

1 PACIFIC TRIAL ATTORNEYS
A Professional Corporation
2 Scott J. Ferrell, Bar No. 202091
sferrell@pacifictrialattorneys.com
3 Victoria C. Knowles, Bar No. 277231
vknowles@pacifictrialattorneys.com
4 4100 Newport Place Drive, Suite 800
Newport Beach, CA 92660
5 Tel: (949) 706-6464
Fax: (949) 706-6469
6

7 Attorneys for Plaintiff and the Class

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
02/09/2017 at 04:27:10 PM
Clerk of the Superior Court
By Georgina Ramirez, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE**

10 Judge William Claster

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

12 Plaintiff,

13 vs.

14 BLUE APRON, INC., a Delaware corporation,
15 and DOES 1-25, inclusive,

16 Defendants.
17
18
19
20
21
22
23
24
25
26
27
28

Case No.: 30-2017-00902648-CU-MT-CXC

CLASS ACTION COMPLAINT

CX-102

JURY TRIAL DEMANDED

Trial: Not yet set

1 Plaintiff Matthew Lopez (“Plaintiff”), individually and on behalf of all others similarly situated,
2 alleges the following:

3 **I. INTRODUCTION**

4 1. Blue Apron, Inc. (“Defendant”) is an American meal delivery service that provides
5 customers across the United States with weekly pre-portioned meals with recipes to subscribers. The
6 company ships 8 million meals per month.

7 2. The parties have a dispute regarding Defendant’s billing practices under California’s
8 Automatic Renewal Law (“ARL”), Cal. Bus. and Prof. Code § 17600 *et seq.*

9 3. Defendant contends that the parties must resolve the dispute regarding the ARL via
10 arbitration, but Plaintiff believes that such arbitration provision is unenforceable and unconscionable.

11 4. Plaintiff brings this class action lawsuit to obtain declaratory relief that such arbitration
12 clause is not enforceable.

13 **II. THE PARTIES**

14 5. Plaintiff is a resident of California and subscribed to Defendant’s subscription plan in
15 2016.

16 6. Plaintiff is informed and believes, and based thereon, alleges, that Defendant Blue
17 Apron, Inc. is a Delaware corporation with its principal place of business located at 5 Crosby Street,
18 New York, New York 10013. Defendant operates in California and has done business throughout
19 California and throughout the United States at all times during the Class Period. Also during the Class
20 Period, Defendant made automatic renewal or continuous service offers to consumers in California and
21 throughout the United States. Defendant operates a website which markets subscriptions for meals,
22 which are shipped to its subscribers.

23 7. The true names and capacities, whether individual, corporate, associate, representative,
24 alter ego or otherwise, of defendants and/or their alter egos named herein as DOES 1 through 25
25 inclusive are presently unknown to Plaintiff at this time, and are therefore sued by such fictitious names
26 pursuant to California Code of Civil Procedure § 474. Plaintiff will amend this Complaint to allege the
27 true names and capacities of DOES 1 through 25 when the same have been ascertained. Plaintiff is
28 further informed and believes, and based thereon allege, that DOES 1 through 25 were and/or are, in

1 some manner or way, responsible for and liable to Plaintiff for the events, happenings, and damages
2 hereinafter set forth below.

3 **III. JURISDICTION AND VENUE**

4 8. This Court has jurisdiction over all causes of action asserted herein.

5 9. Venue is proper in this Court because Defendant has received substantial compensation
6 from sales in this County. Specifically, Defendant knowingly engages in activities directed at consumers
7 in this County. Plaintiff has filed concurrently with his original Complaint the declaration of venue
8 required by Civil Code Section 1780(d) and was attached thereto as **Exhibit 1**.

9 10. Defendant and other out-of-state participants can be brought before this Court pursuant
10 to California's "long-arm" jurisdictional statute.

11 **IV. FACTS**

12 11. Plaintiff purchased a subscription to Defendant's service during the Class Period.

13 12. After his purchase, on January 9, 2017, Plaintiff sent a letter via his counsel
14 communicating the fact that Defendant had violated the ARL.

15 13. Defendant has responded by demanding that Plaintiff submit the foregoing ARL
16 dispute to arbitration pursuant to an arbitration provision within its online Terms of Use.

17 14. Plaintiff believes that such arbitration provision is unconscionable, and, therefore,
18 unenforceable.

19 15. Plaintiff has suffered damages including transaction costs as a result of Defendant's
20 violation of the Consumers Legal Remedies Act ("CLRA"), Civ. Code § 1750 *et seq.*

21 **V. CLASS ACTION ALLEGATIONS**

22 16. Plaintiff brings this class action for declaratory relief on behalf of the following class:

23 **All persons within California that, within the applicable statute of limitations period,**
24 **purchased any product or service in response to an offer constituting an "Automatic**
25 **Renewal" as defined by § 17601(a) from Blue Apron, Inc., its predecessors, or its affiliates.**

26 17. Excluded from the Class are governmental entities, Defendant, any entity in which
27 Defendant has a controlling interest, and Defendant's officers, directors, affiliates, legal
28 representatives, employees, co-conspirators, successors, subsidiaries, and assigns, and individuals

1 bound by any prior settlement involving Defendant's products or services. Also excluded from the
2 Class is any judge, justice, or judicial officer presiding over this matter and the members of their
3 immediate families and judicial staff.

4 18. The proposed Class is so numerous that individual joinder of all its members is
5 impracticable. Due to the nature of the trade and commerce involved, however, Plaintiff believes that
6 the total number of Class members is at least in the tens of thousands and members of the Class are
7 numerous and geographically dispersed across California. While the exact number and identities of
8 the Class members are unknown at this time, such information can be ascertained through appropriate
9 investigation and discovery. The disposition of the claims of the Class members in a single class
10 action will provide substantial benefits to all parties and to the Court.

11 19. There is a well-defined community of interest in the questions of law and fact involved
12 affecting the plaintiff class and these common questions predominate over any questions that may
13 affect individual Class members. Common questions of fact and law include, but are not limited to,
14 the following:

- 15 a. Whether Defendant's arbitration clause is unconscionable;
- 16 b. Whether Defendant's arbitration clause is unenforceable;
- 17 c. Whether Defendant's arbitration clause represents that a transaction confers or
18 involves rights, remedies or obligations which it does not have or involve, or
19 which are prohibited by law;
- 20 d. Whether Defendant's conduct constitutes a violation of the Consumers Legal
21 Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*);
- 22 e. Whether Plaintiff and Class members are entitled to declaratory relief,
23 injunctive relief, or some other appropriate remedy.

24 20. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all
25 members of the Class have been similarly affected by Defendant's common course of conduct since
26 they all are purportedly subject to the same arbitration clause.

27 21. Plaintiff will fairly and adequately represent and protect the interests of the Class.
28 Plaintiff has retained counsel with substantial experience in handling complex class action litigation.

1 Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the Class
2 and have the financial resources to do so. Plaintiff has retained a law firm who is widely recognized
3 as one of the most successful and effective class action litigators in California, and whose victories
4 have been publicized on CNN, Fox News, MSNBC, and nearly every major California newspaper.
5 The firm has also been certified as lead class counsel in similar class actions.

6 22. Plaintiff and the members of the Class suffered, and will continue to suffer, harm as a
7 result of Defendant's unlawful and wrongful conduct. A class action is superior to other available
8 methods for the fair and efficient adjudication of the present controversy. Individual joinder of all
9 members of the class is impracticable. Even if individual class members had the resources to pursue
10 individual litigation, it would be unduly burdensome to the courts in which the individual litigation
11 would proceed. Individual litigation magnifies the delay and expense to all parties in the court system
12 of resolving the controversies engendered by Defendant's common course of conduct. The class
13 action device allows a single court to provide the benefits of unitary adjudication, judicial economy,
14 and the fair and efficient handling of all class members' claims in a single forum. The conduct of this
15 action as a class action conserves the resources of the parties and of the judicial system and protects
16 the rights of the class members. Furthermore, for many, if not most, a class action is the only feasible
17 mechanism that allows an opportunity for legal redress and justice.

18 23. Adjudication of individual class members' claims with respect to Defendant would, as
19 a practical matter, be dispositive of the interests of other members not parties to the adjudication, and
20 could substantially impair or impede the ability of other class members to protect their interests.

21 **VI. CAUSES OF ACTION**

22 **FIRST CAUSE OF ACTION**

23 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT**

24 **(CAL. CIV. CODE §§ 1750, ET SEQ.)**

25 **(By Plaintiff and on Behalf of the Class Against Defendant)**

26 24. Plaintiff incorporates by this reference the allegations contained in the paragraphs
27 above as if fully set forth herein.

28 25. Defendant has engaged in and continues to engage in business practices in violation of

1 California Civil Code §§ 1750, *et seq.* by seeking to enforce an unconscionable arbitration clause.

2 This business practice should be enjoined.

3 26. Defendant’s conduct alleged herein violates the CLRA, including but not limited to, the
4 following provisions: (1) inserting an unconscionable provision in a contract in violation of Civil Code
5 § 1770(a)(19); and (2) representing that a transaction confers or involves rights, remedies or obligations
6 which it does not have or involve, or which are prohibited by law in violation of Civil Code §
7 1770(a)(14).

8 27. There is no other adequate remedy at law, and Plaintiff and Class members will suffer
9 irreparable harm unless Defendant’s conduct is enjoined.

10 28. The declaration of venue required by Civil Code § 1780(d) is attached hereto as **Exhibit**
11 **1**.

12 29. Defendant’s wrongful business practices constituted, and constitute, a continuing course
13 of conduct in violation of the CLRA because Defendant is still seeking to enforce its unconscionable
14 arbitration clause, and have injured Plaintiff and the Class.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff and members of the Class request that the Court enter an order or
17 judgment against Defendant, and each of them as named in the future, as follows:

- 18 1. For an order certifying the Class, appointing Plaintiff and his counsel to represent the
19 Class, and notice to the Class to be paid by Defendant;
- 20 2. For an injunction ordering Defendant to cease and desist from seeking to enforce its
21 arbitration clause;
- 22 3. For Plaintiff’s costs of the proceedings herein;
- 23 4. For reasonable attorneys’ fees as allowed by statute; and
- 24 5. For any and all such other and further relief that this Court may deem just and proper.

25 ///

26 ///

27 ///

28 ///

1 DEMAND FOR JURY TRIAL

2 Plaintiff hereby demands a trial by jury of all claims and causes of action so triable in this
3 lawsuit.

4 Dated: February 9, 2017

PACIFIC TRIAL ATTORNEYS
A Professional Corporation

6
7 By:  _____
8 Scott J. Ferrell
9 Attorney for Plaintiff and the Class

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

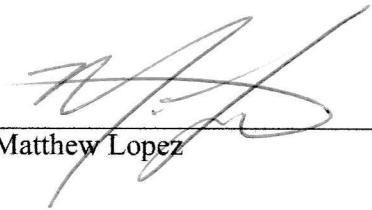
EXHIBIT 1

1 I, Matthew Lopez, declare as follows:

2 1. I am a Plaintiff in this action, and am a citizen of the State of California. I have
3 personal knowledge of the facts herein and, if called as a witness, I could and would testify
4 competently thereto.

5
6 2. The Complaint in this action, filed concurrently with this Declaration, is filed in the
7 proper place for trial under Civil Code Section 1780(d) in that Orange County is a county in which
8 Defendants are doing business.

9
10 I declare under penalty of perjury under the laws of the State of California that the foregoing is
11 true and correct.

12
13 
14 _____
15 Matthew Lopez

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28