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9 ATTORNEYS FOR INDIVIDUAL AND

10 REPRESENTATIVE PLAINTIFF EDUARDO LEON CASTILLO

AND PUTATIVE CLASS PLAINTIFFS

11 **SUPERIOR COURT OF CALIFORNIA**

12 **SAN FRANCISCO COUNTY**

13
14 EDUARDO LEON CASTILLO, on behalf
15 of a class of similarly situated individuals,
16 and himself individually,

17 Plaintiffs,

18 v.

19 PEET'S COFFEE & TEA, LLC, a
20 Washington limited liability company, dba
21 PEET'S COFFEE & TEA; and DOES 1
22 through 10, inclusive,

23 Defendants.

Case Number: **CGC-17-556926**

CLASS ACTION COMPLAINT FOR:

1. VIOLATIONS OF CALIFORNIA'S
AUTOMATIC RENEWAL LAW
[CAL. BUS. & PROF. CODE § 17600,
ET SEQ.];
2. VIOLATIONS OF CALIFORNIA'S
UNFAIR COMPETITION LAW
[CAL. BUS. & PROF. CODE § 17200,
ET SEQ.]; AND
3. RESTITUTION AND INJUNCTIVE
RELIEF [CAL. BUS. & PROF. CODE
§ 17535, ET SEQ.]

- Demand for Trial by Jury -

1 REPRESENTATIVE PLAINTIFF EDUARDO LEON CASTILLO (hereafter called
2 "REPRESENTATIVE PLAINTIFF"), on behalf of himself and all others similarly situated current
3 and former customers of DEFENDANT PEET'S COFFEE AND TEA, LLC, doing business as Peet's
4 Coffee & Tea (hereafter referred to as "Peet's" or "Defendant"), hereby complains and
5 alleges as follows:

6 INTRODUCTION AND OVERVIEW OF CLAIMS

7 1. Representative Plaintiff Eduardo Leon Castillo brings this class action on
8 behalf of himself and a class of other similarly situated individuals, consisting of all
9 persons in California who, within the applicable statute of limitations period, purchased a
10 coffee and/or tea "Subscription" through Defendant's website, www.peets.com, and
11 whose credit cards or debit cards were automatically charged on a recurring basis for such
12 Subscription. (This class of other individuals similarly situated to Representative Plaintiff
13 will be referred to herein as the putative "Class" or "Class Members.") In selling its coffee
14 and tea Subscriptions to California consumers on its website, as a matter of practice,
15 Defendant fails to comply with the requirements California's Automatic Renewal Law,
16 Business & Professions Code §17600 *et seq.*, by failing to provide consumers with legally
17 compliant notices and disclosures.

18 2. Plaintiff alleges that Defendant is accordingly liable for violations of the
19 Automatic Renewal Law as well as the Unfair Competition Law (Bus. & Prof. Code
20 §17200, *et seq.*), and injunctive relief under Bus. & Prof. Code §17535.

21 3. This putative class action and the claims herein seek monetary damages and
22 equitable relief for customers aggrieved by Defendant's unlawful business practices,
23 including restitution, injunctive relief, and attorneys' fees and costs as authorized by law.

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1 PARTIES

2 4. *Representative and Individual Plaintiff Eduardo Leon Castillo*: Plaintiff Eduardo
3 Leon Castillo is a resident of Los Angeles County, California (hereinafter "Representative
4 Plaintiff" or "Plaintiff").

5 5. *Putative Class Plaintiffs*: The putative Class Plaintiffs are comprised of all
6 persons in California who purchased a coffee and/or tea Subscription through
7 Defendant's website, www.peets.com, and whose credit cards or debit cards were
8 automatically charged on a recurring basis as part of that Subscription within the relevant
9 time period preceding the filing of this Complaint through the present (hereinafter,
10 putative "Class" or "Plaintiffs"). The Representative Plaintiff brings this class action
11 against Defendant pursuant to California Code of Civil Procedure §382, on behalf of
12 himself and all similarly situated persons in California. Excluded from the putative Class
13 for purposes of this action are Defendant, its corporate parents, subsidiaries and affiliates,
14 officers and directors, any entity in which Defendant has a controlling interest, and the
15 legal representatives, successors or assigns of any such excluded persons or entities.

16 6. *Defendant Peet's Coffee & Tea, LLC*: Plaintiffs are informed and believe, and
17 based upon such information and belief allege, that Defendant Peet's Coffee & Tea, LLC, is
18 a Washington limited liability company, doing business as "Peet's Coffee & Tea," which,
19 as Plaintiffs are informed and believe, is headquartered in Emeryville, California.
20 Plaintiffs are also informed and believe that Peet's is and was at all relevant times,
21 including during the Class Period, authorized to transact business in the State of
22 California, where it has and continues to transact business. Among other things, Peet's
23 sells its products throughout California and markets its products to California consumers
24 through retail locations referred to on Defendant's website as "Peet's Coffee & Tea Stores."
25 Defendant also sells and markets its products, including its coffee and tea Subscriptions,
26 by and through its website, www.peets.com (hereinafter "Website"), as described herein
27 below.
28

7. *Does 1 through 10:* Plaintiffs are unaware of the true names and capacities of Defendants sued herein as DOES 1 through 10, inclusive, and therefore sue these Defendants by such fictitious names. Plaintiffs believe each fictitiously sued Defendant was in some way responsible for the acts alleged in the Complaint. Plaintiffs are informed and believe, and thereon allege, that Peet's and DOES 1 through 10, inclusive, are and were each the agent, servant, and employee of one another, and to the extent of doing the acts alleged herein, each acted within the course and scope of said agency or employment. Plaintiffs will seek leave of Court to amend this Complaint to allege their true names and capacities when ascertained.

8. Plaintiffs are informed and believe, and thereon allege, that at all relevant times, each Defendant was an agent or joint venture of the other Defendant, and in doing the acts alleged herein, was acting within the course and scope of such agency. Each Defendant had actual and/or constructive knowledge of the acts of the other Defendant, and ratified, approved, joined in, acquiesced, and/or authorized the wrongful acts of the other Defendant, and/or retained the benefits of said wrongful acts.

9. Furthermore, as Plaintiffs are informed and believe, each Defendant aided, abetted, encouraged, and rendered substantial assistance to the other Defendants in breaching obligations to the Representative Plaintiff and putative Class Plaintiffs, as alleged herein. In taking action to aid, abet, encourage, and substantially assist the commissions of these wrongful acts and other wrongdoings complained of herein, each Defendant acted with an awareness of its primary wrongdoing and realized that its conduct would substantially assist the accomplishment of the wrongful conduct, wrongful goal, and wrongdoing.

JURISDICTION AND VENUE

10. Venue is proper within the State of California and within San Francisco County since Defendant conducts business in said county. Specifically, Peet's sells its products by and through retail "Stores" within San Francisco County. Peet's also markets and sells recurring coffee and tea Subscriptions to consumers in San Francisco County,

1 such as the Representative Plaintiff herein, by and through its Website. Defendant has
2 accepted online payments via credit cards and debit cards for the transaction of business
3 throughout the State of California and specifically within San Francisco County, which has
4 caused liability to arise therein, including, in particular, the transaction with the
5 Representative Plaintiff. Numerous transactions have occurred, and continue to occur,
6 within San Francisco County; and the amount in controversy exceeds the jurisdictional
7 minimum of this Court.

8 **GENERAL ALLEGATIONS**

9 **A. Defendant's Business and Recurring Coffee/Tea "Subscriptions":**

10 11. Peet's sells coffee, teas, drinkware, and brewing equipment (such as coffee
11 makers, grinders, and tea kettles) throughout the United States by and through brick and
12 mortar "Stores." In California alone, according to Defendant's Website, there are
13 approximately 29 Stores in San Francisco County, and over 180 Stores located throughout
14 the State.

15 12. Defendant also sells its products online through its Website,
16 www.peets.com. In addition to other products sold thereon, Defendants sells
17 "Subscriptions" for its coffee and tea products. The Subscriptions are offered in varying
18 frequencies; for delivery "Every Week," "Every 2 Weeks," "Every 3 Weeks," "Every 4
19 Weeks," "Every 6 Weeks," "Every 8 Weeks," or a "Custom Option."

20 13. To purchase a Subscription, the consumer first selects a particular type of
21 coffee and/or tea from the various offerings on the Website. For coffee products, the
22 consumer also selects a type of grind. The consumer must then click on "SUBSCRIBE" to
23 proceed with signing up for the Subscription. The consumer next enters a descriptive
24 "Name" for the Subscription and then selects one of the aforementioned frequencies for
25 the Subscription.

26 14. To complete his/her purchase of the Subscription of the chosen coffee
27 and/or tea, the consumer is required to register an account through the Defendant's
28 Website by providing an email address, zip code (optional), and by creating a password.

1 After doing that, to complete his/her purchase of the Subscription, the consumer clicks on
2 "PROCEED TO CHECKOUT" to commence the "CHECKOUT" process, during which the
3 consumer provides his/her "Shipping Address."

4 15. Next, the consumer must provide his/her "Payment Method," including the
5 type of "Debit/Credit Card" being used to pay for the Subscription, and corresponding
6 credit card number, expiration date, security code, and "Name on Card." (Hereinafter,
7 "credit card" and "debit card" shall be referred to as the "payment method".) After
8 entering his/her payment method, the consumer enters his/her "Billing Address."

9 16. To complete the Subscription order, the consumer next clicks "Review &
10 Place Order." Once the order is completed, the consumer is provided an "Order
11 Confirmation," and receives an email confirmation thereafter.

12 17. For every recurring Subscription, the consumer's payment method is
13 charged at the time of initially purchasing the Subscription, and thereafter, for ensuing
14 consecutive weeks corresponding to the consumer's chosen frequency. For every type of
15 Subscription, thus, the consumer's payment method is automatically charged for each
16 subsequent shipment of the selected item(s) as part of the recurring Subscription.

17 **B. Representative Plaintiff's Transaction:**

18 18. On July 28, 2016, Representative Plaintiff Castillo visited the Defendant's
19 Website, www.peets.com. After reviewing products and the various coffee and tea
20 Subscriptions offered on Defendant's Website, Representative Plaintiff signed up for a
21 Subscription for a coffee product, "Café Domingo." He selected "Every 4 Weeks" for the
22 Subscription frequency. Representative Plaintiff then clicked the "PROCEED TO
23 CHECKOUT" button and completed the "CHECK OUT" process by providing his
24 shipping address, billing address, and payment method information. Defendant's
25 Website processed the transaction and charged Representative Plaintiff's payment
26 method, which charge appeared on his debit card statement with a transaction date of
27 August 1, 2016. A few days later, Representative Plaintiff received the first shipment of
28 the coffee product.

1 19. About a month later before the next shipment, on August 24, 2016,
2 Representative Plaintiff switched the coffee from "Café Domingo" to "Columbia" and
3 shortly thereafter, received a second shipment as part of his Subscription. His debit card
4 was automatically charged for this shipment on August 29, 2016. Then, about another
5 month later, on September 21, 2016, Representative Plaintiff ordered "Columbia
6 Luminosa" and shortly thereafter received a third shipment as part of his Subscription.
7 His debit card was automatically charged for this third shipment on September 26, 2016.
8 Then, about another month later, on October 19, 2016, Representative Plaintiff ordered
9 "Arabian Mocha-Java" and shortly thereafter received a fourth shipment as part of his
10 Subscription. His debit card was automatically charged for this fourth shipment on
11 October 24, 2016.

12 20. At that point, Representative Plaintiff elected to discontinue his Subscription,
13 which he did through Defendant's Website.

14 **C. California's Automatic Renewal Law and Defendant's Non-Compliance**
15 **Therewith:**

16 21. The consumer transactions that are the subject of this putative class action
17 are subject to, among other protections, California's Automatic Renewal Law, codified as
18 Bus. & Prof. Code §§ 17600 through 17606.

19 22. Pursuant to that law, specifically, Bus. & Prof. Code §17602(a), it is unlawful
20 for any business making an automatic renewal or continuous service offer to a consumer
21 in this state to do any of the following:

- 22 (1) Fail to present the automatic renewal offer terms or
23 continuous service offer terms in a clear and conspicuous
24 manner before the subscription or purchasing agreement is
25 fulfilled and in visual proximity, or in the case of an offer
26 conveyed by voice, in temporal proximity, to the request for
27 consent to the offer.
28 (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.

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

6 23. Bus. & Prof. Code §17601(a) defines the term "Automatic renewal" as a
7 "plan or arrangement in which a paid subscription or purchasing agreement is
8 automatically renewed at the end of a definite term for a subsequent term." Bus. & Prof.
9 Code §17601(e) defines "Continuous service" as a "plan or arrangement in which a
10 subscription or purchasing agreement continues until the consumer cancels the service."

11 24. Under Bus. & Prof. Code §17601(b), the term "Automatic renewal offer
12 terms" means the following clear and conspicuous disclosures:

- 13 (1) That the subscription or purchasing agreement will continue until the
14 consumer cancels.
15 (2) The description of the cancellation policy that applies to the offer.
16 (3) The recurring charges that will be charged to the consumer's credit or
17 debit card or payment account with a third party as part of the
18 automatic renewal plan or arrangement, and that the amount of the
19 charge may change, if that is the case, and the amount to which the
20 charge will change, if known.
21 (4) The length of the automatic renewal term or that the service is
22 continuous, unless the length of the term is chosen by the consumer.
23 (5) The minimum purchase obligation, if any."

24 25. Under Bus. & Prof. Code §17601(c), "'Clear and conspicuous' or 'clearly and
25 conspicuously' means in larger type than the surrounding text, or in contrasting type, font,
26 or color to the surrounding text of the same size, or set off from the surrounding text of the
27 same size by symbols or other marks, in a manner that clearly calls attention to the
28 language."

26 26. Furthermore, with respect to the remedy under Bus. & Prof. Code §17603,
27 "[i]n any case in which a business sends any goods, wares, merchandise, or
28 products to a consumer, under a continuous service agreement or
automatic renewal of a purchase, without first obtaining the consumer's

1 affirmative consent as described in Section 17602, the goods, wares,
2 merchandise, or products shall for all purposes be deemed an
3 unconditional gift to the consumer, who may use or dispose of the same in
4 any manner he or she sees fit without any obligation whatsoever on the
consumer's part to the business, including, but not limited to, bearing the
cost of, or responsibility for, shipping any goods, wares, merchandise, or
products to the business."

5 27. Defendant's coffee and tea Subscriptions, as offered through its Website,
6 automatically renew on a recurring basis, depending on the consumer's chosen frequency
7 and continue until the consumer cancels. As such, after Class Members entered their
8 payment method and purchased their respective Subscriptions, Defendant charged, and
9 has continued to charge the Class Members' payment method on a recurring basis
10 depending on their chosen Subscription frequency. Such charges continued to be charged
11 to Class Members' payment method until Class Members canceled their coffee and tea
12 Subscriptions.

13 28. In offering its recurring coffee and tea Subscriptions to Class Members
14 during the Class Period, therefore, Defendant has made automatic renewal or continuous
15 service offers to California consumers. Defendant's coffee and tea Subscriptions are
16 accordingly subject to the requirements of the ARL such that its sale of said Subscriptions
17 must comply with the notice and disclosure requirements of the ARL.

18 29. When enrolling in one of Defendant's coffee and/or tea Subscriptions,
19 however, consumers are not provided sufficient and compliant notices and disclosures as
20 required by the ARL. As alleged more fully below, contrary to the requirements of the
21 ARL, at the time of offering its coffee and tea Subscriptions to prospective purchasers,
22 Defendant: (a) fails to present the automatic renewal offer terms or continuous service
23 offer terms in a clear and conspicuous manner and in visual proximity to the request for
24 consent to the offer before the subscription or purchasing agreement is fulfilled; (b)
25 charges consumers' payment method without first obtaining the affirmative consent of
26 consumers to the agreement containing the automatic renewal offer terms or continuous
27 service offer terms; and (c) fails to provide an acknowledgement that includes the
28

1 automatic renewal or continuous service offer terms, cancellation policy, and information
2 regarding how to cancel in a manner that is capable of being retained by the consumer.

3 CLASS ALLEGATIONS

4 30. This lawsuit is filed on behalf of an ascertainable statewide Class comprised
5 of all persons in California who, purchased one or more of Defendant's coffee and/or tea
6 Subscriptions and whose payment methods were automatically charged on a recurring
7 basis for said Subscriptions at any time during the four (4) year period preceding the filing
8 of this Class Action Complaint and continuing through the date of trial.

9 31. The putative Class *excludes* Defendant, its corporate parents, subsidiaries and
10 affiliates, officers and directors, any entity in which Defendant has a controlling interest,
11 and the legal representatives, successors or assigns of any such excluded persons or
12 entities.

13 32. This action is appropriately suited for a Class Action for the following
14 reasons:

15 A. The members of the putative Class are so numerous that joinder of all
16 members is impracticable. While the exact number of potential Class
17 members is unknown to Plaintiffs at this time, since this information
18 is in Defendant's exclusive control, such information can be
19 ascertained through appropriate discovery from records maintained
20 by Defendant and its agents.

21 B. A Class Action is superior to other available methods for fair and
22 efficient adjudication of this controversy because the likelihood of
23 individual Class members prosecuting separate claims is remote and
24 the individual Class members do not have a significant interest in
25 individually controlling the prosecution of separate actions.

26 C. There is a well-defined community of interest among the members of
27 the putative Class because common questions of law and fact
28 predominate. Given that the Representative Plaintiff's claims are

1 typical of the members of the putative Class, the Representative
2 Plaintiff can fairly and adequately represent the interest of such
3 putative Class.

4 D. Common questions of law and fact exist as to all members of the
5 putative Class which predominate over any questions solely affecting
6 individual members of the Class, given that the putative Class
7 members have suffered the same injury; determination of the truth,
8 falsity, accuracy, and legality of the common questions will therefore
9 resolve central issues that affect the entire Class. Such common
10 questions include, *inter alia*, the following:

- 11 (1) Whether Defendant presents the automatic renewal offer terms
12 or continuous service terms in a "clear and conspicuous
13 manner" before the subscription or purchasing agreement was
14 fulfilled?
 - 15 (2) Whether Defendant presents the automatic renewal offer terms
16 or continuous service terms "in visual proximity" to the
17 request for consent to the offer?
 - 18 (3) Whether Defendant charges California consumers' credit cards
19 or debit cards without first obtaining the "affirmative consent"
20 of California consumers to the agreement containing the
21 automatic renewal offer terms or continuous service offer
22 terms?
 - 23 (4) Whether Defendant fails to provide an acknowledgement that
24 includes the automatic renewal or continuous service offer
25 terms, cancellation policy, and information regarding how to
26 cancel in a manner that is capable of being retained by the
27 consumer?
- 28

- 1 (5) Whether Defendant fails to provide adequate means as
2 required by statute for the consumer to cancel the automatic
3 renewal or continuous service?
- 4 (6) Whether the Representative Plaintiff and putative Class
5 Members are entitled to retain the goods purchased from
6 Defendant by and through their coffee and/or tea
7 Subscriptions as an unconditional gift and are entitled to
8 restitution of the monies paid to Defendant for said
9 Subscriptions?
- 10 (7) Whether Defendant's practices violate the Unfair Competition
11 Law by virtue of its failure to provide notices and disclosures
12 in compliance with the ARL requirements?
- 13 (8) Whether the Representative Plaintiff and putative Class are
14 entitled to restitution and/or the disgorgement of profits under
15 the Unfair Competition Law?
- 16 (9) Whether the Representative Plaintiff and putative Class are
17 entitled to injunctive relief and restitution under Cal. Bus. &
18 Prof. Code §17535?

19 E. The Representative Plaintiff can fairly and adequately represent the
20 interests of the putative Class. The Representative Plaintiff has no
21 conflicts of interest with other putative Class Members, and has
22 retained counsel competent and experienced in class actions and
23 complex civil litigation.

24 **FIRST CAUSE OF ACTION**

25 ***- Violation of the Automatic Renewal Law -***

26 ***[Cal. Bus. & Prof. Code § 17600, et seq.]***

27 33. Plaintiffs hereby reallege, and incorporate by reference as though set forth
28 fully herein, the allegations contained in each preceding paragraph above.

1 34. As alleged more fully below, Defendant has violated the requirements of the
2 ARL, including in particular, the requirements of §§17602(a)(1) - (3), 17602(b), and
3 17602(c).

4 **A. Clear/Conspicuous and Visual Proximity Violations:**

5 35. In offering its coffee and tea Subscriptions through its Website, during the
6 class period, Defendant has made an automatic renewal or continuous service offer to
7 consumers in California, including to the Representative Plaintiff and putative Class
8 Members. In so doing, however, Defendant has failed to state the automatic renewal or
9 continuous service offer in "clear and conspicuous manner" in compliance with law in,
10 *inter alia*, the following respects:

- 11 (a) failing to clearly and conspicuously state that the recurring coffee and
12 tea Subscriptions will continue until the consumer cancels;
- 13 (b) failing to clearly and conspicuously describe the cancellation policy
14 that applies to the offer;
- 15 (c) failing to clearly and conspicuously state that the recurring charges
16 will be charged to the consumer's payment method as part of the
17 automatic renewal plan or arrangement, and that the amount of the
18 charge may change, if that is the case, and the amount to which the
19 charge will change, if known;
- 20 (d) failing to clearly and conspicuously state that the coffee and tea
21 Subscriptions are continuous; and
- 22 (e) failing to clearly and conspicuously state that there is a minimum
23 purchase obligation, if any.

24 36. In addition to the above failures, Defendant has failed and continues to fail,
25 to state the automatic renewal or continuous service offer during the "Check Out" process
26 anywhere on the webpage where the Representative Plaintiff and Class Members
27 complete their purchase of the coffee and tea Subscriptions. As such, when offering coffee
28 and tea Subscriptions through its Website to the Representative Plaintiff and Class

1 Members, Defendant failed to state the automatic renewal or continuous service offer "in
2 visual proximity" to the request for consent to the offer.

3 37. As such, Defendant has violated Bus. & Prof. Code §17602(a)(1), such that
4 the Representative Plaintiff and putative Class Members are entitled to the relief under
5 Cal. Bus. & Prof. Code §17603, including, *inter alia*, restitution of the monies paid to
6 Defendant for such Subscriptions and retention of the goods purchased through such
7 Subscriptions as an "unconditional gift."

8 38. WHEREFORE, based on the above violations of their lawful rights, the
9 Representative Plaintiff and putative Class Members seek relief as requested herein.

10 **B. Failure to Obtain Affirmative Consent:**

11 39. In addition to the above failures, throughout the Class Period, Defendant
12 failed to obtain the affirmative consent of the Representative Plaintiff and Class Members
13 to the agreement containing the automatic renewal and/or continuous service offer terms.
14 This has included, *inter alia*, failing to obtain their affirmative consent to the term that their
15 payment method would be automatically and perpetually charged on a recurring basis,
16 corresponding to the consumer's chosen frequency, unless and until they cancelled their
17 coffee and/or tea Subscriptions, on the webpage in which Defendant obtained the
18 payment method information from the Representative Plaintiff and Class Members. There
19 is no mechanism during the checkout process by which consumers could provide their
20 explicit consent to Defendant's automatic renewal and/or continuous service terms prior
21 to entering the information for their payment methods and prior to the charge thereto. For
22 instance, there is no box which consumers are required to check or other form of
23 acknowledgement by which consumers affirmed that they explicitly agreed to recurring
24 charges to their respective payment methods for the coffee and/or tea Subscriptions until
25 they affirmatively cancelled their Subscriptions.

26 40. Defendant has therefore charged, and has continued to charge, the payment
27 method of the Representative Plaintiff and Class Members without first obtaining their
28

1 affirmative consent to the terms of the coffee and/or tea Subscriptions in violation of Bus.
2 & Prof. Code §176012(a)(2).

3 41. As a result of these failures, the Representative Plaintiff and putative Class
4 Members are entitled to the relief under Cal. Bus. & Prof. Code §17603, including, *inter*
5 *alia*, restitution of the monies paid to Defendant for such Subscriptions and retention of the
6 goods purchased through such Subscriptions as an “unconditional gift.”

7 42. WHEREFORE, based on the above violations of their lawful rights, the
8 Representative Plaintiff and putative Class Members seek relief as requested herein.

9 **C. Retainable Cancellation Policy and Cancellation Mechanism:**

10 43. In addition to the above failures, throughout the Class Period, Defendant has
11 failed, and continues to fail, to provide the Representative Plaintiff and Class Members
12 with a retainable “acknowledgement” that includes the automatic renewal or continuous
13 service offer terms, cancellation policy, and information on how to cancel, in violation of
14 Cal. Bus. & Prof. Code § 17602(a)(3). Upon concluding the “CHECKOUT” process for
15 purchasing one of Defendant’s coffee and/or tea Subscriptions, Defendant failed to
16 provide information, such as a downloadable or printable document or other retainable
17 format, which sets forth the terms of the automatic renewal or continuous service offers,
18 the cancellation policies applicable to the coffee and tea Subscriptions, or any information
19 on how to cancel the Subscriptions.

20 44. Defendant has therefore violated the requirements of Bus. & Prof. Code
21 §176012(a)(3), such that the Representative Plaintiff and putative Class Members are
22 entitled to the relief under Cal. Bus. & Prof. Code §17603, including, *inter alia*, restitution of
23 the monies paid to Defendant for such Subscriptions and retention of the goods purchased
24 through such Subscriptions as an “unconditional gift.”

25 45. WHEREFORE, based on the above violations of their lawful rights, the
26 Representative Plaintiff and putative Class Members seek relief as requested herein.
27
28

1 SECOND CAUSE OF ACTION

2 - *Violation of the Unfair Competition Law* -

3 [*Bus. & Prof. Code §17200, et seq.*]

4 46. Plaintiffs hereby reallege, and incorporate by reference as though set forth
5 fully herein, the allegations contained in each preceding paragraph above.

6 47. Defendant engages in business practices, offers its products and services,
7 and advertises its products and services to consumers within the State of California. In so
8 doing, Defendant has a duty to comply with applicable laws protecting against, *inter alia*,
9 unlawful and unfair business practices and acts, as prohibited by Bus. & Prof. Code
10 §17200, *et seq.*, also known as the Unfair Competition Law (hereinafter "UCL").

11 48. Section §17204 of the UCL allows "a person who has suffered injury in fact
12 and has lost money or property" to prosecute a civil action for violation of the UCL
13 individually and on behalf of a class of similarly situated individuals affected by the
14 unlawful or unfair business practices or acts.

15 49. Defendant has engaged in numerous acts and/or a pattern and practice of
16 unlawful and unfair business practices within the State of California, in violation of the
17 UCL. These illegal business practices and acts include failing to provide consumers, such
18 as the Representative Plaintiff and Class Members, with notices and disclosures in
19 compliance with the Automatic Renewal Law, Bus. & Prof. Code §17600 *et seq.*
20 corresponding to Defendant's sale of its coffee and tea Subscriptions. In particular, as set
21 forth more fully herein above, Defendant failed and continues to fail to comply with the
22 requirements of §17602(a)(1) through (3).

23 50. For at least the last four years, Defendant has committed unlawful and
24 unfair business acts and practices, as defined by the UCL, based on its violations of the
25 Automatic Renewal Law.

26 51. The Representative Plaintiff and putative Class Members have standing to
27 pursue this claim because they have suffered injury in fact by, among other things, having
28

1 lost money which they paid for Defendant's coffee and tea Subscriptions, which do not
2 comply with applicable laws.

3 52. As a result of its conduct, Defendant has been unjustly enriched and should
4 be disgorged of profits realized from its unlawful business practices. Plaintiffs and other
5 members of the general public have no other adequate remedy of law in that, absent
6 equitable relief from the Court, Defendant is likely to continue to injure consumers, reap
7 unjust enrichment, and harm the public interest, thus engendering a multiplicity of
8 judicial proceedings.

9 53. WHEREFORE, based on the above violations of their lawful rights, the
10 Representative Plaintiff and Class Members seek relief as requested herein.

11 **THIRD CAUSE OF ACTION**

12 ***- Injunctive Relief -***

13 ***[Cal. Bus. & Prof. Code § 17535]***

14 54. Plaintiffs hereby reallege, and incorporate by reference as though set forth
15 fully herein, the allegations contained in each preceding paragraph above.

16 55. Bus. & Prof. Code §17535 allows "any person who has suffered injury in fact
17 and has lost money or property" to prosecute a civil action for violation of the UCL. An
18 individual aggrieved as such may bring an action on behalf himself or herself and others
19 similarly situated who are affected by the unlawful and/or unfair business practice.

20 56. For at least the last four years, Defendant has committed unlawful and/or
21 unfair business acts and practices within the meaning of the UCL based on its violations of
22 the Automatic Renewal Law, Bus. & Prof. Code §17601 *et seq.*, as set forth above.

23 57. As a direct and proximate result of Defendant's unlawful and/or unfair
24 business acts and practices, described herein, Defendant has received and continues to
25 hold unlawfully obtained money belonging to the Representative Plaintiff and Class
26 Members in the form of payments made by them for Defendant's coffee and tea
27 Subscriptions. Defendant has profited from its unlawful and unfair acts and practices in
28 the amounts of those Subscription payments and interest accrued thereon.

1 58. Representative Plaintiff and similarly situated Class Members are entitled to
2 injunctive relief and/or restitution pursuant to Cal. Bus. & Prof. Code § 17535 and interest
3 thereon for all monies paid by Class Members under the Subscription agreements for the
4 last four years preceding the filing of this legal action through the date of such restitution,
5 at rates specified by law. Defendant should be required to disgorge all profits and gains it
6 has reaped and should be ordered to restore those profits and gains to Representative
7 Plaintiff and Class Members, from whom they were unlawfully taken.

8 59. Representative Plaintiff and similarly situated Class Members are entitled to
9 enforce all applicable penalty provisions pursuant to Cal. Bus. & Prof. Code § 17202.

10 60. Representative Plaintiff has assumed the responsibility of enforcement of the
11 laws for the benefit of consumers by suing on behalf himself and other similarly situated
12 Class Members. Representative Plaintiff's success in this action will enforce important
13 rights affecting the public interest. Therefore, an award of reasonable attorneys' fees to
14 Representative Plaintiff is appropriate pursuant to California Code of Civil Procedure §
15 1021.5.

16 61. WHEREFORE, based on the above violations of their lawful rights, the
17 Representative Plaintiff and Class Members seek relief as requested herein.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs pray for judgment and relief as follows:

20 1. Certification of the Class and any subclasses the Court deems appropriate,
21 appointment of Representative Plaintiff as class representative, and Plaintiffs' counsel of
22 record as Class Counsel;

23 2. For restitution under Bus. & Prof. Code §17603 and related statutory
24 provisions;

25 3. For a declaration that the goods purchased by Representative Plaintiff and
26 Class Members are deemed an unconditional gift to them by Defendants in accord with
27 Bus. & Prof. Code §17603,
28


- 1 4. For restitution and/or disgorgement of profits under Bus. & Prof. Code
2 §17200, *et seq.*;
- 3 5. For injunctive relief and restitution under Bus. & Prof. Code §17535;
- 4 6. For issuance of temporary, preliminary and permanent injunctive relief
5 enjoining Defendant from engaging in the above-described unlawful conduct, and/or
6 other remedial or equitable relief;
- 7 7. For attorneys' fees pursuant to statute including, but not limited to
8 California Code of Civil Procedure §1021.5, and as otherwise authorized by law, including
9 as authorized under the "common fund" doctrine and "substantial benefit" doctrine;
- 10 8. For declaratory relief regarding the liability of Defendant;
- 11 9. For pre-judgment and post-judgment interest, as allowable at the maximum
12 rate allowed by law;
- 13 10. For a declaration of financial responsibility on the part of Defendant for the
14 costs of class notification; and
- 15 11. For such other and further relief as this Honorable Court deems just and
16 proper.

17
18 Dated: January 31, 2017

Respectfully Submitted by:

19 **STONEBARGER LAW, APC**

20 **SOLIMAN LAW GROUP, PC**

21 By: 
22 CRYSTAL L. MATTER
23 TONY M. SOLIMAN

24 ATTORNEYS FOR PUTATIVE CLASS PLAINTIFFS
25 AND REPRESENTATIVE PLAINTIFF EDUARDO LEON CASTILLO
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28

1 DEMAND FOR TRIAL BY JURY


2 Plaintiffs demand a trial by jury on all questions of fact raised by the foregoing
3 CLASS ACTION COMPLAINT.

4
5 Dated: January 31, 2017

Respectfully Submitted by:

6 **STONEBARGER LAW, APC**

7 **SOLIMAN LAW GROUP, PC**

8 By: 
9 CRYSTAL L. MATTER
10 TONY M. SOLIMAN

11 ATTORNEYS FOR PUTATIVE CLASS PLAINTIFFS
12 AND REPRESENTATIVE PLAINTIFF **EDUARDO LEON CASTILLO**
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