAILS [REDACTED]		 PAYMENT DETAILS Credit Card
<p style="text-align: center;">Thank You! THE CASKERS TEAM</p>		

CLASS ACTION ALLEGATIONS

25. Plaintiff brings this action, on behalf of himself and all others similarly situated, as a class action pursuant to Rule 23(a) 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 within California that, within the applicable statute of limitations period, purchased any product or service in response to an offer constituting an “Automatic Renewal” as defined by § 17601(a) from Caskers, LLC its predecessors, or its affiliates.”

26. This action is brought and may be properly maintained as a class action pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4) and 23(b)(1)-

1 (3). This action satisfies the numerosity, typicality, adequacy, predominance and
2 superiority requirements of those provisions.

3 27. [Fed. R. Civ. P. 23(a)(1)] The Class is so numerous that the individual
4 joinder of all of its members is impractical. While the exact number and identities of
5 Class members are unknown to Plaintiff at this time and can only be ascertained
6 through appropriate discovery, Plaintiff is informed and believes the Class includes
7 hundreds of thousands of members. Plaintiff alleges that the Class may be ascertained
8 by the records maintained by Defendant.

9 28. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all
10 members of the Class which predominate over any questions affecting only individual
11 members of the Class. These common legal and factual questions, which do not vary
12 from class member to class member, and which may be determined without reference to
13 the individual circumstances of any class member, include, but are not limited to, the
14 following:

- 15 i) (a) Whether Defendant failed to present the automatic renewal offer
16 terms, or continuous service offer terms, in a clear and conspicuous
17 manner before the subscription or purchasing agreement was
18 fulfilled and in visual proximity to the request for consent to the
19 offer in violation of Cal. Bus. & Prof. Code § 17602(a)(1);
- 20 ii) Whether Defendant failed to provide an acknowledgment that
21 describes a cost-effective, timely, and easy-to-use mechanism for
22 cancellation in violation of Cal. Bus. & Prof. Code § 17602(b);
- 23 iii) Whether Defendant charged Plaintiff's and Class Members'
24 Payment Method for an automatic renewal or continuous service
25 without first obtaining the Plaintiff's and Class Members'
26 affirmative consent to the Terms of Service containing the automatic
27 renewal offer terms or continuous service offer terms in violation of
28 Cal. Bus. & Prof. Code § 17602(a)(2);

- iv) Whether Defendant failed to provide an acknowledgement that included 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);
- v) Whether Defendant's Terms of Service contained the automatic renewal offer terms and/or continuous service offer terms as defined by Cal. Bus. & Prof. Code § 17601;
- vi) Whether Plaintiff and the Class Members are entitled to restitution of money paid in circumstances where the goods and services provided by Defendant are deemed an unconditional gift in accordance with Cal. Bus. & Prof. Code § 17603;
- vii) Whether Plaintiff and Class Members are entitled to restitution in accordance with Cal. Bus. & Prof. Code §§ 17200, 17203;
- viii) Whether Plaintiff and Class Members are entitled to attorneys' fees and costs under California Code of Civil Procedure § 1021.5; and
- ix) The proper formula(s) for calculating the restitution owed to Class Members.

29. [Fed. R. Civ. P. 23(a)(3)] Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class have sustained injury and are facing irreparable harm arising out of Defendant's common course of conduct as complained of herein. The losses of each member of the Class were caused directly by Defendant's wrongful conduct as alleged herein.

30. [Fed. R. Civ. P. 23(a)(4)] Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained attorneys experienced in the prosecution of class actions, including complex consumer and mass tort litigation.

31. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation

1 of the claims of all Class members is impracticable. Even if every Class member could
2 afford individual litigation, the court system could not. It would be unduly burdensome
3 to the courts in which individual litigation of numerous issues would proceed.
4 Individualized litigation would also present the potential for varying, inconsistent, or
5 contradictory judgments and would magnify the delay and expense to all parties and to
6 the court system resulting from multiple trials of the same complex factual issues. By
7 contrast, the conduct of this action as a class action, with respect to some or all of the
8 issues presented herein, presents fewer management difficulties, conserves the
9 resources of the parties and of the court system, and protects the rights of each Class
10 member.

11 32. [Fed. R. Civ. P. 23(b)(1)(A)] The prosecution of separate actions by
12 thousands of individual Class members would create the risk of inconsistent or varying
13 adjudications with respect to, among other things, the need for and the nature of proper
14 notice, which Defendant must provide to all Class members.

15 33. [Fed. R. Civ. P. 23(b)(1)(B)] The prosecution of separate actions by
16 individual class members would create a risk of adjudications with respect to them that
17 would, as a practical matter, be dispositive of the interests of the other Class members
18 not parties to such adjudications or that would substantially impair or impede the ability
19 of such non-party Class members to protect their interests.

20 34. [Fed. R. Civ. P. 23(b)(2)] Defendant has acted or refused to act in respects
21 generally applicable to the Class, thereby making appropriate final injunctive relief with
22 regard to the members of the Class as a whole.

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FIRST CAUSE OF ACTION

**FAILURE TO PRESENT 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))**

(By Plaintiff, on his own behalf and on behalf of the Class, against All Defendants)

35. The foregoing paragraphs are alleged herein and are incorporated herein by reference.

36. 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.

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

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

39. Plaintiff, on behalf of himself and Class Members, requests relief as described below.

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SECOND CAUSE OF ACTION

**FAILURE TO OBTAIN CONSUMER'S AFFIRMATIVE CONSENT
BEFORE THE SUBSCRIPTION IS FULFILLED**

(CAL BUS. & PROF. CODE §§ 17602(a)(2) and 17603)

(By Plaintiff, on his own behalf and on behalf of the Class, against All Defendants)

40. The foregoing paragraphs are alleged herein and are incorporated herein by reference.

41. Cal. Bus. & Prof. Code § 17602(a)(2) 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:

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

42. Defendant charged, and continues to charge Plaintiff's and Class Members' Payment Method for an automatic renewal or continuous service without first obtaining Plaintiff's and Class Members affirmative consent to the Terms of Service purportedly containing the automatic renewal offer terms or continuous service offer terms.

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

44. Plaintiff, on behalf of himself and Class Members, requests relief as described below.

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THIRD CAUSE OF ACTION

**FAILURE TO PROVIDE ACKNOWLEDGMENT
WITH AUTOMATIC RENEWAL TERMS AND
INFORMATION REGARDING CANCELLATION POLICY
(CAL. BUS. & PROF. CODE §§ 17602(a)(3), 17602(b))**

(By Plaintiff, on his own behalf and on behalf of the Class, against All Defendants)

45. The foregoing paragraphs are alleged herein and are incorporated herein by reference.

46. Cal. Bus. & Prof. Code § 17602(a)(3) 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:

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

Cal. Bus. & Prof. Code § 17602(b) provides:

“A business making automatic renewal or continuous service offers shall provide a toll-free telephone number, electronic mail address, a postal address only when the seller directly bills the consumer, or another cost-effective, timely, and easy-to-use mechanism for cancellation that shall be described in the acknowledgment specified in paragraph (3) of subdivision (a).”

47. 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.

48. As a result of Defendant’s violations of Cal. Bus. & Prof. Code §§ 17602(a)(3) and 17602(b), Defendant is subject to all civil remedies under Cal. Bus. &

1 Prof. Code § 17604 that apply to a violation of Article 9, of Chapter 1 of Part 3, of
2 Division 7 of the Cal. Bus. & Prof. Code.

3 49. Plaintiff, on behalf of himself and Class Members, requests relief as
4 described below.

5 **FOURTH CAUSE OF ACTION**

6 **VIOLATION OF THE UNFAIR COMPETITION LAW**

7 **(CAL. BUS. & PROF. CODE§ 17200 *et. seq.*)**

8 **(By Plaintiff, on his own behalf and on behalf of the Class, against All Defendants)**

9 50. The foregoing paragraphs are alleged herein and are incorporated herein
10 by reference.

11 51. Cal. Bus. & Prof. Code § 17200, *et seq.* (the “UCL”) prohibits unfair
12 competition in the form of any unlawful or unfair business act or practice. Cal. Bus. &
13 Prof. Code § 17204 allows “a person who has suffered injury in fact and has lost money
14 or property” to prosecute a civil action for violation of the UCL. Such a person may
15 bring such an action on behalf of himself or herself and others similarly situated who
16 are affected by the unlawful and/or unfair business practice or act.

17 52. Since December 1, 2010, and continuing to the present, Defendant has
18 committed unlawful and/or unfair business acts or practices as defined by the UCL, by
19 violating Cal. Bus. & Prof. Code §§ 17602(a)(1), 17602(a)(2), 17602(a)(3), and
20 17602(b). The public policy which is a predicate to a UCL action under the unfair
21 prong of the UCL is tethered to a specific statutory provision. *See* Cal. Bus. & Prof.
22 Code §§ 17600, 17602.

23 53. As a direct and proximate result of Defendant’s unlawful, and/or unfair
24 acts and practices described herein, Defendant has received, and continues to hold,
25 unlawfully obtained property and money belonging to Plaintiff and Class Members in
26 the form of payments made for subscription agreements by Plaintiff and Class
27 Members. Defendant has profited from its unlawful and/or unfair acts and practices in
28 the amount of those business expenses and interest accrued thereon.

1 C. That the Court find and declare that Defendant has violated Cal. Bus. &
2 Prof. Code § 17602(b) by failing to provide an acknowledgment that describes a toll-
3 free telephone number, electronic mail address, a postal address only when the seller
4 directly bills the consumer, or another cost-effective, timely, and easy-to-use
5 mechanism for cancellation.

6 D. That the Court find and declare that Defendant has violated Cal. Bus. &
7 Prof. Code § 17602(a)(2) by charging Plaintiff's and Class Members' Payment Method
8 without first obtaining their affirmative consent to the Terms of Service containing the
9 automatic renewal offer terms or continuous service terms;

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

15 F. That the Court find and declare that Defendant has violated the UCL and
16 committed unfair and unlawful business practices by violating Cal. Bus. & Prof. Code §
17 17602.

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

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

24 I. That the Court find that Plaintiff and Class Members are entitled to
25 injunctive relief pursuant to Cal. Bus. & Prof. Code § 17203;

26 J. That Plaintiff and the Class be awarded reasonable attorneys' fees and
27 costs pursuant to California Code of Civil Procedure § 1021.5, and/or other applicable
28 law; and

1 K. That the Court award such other and further relief as this Court may deem
2 appropriate.

3
4 Dated: April 7, 2016

MILSTEIN, ADELMAN, JACKSON,
FAIRCHILD & WADE, LLP

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6 By: /s/ Gillian M. Wade

7 Gillian M. Wade
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CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2016, I electronically filed the foregoing **CLASS ACTION COMPLAINT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing via electronic mail to all counsel of record.

/s/ Gillian M. Wade
Gillian M. Wade

JS 44 (Rev. 12/12)

CIVIL COVER SHEET**'16CV0837 LAB RBB**

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

MATTHEW LOPEZ, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff San Diego, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

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

Gillian L. Wade, Milstein, Adelman, Jackson, Fairchild & Wade, LLP
10250 Constellation Blvd., Los Angeles, CA 90067
Tel: (310) 396-9600

DEFENDANTS

CASKERS, LLC, a Delaware limited liability company; and DOES 1 – 10, inclusive,

County of Residence of First Listed Defendant New York, NY
(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 <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract (srn) <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

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

Brief description of cause:

Violation of California Automatic Renewal Law and 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

DOCKET NUMBER

DATE

04/07/2016

SIGNATURE OF ATTORNEY OF RECORD

/s/Gillian L. Wade

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.