

PACIFIC TRIAL ATTORNEYS
A Professional Corporation
Scott J. Ferrell, Bar No. 202091
sferrell@pacifictrialattorneys.com
4100 Newport Place Drive, Ste. 800
Newport Beach, CA 92660
Tel: (949) 706-6464
Fax: (949) 706-6469

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

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

Plaintiff,

v.

TERRA'S KITCHEN, LLC, a Delaware limited liability company; and DOES 1 – 10, inclusive,

Defendants.

Case No. '18CV0842 MMAJLB

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 up to and including the date of judgment in this action,
7 purchased subscriptions for products (such as ready-made meals and related products)
8 from Terra’s Kitchen, LLC (“Defendant”). The class of others similarly situated to
9 Plaintiff is referred to herein as “Class Members.” The claims for damages, restitution,
10 injunctive and/or other equitable relief, and reasonable attorneys’ fees and costs arise
11 under California Business and Professions Code (hereinafter “Cal. Bus. & Prof. Code”)
12 §§ 17602, 17603, 17604) and 17200, et seq., and California Code of Civil Procedure §
13 1021.5. Plaintiff and Class Members are consumers for purposes of Cal. Bus. & Prof.
14 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 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. Plaintiff is informed and believes, and upon such information and belief
24 alleges, that Defendant Terra's Kitchen, LLC is a Delaware limited liability company
25 with its principal place of business located in Baltimore, Maryland. Defendant operates
26 in California and has done business in California at all times during the Class Period.
27 Also during the Class Period, Defendant made, and continues to make, automatic
28

1 renewal or continuous service offers to consumers in California. Defendant operates a
2 website which markets ready-made meals 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 (Terra's
14 Kitchen, LLC 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

1 proximity, or in the case of an offer conveyed by voice, in temporal
2 proximity, to the request for consent to the offer.

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

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

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

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

28 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.”

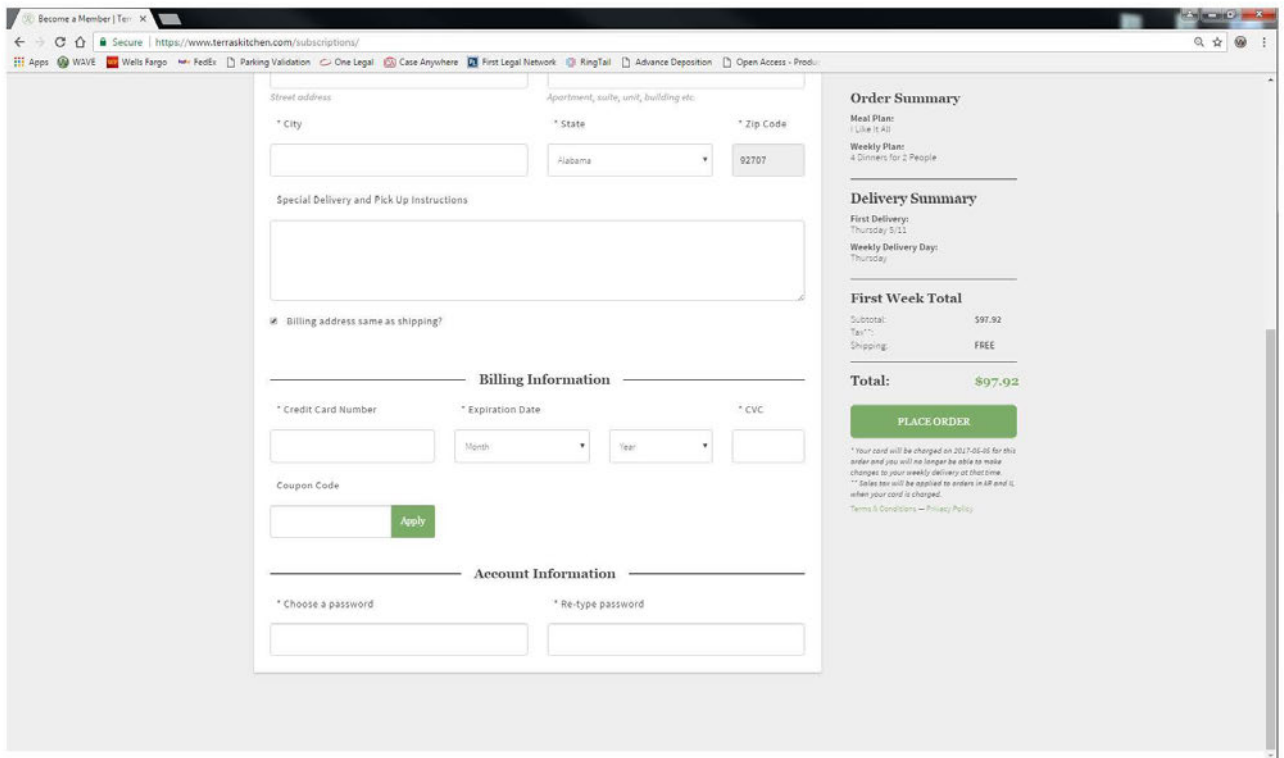
15 **Defendant’s Business**

16 18. Defendant offers, at its website, found at www.terraskitchen.com, various
17 subscriptions for **ready-made meals** and related **products**. Defendant’s product and
18 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 Failed to Present the Automatic Renewal Offer Terms or Continuous**
21 **Service Offer Terms in a Clear and Conspicuous Manner Before the Subscription**
22 **or Purchasing Agreement was Fulfilled and in Visual Proximity to the Request for**
23 **Consent to the Offer in Violation of Cal. Bus. & Prof. Code § 17602(a)(1), (2).**

24 19. During the Class Period, Defendant made an automatic renewal offer for
25 its subscriptions plans to Consumers in the United States, including Plaintiff and Class
26 Members. On the pages where the subscriber makes the purchase, there was no
27 description of that policy. Accordingly, the website did not contain automatic renewal
28

1 offer terms or continuous service offer terms as defined by Cal. Bus. & Prof. Code §
 2 17601(b).



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

21 21. Because of Defendant’s failure to gather affirmative consent to the
 22 automatic renewal terms, all goods, wares, merchandise, or products, sent to Plaintiff
 23 and Class Members under the automatic renewal or continuous service agreement are
 24 deemed to be an unconditional gift pursuant to Cal. Bus. & Prof. Code § 17603, and
 25 Plaintiff and Class Members may use or dispose of the same in any manner they see fit
 26 without any obligation whatsoever on their part to Defendant, including, but not limited
 27
 28

1 to, bearing the cost of, or responsibility for, shipping any goods, wares, merchandise or
2 products.

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

5 22. Furthermore, and in addition to the above, after Plaintiff and Class
6 Members subscribed to one of Defendant’s subscription plans, Defendant sent to
7 Plaintiff and Class Members email follow-ups to their purchases, but has failed, and
8 continues to fail, to provide an acknowledgement that includes the automatic renewal or
9 continuous service offer terms, cancellation policy, and information on how to cancel in
10 a manner that is capable of being retained by Plaintiff and Class Members in violation
11 of Cal. Bus. & Prof. Code §§ 17602(a)(3) and 17602(b).

12 From: Terra's Kitchen <customercare@tk.co>

13 Date: Fri, May 12, 2017 at 12:12 PM

14 Subject: Welcome, Matthew Lopez! You are now a member of the Terra's Kitchen family!

15 To: Matthew Lopez <[REDACTED]>



[My Account](#)

23 **A. WELCOME TO TERRA'S KITCHEN**

24 Welcome to Terra’s Kitchen! We’re confirming your subscription and your first weekly
25 delivery. After your first order processes, you will receive a confirmation email. You can
26 use our calendar functionality to plan meals for future deliveries up to 4 weeks in
27 advance. If you don’t customize ahead of time, we will send you a weekly reminder with
28 meal suggestions and an opportunity to customize your order. If you do not customize

1
2 or skip, we will send you the meals we think you will like based on your subscription
3 preferences.

4
5 Use the following values when prompted to log in:

6 Email: [REDACTED]

7 Password: *****

8 Have you read our [philosophy](#)? We focus on real health, real balance, real change, and
9 real talk; these four pillars make up our recipe for real life.

10 Here's some other info to get you started with Terra's Kitchen:



22
23
24
25
26
27
28

Simplify meal
planning with
a meal delivery
service

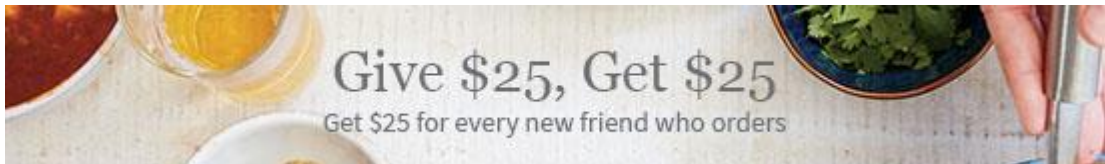
5 facts
about our
eco-friendly
packaging



Questions?

[FAQs](#) | customer care@tk.co | 844-485-FOOD (3663)

Want to share your pics? Tag them: [@terraskitchen](#) and [#arecipeforreallife](#).



A recipe for real life.



You received this email because you have a pending transaction from Terra's Kitchen.

1 From: Terra's Kitchen <customercare@tk.co>

2 Date: Mon, May 15, 2017 at 5:13 AM

3 Subject: Your Terra's Kitchen order confirmation for 2017-05-20 delivery!

4 To: Matthew Lopez <[REDACTED]>



[My Account](#)

11 **A. GREAT NEWS! YOUR TERRA'S KITCHEN ORDER**
12 **HAS PROCESSED.**

13 Your Terra's Kitchen order has processed and will ship shortly.

14
15 You only need to have a few pantry staples: oil, salt, and pepper. That's it! We send
16 everything else to you.

17 We can't wait to cook with you!

18
19 **1. DELIVERY DETAILS:**

20
21 2017-05-20

22
23 Your refrigerated vessel is estimated to arrive between 12pm and 8pm. No signature
24 is required. Your vessel will stay fresh and cold on your doorstep.

25 **2. ORDER INFORMATION**
26
27
28

1
2
3 Shipping Address

4 Matthew Lopez

5 [REDACTED]
6 [REDACTED]
7 T: [REDACTED]

8
9 3. BILLING DETAILS

10
11 Subtotal: \$89.94
12 Discount (PRVY35): \$35.00
13 Grand Total: \$54.94



17
18 Orange-Glazed Salmon with Minted Spring Vegetables

19 x 1



24
25 Hearty Sweet Potato Chili

26 x 1

27
28



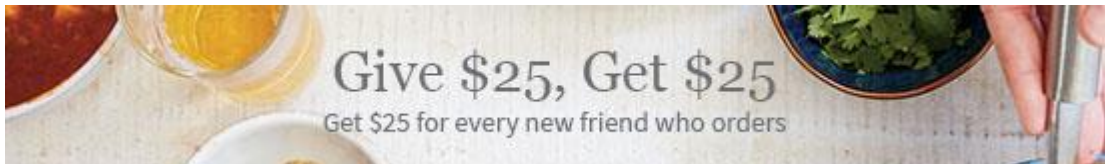
Sheet Pan Fish and Chips

x 1

Questions?

[FAQs](#) | customercare@tk.co | 844-485-FOOD (3663)

Want to share your pics? Tag them: [@terraskitchen](#) and [#arecipeforreallife](#).



A recipe for real life.



You received this email because you have a pending transaction from Terra's Kitchen.

From: Terra's Kitchen <customercare@tk.co>

Date: Thu, May 18, 2017 at 5:28 PM

Subject: Your Terra's Kitchen food is on the way

To: <[REDACTED]>



Fresh Food is on the Way

Hi Matthew ,

We hope you're getting hungry, because your Terra's Kitchen vessel has been shipped! This vessel is loaded with fresh and delicious food for chef-inspired meals.



Here's the tracking number: [707994911333394](#)

While you wait on your delivery, can we suggest some light reading?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



-
-



-
-

We can't wait to see your Terra's Kitchen meals! Please share with us on social media using [#arecipeforreallife](#).

Questions?

[FAQs](#) | customercare@tk.co | 844-485-FOOD (3663)



1 From: Terra's Kitchen <customercare@tk.co>

2 Date: Mon, May 22, 2017 at 4:24 AM

3 Subject: Your Terra's Kitchen order confirmation for 2017-05-27 delivery!

4 To: Matthew Lopez <[REDACTED]>



[My Account](#)

11 **A. GREAT NEWS! YOUR TERRA'S KITCHEN ORDER**
12 **HAS PROCESSED.**

13 Your Terra's Kitchen order has processed and will ship shortly.

14
15 You only need to have a few pantry staples: oil, salt, and pepper. That's it! We send
16 everything else to you.

17 We can't wait to cook with you!

18
19 **1. DELIVERY DETAILS:**

20
21 2017-05-27

22
23 Your refrigerated vessel is estimated to arrive between 12pm and 8pm. No signature
24 is required. Your vessel will stay fresh and cold on your doorstep.

25
26 **2. ORDER INFORMATION**

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Shipping Address

Matthew Lopez

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
T: [REDACTED]

3. BILLING DETAILS

Subtotal: \$87.94
Grand Total: \$87.94



Garlic Mushroom Smothered Chicken

x 1



BBQ Salmon with Caramelized Pineapple Relish

x 1



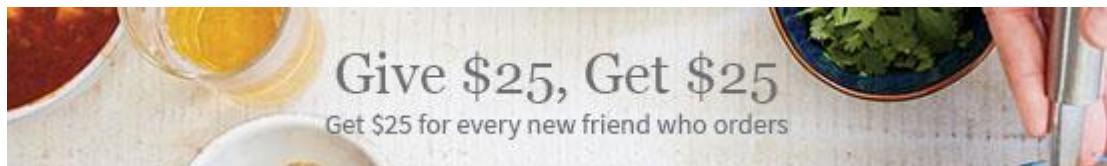
Crunchy Lemon-Parsley Tilapia

x 1

Questions?

[FAQs](#) | customercare@tk.co | 844-485-FOOD (3663)

Want to share your pics? Tag them: [@terraskitchen](#) and [#arecipeforreallife](#).



A recipe for real life.



You received this email because you have a pending transaction from Terra's Kitchen.

CLASS ACTION ALLEGATIONS

23. 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 up to and including entry of judgment in this

1 **matter, purchased any product or service in response to an offer**
2 **constituting an “Automatic Renewal” as defined by § 17601(a) of the**
3 **Business and Professions Code, from Terra’s Kitchen, LLC, its**
4 **predecessors, or its affiliates, via the website www.terraskitchen.com.”**

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

10 25. This action is brought and may be properly maintained as a class action
11 pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4) and 23(b)(1)-
12 (3). This action satisfies the numerosity, typicality, adequacy, predominance and
13 superiority requirements of those provisions.

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

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

- 26 i. Whether during the Class Period Defendant failed to present the
27 automatic renewal offer terms, or continuous service offer terms, in
28 a clear and conspicuous manner before the subscription or

1 purchasing agreement was fulfilled and in visual proximity to the
2 request for consent to the offer in violation of Cal. Bus. & Prof.
3 Code § 17602(a)(1);

4 ii. Whether during the Class Period Defendant charged Plaintiff's and
5 Class Members' Payment Method for an automatic renewal or
6 continuous service without first obtaining the Plaintiff's and Class
7 Members' affirmative consent to the automatic renewal offer terms
8 or continuous service offer terms in violation of Cal. Bus. & Prof.
9 Code§ 17602(a)(2);

10 iii. Whether during the Class Period Defendant failed to provide an
11 acknowledgement that included the automatic renewal or continuous
12 service offer terms, cancellation policy, and information on how to
13 cancel in a manner that is capable of being retained by Plaintiff and
14 Class Members, in violation of Cal. Bus. & Prof. Code §
15 17602(a)(3);

16 iv. Whether during the Class Period Defendant failed to provide an
17 acknowledgment that describes a cost-effective, timely, and easy-to-
18 use mechanism for cancellation in violation of Cal. Bus. & Prof.
19 Code § 17602(b);

20 v. Whether Plaintiff and the Class Members are entitled to restitution
21 of money paid in circumstances where the goods and services
22 provided by Defendant are deemed an unconditional gift in
23 accordance with Cal. Bus. & Prof. Code§ 17603;

24 vi. Whether Plaintiff and Class Members are entitled to restitution in
25 accordance with Cal. Bus. & Prof. Code §§ 17200, 17203;

26 vii. Whether Plaintiff and Class Members are entitled to injunctive relief
27 under Cal. Bus. & Prof. Code § 17203;

28

- 1 viii. Whether Plaintiff and Class Members are entitled to attorneys' fees
2 and costs under California Code of Civil Procedure § 1021.5; and
3 ix. The proper formula(s) for calculating the restitution owed to Class
4 Members.

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

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

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

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

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

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

9 **FIRST CAUSE OF ACTION**

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

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

15 34. The foregoing paragraphs are alleged herein and are incorporated herein
16 by reference.

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

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

21 (1) Fail to present the automatic renewal offer terms or continuous
22 service offer terms in a clear and conspicuous manner before the
23 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.

24 36. Plaintiff and Class Members purchased Defendant's online **ready-made**
25 **meals** and related **products** for personal, family or household purposes. Defendant
26 failed to present the automatic renewal offer terms, or continuous service offer terms, in
27
28

1 a clear and conspicuous manner and in visual proximity the request for consent to the
2 offer before the subscription or purchasing agreement was fulfilled.

3 37. As a result of Defendant's violations of Cal. Bus. & Prof. Code §
4 §17602(a)(1), Defendant is subject under Cal. Bus. & Prof. Code § 17604 to all civil
5 remedies that apply to a violation of Article 9, of Chapter 1, of Part 3, of Division 7 of
6 the Cal. Bus. & Prof. Code.

7 38. Plaintiff, on behalf of himself and Class Members, requests relief as
8 described below.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO OBTAIN CONSUMER'S AFFIRMATIVE CONSENT**

11 **BEFORE THE SUBSCRIPTION IS FULFILLED**

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

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

14 39. The foregoing paragraphs are alleged herein and are incorporated herein
15 by reference.

16 40. Cal. Bus. & Prof. Code § 17602(a)(2) provides:

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

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

23 41. Plaintiff and Class Members purchased Defendant's online **ready-made**
24 **meals** and related **products** for personal, family or household purposes. Defendant
25 charged, and continues to charge Plaintiff's and Class Members' Payment Method for
26 an automatic renewal or continuous service without first obtaining Plaintiff's and Class
27 Members affirmative consent to the Terms of Service containing the automatic renewal
28 offer terms or continuous service offer terms.

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

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

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PROVIDE ACKNOWLEDGMENT WITH**
8 **AUTOMATIC RENEWAL TERMS AND INFORMATION REGARDING**
9 **CANCELLATION POLICY**

10 **(CAL. BUS. & PROF. CODE §§ 17602(a)(3), 17602(b))**

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

12 44. The foregoing paragraphs are alleged herein and are incorporated herein
13 by reference.

14 45. Cal. Bus. & Prof. Code§ 17602(a)(3) provides:

15
16 (a) It shall be unlawful for any business making an automatic renewal or
17 continuous service offer to a consumer in this state to do any of the
following:

18 (3) Fail to provide an acknowledgment that includes the
19 automatic renewal or continuous service offer terms,
20 cancellation policy, and information regarding how to cancel in
21 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.

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

23
24 “A business making automatic renewal or continuous service
25 offers shall provide a toll-free telephone number, electronic
26 mail address, a postal address only when the seller directly bills
the consumer, or another cost-effective, timely, and easy-to-use
27 mechanism for cancellation that shall be described in the
28 acknowledgment specified in paragraph (3) of subdivision (a).”

1 47. Plaintiff and Class Members purchased Defendant's online **ready-made**
2 **meals** and related **products** for personal, family or household purposes. Defendant
3 failed to provide an acknowledgement that includes the automatic renewal or
4 continuous service offer terms, cancellation policy, and information on how to cancel in
5 a manner that is capable of being retained by Plaintiff and Class Members.

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

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

12 **FOURTH CAUSE OF ACTION**

13 **VIOLATION OF THE UNFAIR COMPETITION LAW**

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

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

16 50. The foregoing paragraphs are alleged herein and are incorporated herein
17 by reference.

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

24 52. Since December 1, 2010, and continuing during the Class Period,
25 Defendant has committed unlawful and/or unfair business acts or practices as defined
26 by the UCL, by violating Cal. Bus. & Prof. Code §§ 17602(a)(1), 17602(a)(2),
27 17602(a)(3) and 17602(b). The public policy which is a predicate to a UCL action
28 under the unfair prong of the UCL is tethered to a specific statutory provision. *See* Cal.

1 Bus. & Prof. Code §§ 17600, 17602. In addition, besides offending an established
2 public policy, Defendant's act or practice is immoral, unethical, oppressive,
3 unscrupulous or substantially injurious to consumers. Further, the utility of
4 Defendant's conduct is outweighed by the gravity of the harm to Plaintiff and Class
5 Members.

6 53 Plaintiff has standing to pursue this claim because he suffered injury in
7 fact and has lost money or property as a result of Defendant's actions as set forth
8 herein. Plaintiff purchased Defendant's online **ready-made meals** and related
9 **products** for personal, family, or household purposes.

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

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

22 56. Plaintiff and similarly situated Class Members are entitled to enforce all
23 applicable penalty provisions pursuant to Cal. Bus. & Prof. Code § 17202, and to obtain
24 injunctive relief pursuant to Cal. Bus. & Prof. Code § 17203.

25 57. Plaintiff has assumed the responsibility of enforcement of the laws and
26 public policies specified herein by suing on behalf of himself and other similarly-
27 situated Class Members. Plaintiff's success in this action will enforce important rights
28 affecting the public interest. Plaintiff will incur a financial burden in pursuing this

1 action in the public interest. An award of reasonable attorneys' fees to Plaintiff is thus
2 appropriate pursuant to California Code of Civil Procedure § 1021.5.

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

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff requests the following relief:

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

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

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

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

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

28

1 F. That the Court find and declare that Defendant has violated the UCL and
2 committed unfair and unlawful business practices by violating Cal. Bus. & Prof. Code §
3 17602;

4 G. That the Court award to Plaintiff and Class Members damages and full
5 restitution due to Defendant's UCL violations, pursuant to Cal. Bus. & Prof. Code §§
6 17200-17205 in the amount of their subscription agreement payments;

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

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

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

14
15 Dated: May 1, 2018

PACIFIC TRIAL ATTORNEYS, APC

16
17 By: /s/ Scott J. Ferrell
18 Scott. J. Ferrell
19 Attorneys for Plaintiff
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

1 I hereby certify that on May 1, 2018, I electronically filed the foregoing **CLASS**
2 **ACTION COMPLAINT** with the Clerk of the Court using the CM/ECF system that
3 will send notification of such filing via electronic mail to all counsel of record.
4

5 */s/ Scott J. Ferrell* _____
6 Scott. J. Ferrell
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CIVIL COVER SHEET

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 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Scott J. Ferrell, Pacific Trial Attorneys, APC 4100 Newport Place Drive, Suite 800, Newport Beach, CA 92660 Telephone: 949-706-6464

DEFENDANTS

TERRA'S KITCHEN, LLC, a Delaware limited liability company; and DOES 1 - 10, inclusive,

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

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

Attorneys (If Known)

'18CV0842 MMAJLB

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER 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 - Transfer, 8 Multidistrict Litigation - Direct File

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)(1)(B)

Brief description of cause:

Class action complaint for damages and injunctive relief

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

05/01/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/Scott J. Ferrell

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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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.