

BURSOR & FISHER, P.A.
L. Timothy Fisher (State Bar No. 191626)
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
E-mail: ltfisher@bursor.com

BURSOR & FISHER, P.A.
Joseph I. Marchese (*pro hac vice* forthcoming)
Alec M. Leslie (*pro hac vice* forthcoming)
New York, NY 10019
Telephone: (646) 837-7150
Facsimile: (212) 989-9163
E-Mail: jmarchese@bursor.com
aleslie@bursor.com

GUCOVSCHI ROZENSSTEYN, PLLC.
Adrian Gucovschi (*pro hac vice* forthcoming)
630 Fifth Avenue, Suite 2000
New York, NY 10111
Telephone: (212) 884-4230
Facsimile: (212) 884-4230
E-Mail: adrian@gr-firm.com

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

AMANDA MCCLURE, individually and on behalf of all other persons similarly situated,

Case No.:

Plaintiff,

CLASS ACTION COMPLAINT

**GROCERY DELIVERY E-SERVICES USA
INC. D/B/A HELLOFRESH.**

JURY TRIAL DEMANDED

Defendant.

1 Plaintiff Amanda McClure (“Plaintiff”) brings this action individually and on behalf of all
 2 others similarly situated against Defendant Grocery Delivery E-Services Usa Inc., d/b/a HelloFresh
 3 (“HelloFresh” or “Defendant”). Plaintiff makes the following allegations pursuant to the
 4 investigation of her counsel and based upon information and belief, except as to allegations
 5 specifically pertaining to herself and her counsel, which are based on personal knowledge.

6 **INTRODUCTION**

7 1. This is a putative class action lawsuit against Defendant for engaging in an illegal
 8 “automatic renewal” scheme with respect to its subscription sports broadcasting and streaming
 9 services across its network sites (collectively, the “HelloFresh Subscriptions,” enumerated below)
 10 through its website at <https://www.HelloFresh.com> (the “HelloFresh Website”). Defendant is an
 11 international food delivery company that, among other activities, delivers pre-portioned ingredients
 12 and recipes as an alternative to traditional grocery shopping. Relevant to Plaintiff’s allegations,
 13 when consumers sign up for the HelloFresh Subscriptions through the HelloFresh Website,
 14 Defendant actually enrolls consumers in a program that automatically renews customers’
 15 HelloFresh Subscriptions from week-to-week and results in weekly charges to the consumer’s
 16 credit card, debit card, or third-party payment account (collectively, “Payment Method”). In doing
 17 so, Defendant fails to provide the requisite disclosures and authorizations required to be made to
 18 and obtained from California consumers under California’s Automatic Renewal Law (“ARL”),
 19 Cal. Bus. & Prof. Code §§ 17600, *et seq.*

20 2. Through the HelloFresh Website, Defendant markets, advertises, and sells to
 21 consumers in California and throughout the United States paid memberships to the HelloFresh
 22 Subscriptions, which include food delivery kits based on its customers’ food preferences and
 23 number of servings per week (collectively, the “HelloFresh Subscriptions”). To sign up for one of
 24 Defendant’s HelloFresh Subscriptions through the HelloFresh Website, customers must provide
 25 Defendant with their billing information and Defendant then automatically charges customers’
 26 Payment Method as payments become due, typically on a weekly basis. Defendant is able to
 27 unilaterally charge its customers’ renewal fees without their consent, as Defendant is in possession
 28 of its customers’ billing information. Thus, Defendant has made the deliberate decision to charge

1 Plaintiff and other similarly situated customers on a weekly basis, absent their consent under the
 2 ARL, relying on consumer confusion and inertia to retain customers, combat consumer churn, and
 3 bolster its revenues.

4 3. Pursuant to the ARL, online retailers who offer automatically renewing
 5 subscriptions to California consumers must: (a) obtain affirmative consent prior to the consumer's
 6 purchase; (b) provide the complete auto-renewal terms in a clear and conspicuous manner and in
 7 visual proximity to the request for consent prior to the purchase; and (c) provide an
 8 acknowledgement identifying an easy and efficient mechanism for consumers to cancel their
 9 subscriptions. As will be discussed below, the enrollment process for the HelloFresh Subscriptions
 10 through the HelloFresh Website uniformly violates each of the core requirements of the ARL.

11 4. Specifically, Defendant systematically violates the ARL by: (i) failing to present the
 12 automatic renewal offer terms in a clear and conspicuous manner and in visual proximity to the
 13 request for consent to the offer before the subscription or purchasing agreement is fulfilled, in
 14 violation of Section 17602(a)(1); (ii) charging consumers' Payment Method without first obtaining
 15 their affirmative consent to the agreement containing the automatic renewal offer terms, in
 16 violation of Section 17602(a)(2); and (iii) failing to provide an acknowledgment that includes the
 17 automatic renewal offer terms, cancellation policy, and information regarding how to cancel in a
 18 manner that is capable of being retained by the consumer, in direct violation of Sections
 19 17602(a)(3) and 17602(b). Cal. Bus. & Prof. Code §§ 17602(a)(1), (a)(2), (a)(3), (b). As a result,
 20 the HelloFresh Subscriptions, which include food delivery kits granted to Plaintiff and the Class
 21 under the automatic renewal of continuous service agreements are deemed to be "unconditional
 22 gifts" under the ARL. Cal. Bus. & Prof. Code § 17603.

23 5. For the foregoing reasons, Plaintiff brings this action individually and on behalf of
 24 all California purchasers of any of Defendant's HelloFresh Subscriptions offerings who, within the
 25 applicable statute of limitations period up to and including the date of judgment in this action,
 26 incurred unauthorized fees for the renewal of their HelloFresh Subscriptions. Based on Defendant's
 27 unlawful conduct, Plaintiff seeks damages, restitution, declaratory relief, injunctive relief, and
 28 reasonable attorneys' fees and costs, for: (i) violation of California's Unfair Competition Law

1 (“UCL”), Cal. Bus. & Prof. Code §§ 17200, et seq.; (ii) violation of California’s False Advertising
 2 Law (“FAL”), Cal. Bus. & Prof. Code §§ 17500, et seq.; (iii) violation of California’s Consumers
 3 Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750, et seq.; (iv) conversion; and (iv) unjust
 4 enrichment/restitution.

5 **THE PARTIES**

6. Plaintiff Amanda McClure is a citizen of California, residing in Marina, California.
 7 On or around March 11, 2022, Ms. McClure purchased a HelloFresh Subscription from
 8 Defendant’s Website while residing in California. During the enrollment process, but before
 9 finally consenting to Defendant’s subscription offering, Ms. McClure provided her Payment
 10 Method information directly to Defendant. At the time that Ms. McClure enrolled in her
 11 HelloFresh Subscription program, Defendant did not disclose to Ms. McClure all of the required
 12 automatic renewal offer terms associated with the subscription program or obtain Ms. McClure’s
 13 affirmative consent to those terms. Further, after Ms. McClure completed her initial order (which
 14 was free after applying the Defendant’s promotional code), Defendant sent Ms. McClure an email
 15 confirmation and receipt for her purchase of and enrollment in the HelloFresh Subscription (the
 16 “Acknowledgment Email”). However, the Acknowledgment Email, too, failed to provide Ms.
 17 McClure with the complete automatic renewal terms that applied to Defendant’s offer, a
 18 description of Defendant’s full cancellation policy, or information regarding how to cancel Ms.
 19 McClure’s HelloFresh Subscription in a manner capable of being retained by her. Ms. McClure did
 20 not receive any other acknowledgement that contained the required information. As a result, Ms.
 21 McClure was not placed on notice of several material terms associated with her HelloFresh
 22 Subscription. In particular, Ms. McClure was not made aware of the recurring price to be charged
 23 upon renewal, the length of the renewal term, when the first charge would occur, or the complete
 24 cancellation policy associated with her HelloFresh Subscription: the most crucial aspects of which
 25 were missing from the Checkout Page and the Acknowledgment Email. Nevertheless, on
 26 Wednesday, March 23, 2022, Defendant automatically renewed Ms. McClure’s HelloFresh
 27 Subscription and charged Ms. McClure’s Payment Method approximately \$69.93. Defendant
 28 charged Mr. McClure’s Payment Method again on March 30, 2022 for \$69.93. Promptly after

1 learning of Defendant's deceptive recurring charges, on or around Tuesday, April 5, 2022, Ms.
 2 McClure canceled her HelloFresh Subscription via Defendant's Website in order to avoid incurring
 3 any additional future charges. Nevertheless, Defendant imposed a charge of 69.93 the day after Ms.
 4 McClure's cancelation. Defendant's missing and/or incomplete disclosures on the Checkout Page
 5 and in the Acknowledgment Email for the HelloFresh Subscription, its failure to obtain Ms.
 6 McClure's affirmative consent to the offer terms associated with the HelloFresh Subscription
 7 before charging her Payment Method on a recurring basis, runs contrary to the ARL, which deems
 8 products provided in violation of the statute to be a gift to consumers. *See* Cal. Bus. & Prof. Code
 9 § 17603. Had Defendant complied with the ARL, Ms. McClure would have been able to read and
 10 review the pertinent automatic renewal offer terms prior to purchase, and she would not have
 11 subscribed to the HelloFresh Subscription at all or on the same terms or she would have cancelled
 12 her HelloFresh Subscription earlier, *i.e.*, prior to the two charges following her free promotional
 13 delivery. As a direct result of Defendant's violations of the ARL, Ms. McClure suffered, and
 14 continues to suffer, economic injury.

15 7. Defendant Grocery Delivery E-Services Usa Inc., d/b/a HelloFresh ("HelloFresh" or
 16 "Defendant") is a Delaware corporation with its principal place of business at 28 Liberty
 17 Street, New York, New York 10005. Defendant is an international food delivery company that
 18 markets, sells, and delivers meal kits to consumers throughout California and nationwide.
 19 Defendant is also responsible for the promotion, advertisement, and/or marketing of the
 20 automatically renewing HelloFresh Subscriptions, and it owns and operates the HelloFresh
 21 Website, where it markets and sells its HelloFresh Subscriptions. Defendant sells HelloFresh
 22 Subscriptions in California and has done business throughout New York, and throughout the
 23 United States, at all times during the Class Period. Defendant also made automatic renewal or
 24 continuous service offers to consumers in California and New York, and throughout the United
 25 States, via the HelloFresh Website during the Class Periods.

26 8. Plaintiff reserves the right to amend this Complaint to add different or additional
 27 defendants, including without limitation any officer, director, employee, supplier, or distributor of

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.