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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

KATHY LIRA, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

BUMP BOXES, INC., an Illinois
corporation; and DOES 1 – 10, inclusive,

Defendants.

Case No. 8:18-cv-422

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 Kathy Lira (“Plaintiff”), on behalf of herself 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 herself and a class of others
5 similarly situated consisting of all persons in California who, within the applicable
6 statute of limitations period up to and including the date of judgment in this action,
7 purchased subscriptions for products (such as pregnancy party gifts and related
8 products) from Bump Boxes, Inc. (“Defendant”). The class of others similarly situated
9 to Plaintiff is referred to herein as “Class Members.” The claims for damages,
10 restitution, injunctive and/or other equitable relief, and reasonable attorneys’ fees and
11 costs arise under California Business and Professions Code (hereinafter “Cal. Bus. &
12 Prof. Code”) §§ 17602, 17603, 17604) and 17200, et seq., and California Code of Civil
13 Procedure § 1021.5. Plaintiff and Class Members are consumers for purposes of Cal.
14 Bus. & Prof. Code §§ 17600-17606.

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

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

4 3. As a result of the above, Plaintiff, on behalf of herself and Class Members,
5 seeks damages, restitution, declaratory relief, injunctive relief and reasonable attorneys'
6 fees and costs pursuant to Cal. Bus. & Prof. Code, §§ 17603, 17203, and 17204, and
7 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. Plaintiff is informed and believes, and upon such information and belief
24 alleges, that Defendant Bump Boxes, Inc. is an Illinois corporation with its principal
25 place of business located in Peoria, Illinois. Defendant operates in California and has
26 done business in California at all times during the Class Period. Also during the Class
27 Period, Defendant made, and continues to make, automatic renewal or continuous
28

1 service offers to consumers in California. Defendant operates a website which markets
2 pregnancy party gifts and related products.

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

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

16 **FACTUAL BACKGROUND**

17 **California Business Professions Code §§ 17600-17606**

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

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

- 26 (1) Fail to present the automatic renewal offer terms or continuous
27 service offer terms in a clear and conspicuous manner before the
28 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.

(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.

(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.

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."

1 16. Section 17602(b) provides: “A business making automatic renewal or
2 continuous service offers shall provide a toll-free telephone number, electronic mail
3 address, a postal address only when the seller directly bills the consumer, or another
4 cost-effective, timely, and easy-to-use mechanism for cancellation that shall be
5 described in the acknowledgment specified in paragraph (3) of subdivision (a).”

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

15 **Defendant’s Business**

16 18. Defendant offers, at its website, found at bumpboxes.com, various
17 subscriptions for **pregnancy party gifts** and related **products**. Defendant’s product
18 and services plan constitutes an automatic renewal and/or continuous service plan or
19 arrangement for the purposes of Cal. Bus. & Prof. Code § 17601.

20 **Defendant’s Terms of Service**

21 19. During the Class Period, Defendant’s webpage, found at bumpboxes.com,
22 contained a section entitled “Terms of Service”. **This is a lengthy document in which**
23 **the information concerning the recurring nature of Defendant’s subscription**
24 **programs and the manner in which the subscriptions may be canceled was, at all**
25 **relevant times, not set forth in clear and conspicuous language, as required by the**
26 **applicable statutes and as set forth below.**

Defendant's Terms of Service Fail to Provide Clear and Conspicuous Disclosures As Required by Law.

20. During the Class Period, within the Terms of Service, 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 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 (there is language in capitals stating that the subscription will continue after the free trial period unless canceled, but language concerning recurring charges thereafter is not so prominently displayed);
- ii) Described 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), (2).

21. During the Class Period, Defendant made an automatic renewal offer for its subscriptions plans to Consumers in the United States, including Plaintiff and Class Members. On the pages where the subscriber essentially finalized the purchase, there was no description of that policy. Accordingly, the website did not contain automatic

renewal offer terms or continuous service offer terms as defined by Cal. Bus. & Prof. Code § 17601(b).

Check Out

Billing Details

First Name* Last Name*

Email Address* Phone*

Country*

Address*

Town / City*

State* ZIP*

Subscribe to our newsletter ☒

Due Date or Baby's Birthday (Not Required)

Your order

Product	Total
Monthly Pregnancy Subscription x 1	\$39.99
Subtotal	\$39.99
30% Coupon applied successfully!	-\$12.00
Subscription Shipping	\$0.00
Total	\$27.99

Shipping

- Subscription Shipping (Ships Mid Month): Free
- Standard (3-5 Business Days): **\$6.95 / month**
- Priority-3 Business Days: **\$21.95 / month**
- Two Day- Business Days: **\$29.95 / month**
- Overnight Shipping: **\$39.95 / month**

Due Date or Baby's Birthday (Not Required)

Create an account by entering the information below. If you are a returning customer please login at the top of the page.

Account password*

Ship to a different address? ☐

Gift Note

Recurring Total **\$39.99 / month**

Credit Card

Pay with your credit card

Card Number*

Expiry (MM/YY)* Card Code*

PAY NOW

As seen in...

the bump FOX NEWS PREGNANCY & newborn InStyle the Healthy Child about.com NEW YORK Baby SHOW

1 22. As a result, during the class period, prior to charging Plaintiff and Class
2 Members, Defendant failed to obtain Plaintiff's and Class Members' affirmative
3 consent to the automatic renewal offer terms or continuous service offer terms as
4 required by Cal. Bus. & Prof. Code § 17602(a)(1), (2).

5 23. Because of Defendant's failure to gather affirmative consent to the
6 automatic renewal terms, all goods, wares, merchandise, or products, sent to Plaintiff
7 and Class Members under the automatic renewal or continuous service agreement are
8 deemed to be an unconditional gift pursuant to Cal. Bus. & Prof. Code § 17603, and
9 Plaintiff and Class Members may use or dispose of the same in any manner they see fit
10 without any obligation whatsoever on their part to Defendant, including, but not limited
11 to, bearing the cost of, or responsibility for, shipping any goods, wares, merchandise or
12 products.

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

15 24. Furthermore, and in addition to the above, after Plaintiff and Class
16 Members subscribed to one of Defendant's subscription plans, Defendant sent to
17 Plaintiff and Class Members email follow-ups to their purchases, including emails
18 entitled "**Your Bump Boxes order receipt**," but has failed, and continues to fail, to
19 provide an acknowledgement that includes the automatic renewal or continuous service
20 offer terms, cancellation policy, and information on how to cancel in a manner that is
21 capable of being retained by Plaintiff and Class Members in violation of Cal. Bus. &
22 Prof. Code §§ 17602(a)(3) and 17602(b).

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[EMAIL US](#)[MY ACCOUNT LOGOUT](#)[My Cart](#)• [SUBSCRIBE](#)• [SHOP](#)• [GIFT REGISTRY](#)• [GIFT](#)• [BLOG](#)• [HOW IT WORKS](#)Hello Kathy (not Kathy? [Sign out](#)). From your account dashboard you can view your recent orders, manage your shipping and billing addresses and [edit your password and account details](#).

My Points

You have 68 Points

Event	Date	Points
Points earned for purchase	01/02/2017	+40
Points earned for purchase	12/13/2016	+28

My Subscriptions

Subscription	Status	Next Payment	Total
#123644	Active	02/02/2017 Via Visa card ending in 0215	\$39.99 / month

Social Login Accounts

You have no social login profiles connected. [Connect one now](#)

Recent Orders

Order	Date	Status	Total
#137399	01/02/2017	Completed	\$39.99 for 1 item
#123643	12/12/2016	Completed	\$27.99 for 1 item

Wishlists

List Name	Date Added	Privacy Settings
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From: **Bump Boxes** <Hello@bumpboxes.com>

Date: Mon, Dec 12, 2016 at 5:48 PM

Subject: Your Bump Boxes order receipt from 12/12/2016

To: kathyilira@gmail.com



4. Thank you for your order

Your order has been received and is now being processed. Your order details are shown below for your reference:

A. ORDER #123643

Product	Quantity	Price
Monthly Pregnancy Subscription	1	\$39.99
Subtotal:		\$39.99

Discount:	-\$12.00
Payment Method:	Credit Card
Total:	\$27.99

B. SUBSCRIPTION INFORMATION:

Subscription	Start Date	End Date	Price
<u>123644</u>	12/12/2016	When Cancelled	\$39.99 / month

[View your invoice.](#)

C. CUSTOMER DETAILS

- Email: kathyilira@gmail.com
- Tel: [5622013323](tel:5622013323)

1. BILLING ADDRESS

Kathy Lira
16124 Rosecrans Ave F2
La Mirada, CA 90638

2. SHIPPING ADDRESS

Kathy Lira
16124 Rosecrans Ave F2
La Mirada, CA 90638

Bump Boxes

1 From: "Bump Boxes" <bumpboxes@gmail.com>

2 Date: Jan 17, 2017 9:42 AM

3 Subject: Your order: 137399

4 To: <kathyilira@gmail.com>

5 Cc:

6 Kathy,

7 Your order #137399 has shipped and the tracking information is below. Thank you for your business! Please
8 DO NOT REPLY to this email.

9 Shipped on **1/9/2017** using **FedEx SmartPost®**: [**9261299990142620318357**](#)

10 Sincerely,
Bump Boxes

11
12 **CLASS ACTION ALLEGATIONS**

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

17 **"All persons within California that, within the applicable statute of**
18 **limitations period up to and including entry of judgment in this**
19 **matter, purchased any product or service in response to an offer**
20 **constituting an "Automatic Renewal" as defined by § 17601(a) of the**
21 **Business and Professions Code, from Bump Boxes, Inc., its**
22 **predecessors, or its affiliates, via the website bumpboxes.com."**

23 26. Excluded from the Class are governmental entities, Defendant, any entity
24 in which Defendant has a controlling interest, and Defendant's officers, directors,
25 affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries,
26 and assigns, and individuals bound by any prior settlement. Also excluded from the
27 Class is any judge, justice, or judicial officer presiding over this matter.

28 27. This action is brought and may be properly maintained as a class action

1 pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4) and 23(b)(1)-
2 (3). This action satisfies the numerosity, typicality, adequacy, predominance and
3 superiority requirements of those provisions.

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

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

- 16 i. Whether during the Class Period Defendant failed to present the
17 automatic renewal offer terms, or continuous service offer terms, in
18 a clear and conspicuous manner before the subscription or
19 purchasing agreement was fulfilled and in visual proximity to the
20 request for consent to the offer in violation of Cal. Bus. & Prof.
21 Code § 17602(a)(1);
- 22 ii. Whether during the Class Period Defendant charged Plaintiff's and
23 Class Members' Payment Method for an automatic renewal or
24 continuous service without first obtaining the Plaintiff's and Class
25 Members' affirmative consent to the automatic renewal offer terms
26 or continuous service offer terms in violation of Cal. Bus. & Prof.
27 Code § 17602(a)(2);
- 28

- 1 iii. Whether during the Class Period Defendant failed to provide an
- 2 acknowledgement that included the automatic renewal or continuous
- 3 service offer terms, cancellation policy, and information on how to
- 4 cancel in a manner that is capable of being retained by Plaintiff and
- 5 Class Members, in violation of Cal. Bus. & Prof. Code §
- 6 17602(a)(3);
- 7 iv. Whether during the Class Period Defendant failed to provide an
- 8 acknowledgment that describes a cost-effective, timely, and easy-to-
- 9 use mechanism for cancellation in violation of Cal. Bus. & Prof.
- 10 Code § 17602(b);
- 11 v. Whether Plaintiff and the Class Members are entitled to restitution
- 12 of money paid in circumstances where the goods and services
- 13 provided by Defendant are deemed an unconditional gift in
- 14 accordance with Cal. Bus. & Prof. Code § 17603;
- 15 vi. Whether Plaintiff and Class Members are entitled to restitution in
- 16 accordance with Cal. Bus. & Prof. Code §§ 17200, 17203;
- 17 vii. Whether Plaintiff and Class Members are entitled to injunctive relief
- 18 under Cal. Bus. & Prof. Code § 17203;
- 19 viii. Whether Plaintiff and Class Members are entitled to attorneys' fees
- 20 and costs under California Code of Civil Procedure § 1021.5; and
- 21 ix. The proper formula(s) for calculating the restitution owed to Class
- 22 Members.

23 30. [Fed. R. Civ. P. 23(a)(3)] Plaintiff's claims are typical of the claims of the

24 members of the Class. Plaintiff and all members of the Class have sustained injury and

25 are facing irreparable harm arising out of Defendant's common course of conduct as

26 complained of herein. The losses of each member of the Class were caused directly by

27 Defendant's wrongful conduct as alleged herein.

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

4 32. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available
5 methods of fair and efficient adjudication of this controversy, since individual litigation
6 of the claims of all Class members is impracticable. Even if every Class member could
7 afford individual litigation, the court system could not. It would be unduly burdensome
8 to the courts in which individual litigation of numerous issues would proceed.
9 Individualized litigation would also present the potential for varying, inconsistent, or
10 contradictory judgments and would magnify the delay and expense to all parties and to
11 the court system resulting from multiple trials of the same complex factual issues. By
12 contrast, the conduct of this action as a class action, with respect to some or all of the
13 issues presented herein, presents fewer management difficulties, conserves the
14 resources of the parties and of the court system, and protects the rights of each Class
15 member.

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

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

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

28 ///

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)(l))**

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

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

37. 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:

(l) 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.

38. Plaintiff and Class Members purchased Defendant's **pregnancy party gifts** and related **products** for personal, family or household purposes. 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.

39. As a result of Defendant's violations of Cal. Bus. & Prof. Code § 17602(a)(l), 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.

40. Plaintiff, on behalf of herself 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 her own behalf and on behalf of the Class, against All Defendants)

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

42. 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.

43. Plaintiff and Class Members purchased Defendant's **pregnancy party gifts** and related **products** for personal, family or household purposes. 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 containing the automatic renewal offer terms or continuous service offer terms.

44. 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.

45. Plaintiff, on behalf of herself 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 her own behalf and on behalf of the Class, against All Defendants)

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

47. 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.

48. 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).”

49. Plaintiff and Class Members purchased Defendant’s **pregnancy party gifts** and related **products** for personal, family or household purposes. 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.

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

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

FOURTH CAUSE OF ACTION

VIOLATION OF THE UNFAIR COMPETITION LAW

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

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

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

53. Cal. Bus. & Prof. Code § 17200, *et seq.* (the "UCL") prohibits unfair competition in the form of any unlawful or unfair business act or practice. Cal. Bus. & Prof. Code § 17204 allows "a 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 himself or herself and others similarly situated who are affected by the unlawful and/or unfair business practice or act.

54. Since December 1, 2010, and continuing during the Class Period, Defendant has committed unlawful and/or unfair business acts or practices as defined by the UCL, by violating Cal. Bus. & Prof. Code §§ 17602(a)(1), 17602(a)(2), 17602(a)(3) and 17602(b). The public policy which is a predicate to a UCL action under the unfair prong of the UCL is tethered to a specific statutory provision. *See* Cal. Bus. & Prof. Code §§ 17600, 17602. In addition, besides offending an established public policy, Defendant's act or practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers. Further, the utility of Defendant's conduct is outweighed by the gravity of the harm to Plaintiff and Class Members.

1 55 Plaintiff has standing to pursue this claim because she suffered injury in
2 fact and has lost money or property as a result of Defendant's actions as set forth
3 herein. Plaintiff purchased Defendant's **pregnancy party gifts** and related **products**
4 for personal, family, or household purposes.

5 56. As a direct and proximate result of Defendant's unlawful and/or unfair
6 business acts or practices described herein, Defendant has received, and continues to
7 hold, unlawfully obtained property and money belonging to Plaintiff and Class
8 Members in the form of payments made for subscription agreements by Plaintiff and
9 Class Members. Defendant has profited from its unlawful and/or unfair business acts or
10 practices in the amount of those business expenses and interest accrued thereon.

11 57. Plaintiff and similarly-situated Class Members are entitled to restitution
12 pursuant to Cal. Bus. & Prof. Code § 17203 for all monies paid by Class Members
13 under the subscription agreements from December 1, 2010, to the date of such
14 restitution at rates specified by law. Defendant should be required to disgorge all the
15 profits and gains it has reaped and restore such profits and gains to Plaintiff and Class
16 Members, from whom they were unlawfully taken.

17 58. Plaintiff and similarly situated Class Members are entitled to enforce all
18 applicable penalty provisions pursuant to Cal. Bus. & Prof. Code § 17202, and to obtain
19 injunctive relief pursuant to Cal. Bus. & Prof. Code § 17203.

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

26 60. Plaintiff, on behalf of herself and Class Members, request relief as
27 described below.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

A. That the Court determine that this action may be maintained as a class action, and define the Class as requested herein;

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

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

D. That the Court find and declare that Defendant has violated Cal. Bus. & Prof. Code § 17602(a)(3) by failing 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;

E. That the Court find and declare that Defendant has violated Cal. Bus. & Prof. Code § 17602(b) by failing to provide an acknowledgment that describes 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;

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

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1 G. That the Court award to Plaintiff and Class Members damages and full
2 restitution due to Defendant's UCL violations, pursuant to Cal. Bus. & Prof. Code §§
3 17200-17205 in the amount of their subscription agreement payments;

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

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

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

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12 Dated: March 16, 2018

PACIFIC TRIAL ATTORNEYS, APC

13 By: /s/ Scott J. Ferrell

14 Scott. J. Ferrell

15 Attorneys for Plaintiff
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