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7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO  
10

11 SAUL GRANILLO and JENNIFER FITE,  
individually and on behalf of all others  
12 similarly situated,

13 Plaintiffs,

14 vs.

15 CONDE NAST ENTERTAINMENT LLC,  
a Delaware limited liability company;  
16 and DOES 1-50, inclusive,

17 Defendants.  
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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**09/27/2019** at 08:39:00 AM

Clerk of the Superior Court  
By Lee McAlister, Deputy Clerk

CASE NO. 37-2019-00051411-CU-BT-CTL

CLASS ACTION

COMPLAINT FOR:

(1) FALSE ADVERTISING - VIOLATION  
OF THE CALIFORNIA AUTOMATIC  
RENEWAL LAW;

(2) VIOLATION OF THE CALIFORNIA  
CONSUMERS LEGAL REMEDIES ACT;

(3) VIOLATION OF THE CALIFORNIA  
UNFAIR COMPETITION LAW;

(4) UNJUST ENRICHMENT.

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. This class action complaint alleges that defendant Conde Nast Entertainment LLC  
3 (“Conde Nast”) violates California law in connection with a magazine subscription program. In  
4 particular, Conde Nast enrolls consumers in automatic renewal or continuous service subscriptions  
5 without providing the “clear and conspicuous” disclosures mandated by California law, and posts  
6 charges to consumers’ credit or debit cards for purported automatic renewal or continuous service  
7 subscriptions without first obtaining the consumers’ affirmative consent to an agreement containing  
8 the requisite clear and conspicuous disclosures. This conduct violates the California Automatic  
9 Renewal Law (Bus. & Prof. Code, § 17600 et seq.) (“ARL”), the Consumers Legal Remedies Act  
10 (Civ. Code, § 1750 et seq.) (“CLRA”), and the Unfair Competition Law (Bus. & Prof. Code, § 17200  
11 et seq.) (“UCL”).

12 **THE PARTIES**

13 2. Plaintiff Saul Granillo (“Granillo”) is an individual residing in San Diego County,  
14 California.

15 3. Plaintiff Jennifer Fite (“Fite”) is an individual residing in San Diego County,  
16 California. Granillo and Fite are collectively referred to herein as “Plaintiffs.”

17 4. Plaintiffs are informed and believe and thereon allege that defendant Conde Nast is  
18 a Delaware limited liability company that does business in San Diego County, including the  
19 marketing of magazine subscriptions.

20 5. Plaintiffs do not know the names of the defendants sued as DOES 1 through 50 but  
21 will amend this complaint when that information becomes known. Plaintiffs allege on information  
22 and belief that each of the DOE defendants is affiliated with the named defendant in some respect  
23 and is in some manner responsible for the wrongdoing alleged herein, either as a direct participant,  
24 or as the principal, agent, successor, alter ego, or co-conspirator of or with one or more of the other  
25 defendants. For ease of reference, Plaintiffs will refer to the named defendant and the DOE  
26 defendants collectively as “Defendants.”

27 6. Venue is proper in this judicial district because the complained of conduct occurred  
28 in this judicial district.

1 **BACKGROUND**

2 7. Conde Nast is one of the world’s largest magazine publishers. In the United States,  
3 Conde Nast’s publications include *Vogue*, *Bon Appetit*, *Vanity Fair*, *Conde Nast Traveler*, *The New*  
4 *Yorker*, *Allure*, *GQ* and *Architectural Digest*.

5 8. Traditionally, magazine publishers sold subscriptions on the basis of a schedule that  
6 reflects a fixed price for a definite term (such as one, two, or three years). Under that arrangement,  
7 the consumer selects the desired price/term combination and submits payment. Later, when the end  
8 of the term is approaching, the consumer is notified that the subscription will soon come to an end  
9 and is provided with a renewal offer. If the consumer wishes to renew, he or she selects the desired  
10 price/term combination for the renewal period and submits the corresponding payment.  
11 Alternatively, if the consumer does not renew, the subscription comes to an end.

12 9. During the 1990s, some marketers came to view the traditional model as a constraint  
13 on sales and profits and advocated instead adoption of a “negative option” model. In a “negative  
14 option,” the seller “interpret[s] a customer’s failure to take an affirmative action, either to reject an  
15 offer or cancel an agreement, as assent to be charged for goods or services.”<sup>1</sup> One variety of the  
16 negative option model is an arrangement in which a magazine subscription will be “automatically  
17 renewed” and thus continue indefinitely unless and until the consumer takes affirmative steps to  
18 cancel. It has been reported that by 2003, the Federal Trade Commission (FTC) was receiving  
19 500,000 complaints annually about deceptive magazine sales. (See Ex. 1 at p. 1 [*Negative Option:*  
20 *When No Means Yes*,” Consumer Affairs (Nov. 2005)].)

21 10. Defendants have implemented a negative option model in which they automatically  
22 renew subscriptions, and they do so in a way that violates California law.

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27 <sup>1</sup> (See *Negative Options* (January 2009) Federal Trade Commission  
28 <<https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf>> [as of September 26, 2019].)

1 **THE CALIFORNIA AUTOMATIC RENEWAL LAW**

2 11. In 2009, the California Legislature passed Senate Bill 340, which took effect on  
3 December 1, 2010 as Article 9 of Chapter 1 of the False Advertising Law. (Bus. & Prof. Code,  
4 § 17600 *et seq.* (the California Automatic Renewal Law or “ARL”).) (Unless otherwise stated, all  
5 statutory references are to the Business & Professions Code). SB 340 was introduced because:

6 It has become increasingly common for consumers to complain about unwanted  
7 charges on their credit cards for products or services that the consumer did not  
8 explicitly request or know they were agreeing to. Consumers report they believed  
9 they were making a one-time purchase of a product, only to receive continued  
10 shipments of the product and charges on their credit card. These unforeseen charges  
11 are often the result of agreements enumerated in the “fine print” on an order or  
12 advertisement that the consumer responded to.

13 (See Exhibit 2 at p. 7.)

14 12. The Assembly Committee on Judiciary provided the following background for the  
15 legislation:

16 This non-controversial bill, which received a unanimous vote on the Senate floor,  
17 seeks to protect consumers from unwittingly consenting to “automatic renewals” of  
18 subscription orders or other “continuous service” offers. According to the author and  
19 supporters, consumers are often charged for renewal purchases without their consent  
20 or knowledge. For example, consumers sometimes find that a magazine subscription  
21 renewal appears on a credit card statement even though they never agreed to a  
22 renewal.

23 (See Exhibit 3 at p. 11.)

24 13. The ARL seeks to ensure that, before there can be a legally-binding automatic  
25 renewal or continuous service arrangement, there must first be adequate disclosure of certain terms  
26 and conditions and affirmative consent by the consumer. Among other things, Bus. & Prof. Code  
27 § 17602(a) makes it unlawful for any business making an automatic renewal offer or a continuous  
28 service offer to a consumer in California to do any of the following:

29 a. Fail to present the automatic renewal or continuous service offer terms in a  
30 clear and conspicuous manner before the subscription or purchasing agreement is fulfilled and in  
31 visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the request  
32 for consent to the offer. (§ 17602(a)(1).) For this purpose, the term “clear and conspicuous” means  
33 “in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text  
34 of the same size, or set off from the surrounding text of the same size by symbols or other marks, in

1 a manner that clearly calls attention to the language.” (§ 17601(c).) For an audio disclosure, “clear  
2 and conspicuous” means “in a volume and cadence sufficient to be readily audible and  
3 understandable.” (*Ibid.*)

4 b. Charge the consumer’s credit or debit card or the consumer’s account with a  
5 third party for an automatic renewal or continuous service without first obtaining the consumer’s  
6 affirmative consent to the agreement containing the automatic renewal or continuous service offer  
7 terms. (§ 17602(a)(2).)

8 c. Fail to provide an acknowledgment that includes the automatic renewal or  
9 continuous service offer terms, cancellation policy, and information regarding how to cancel in a  
10 manner that is capable of being retained by the consumer. (§ 17602(a)(3).) The acknowledgment  
11 must include a toll-free telephone number, electronic mail address, or other mechanism for  
12 cancellation. (§ 17602(b).)

13 14. Section 17603 provides: “In any case in which a business sends any goods, wares,  
14 merchandise, or products to a consumer, under a continuous service agreement or automatic renewal  
15 of a purchase, without first obtaining the consumer’s affirmative consent as described in Section  
16 17602, the goods, wares, merchandise, or products shall for all purposes be deemed an unconditional  
17 gift to the consumer, who may use or dispose of the same in any manner he or she sees fit without  
18 any obligation whatsoever on the consumer’s part to the business, including, but not limited to,  
19 bearing the cost of, or responsibility for, shipping any goods, wares, merchandise, or products to the  
20 business.”

21 **FACTS GIVING RISE TO PLAINTIFFS’ CLAIMS**

22 **Saul Granillo’s Transaction with Defendants**

23 15. In or about July 2017, Granillo responded to an online offer to receive six issues of  
24 *Vogue* magazine for \$6.00. Granillo entered his debit card details in order to complete the online  
25 purchase, and Defendants posted a \$6.00 charge to Granillo’s debit card.

26 16. In or about November 2017, Defendants posted a charge to Granillo’s debit card in  
27 the amount of \$21.99. That charge was posted without Granillo’s authorization.

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1           17.     Granillo is informed and believes that thereon alleges that, upon submission of the  
2 order for six issues of *Vogue*, Defendants enrolled him into a program under which Defendants  
3 would automatically renew the subscription for subsequent periods. When Granillo submitted the  
4 order for six issues of *Vogue*, he was unaware that Defendants were going to enroll him into an  
5 automatic renewal subscription program, and he did not consent to be enrolled into such a program.  
6 Documents evidencing the offer to which Granillo responded are in the exclusive possession,  
7 custody, and control of Defendants. Granillo will seek production of such documents during the  
8 course of discovery in this action, which Granillo believes will support the allegations herein.

9           18.     If Granillo had known that Defendants were going to enroll him in an automatic  
10 renewal or continuous service program, he would not have responded to the offer for *Vogue* and  
11 would not have paid any money to Defendants.

12 **Jennifer Fite's Transaction with Defendants**

13           19.     In or about August 2017, Fite provided Defendants with her credit card details to pay  
14 for a one-year subscription to *Vanity Fair* magazine at a cost of \$5.00.

15           20.     In or about September 2018, Defendants posted a charge to Fite's credit card in the  
16 amount of \$12.00. That charge was posted without Fite's authorization.

17           21.     Fite is informed and believes that thereon alleges that, upon submission of the order  
18 for one year of *Vanity Fair*, Defendants enrolled her into a program under which Defendants would  
19 automatically renew the subscription for subsequent periods. When Fite submitted the order for one  
20 year of *Vanity Fair*, she was unaware that Defendants were going to enroll her into an automatic  
21 renewal subscription program, and she did not consent to be enrolled into such a program.  
22 Documents evidencing the offer to which Fite responded are in the exclusive possession, custody,  
23 and control of Defendants. Fite will seek production of such documents during the course of  
24 discovery in this action, which Fite believes will support the allegations herein.

25           22.     If Fite had known that Defendants were going to enroll her in an automatic renewal  
26 or continuous service program, she would not have submitted the order for *Vanity Fair* and would  
27 not have paid any money to Defendants.

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**DEFENDANTS’ DECEPTION OF OTHER CONSUMERS**

23. Notwithstanding legislative and regulatory efforts, including enactment of the California ARL, “automatically renewed” magazine subscriptions continue to be a perennial source of consumer complaints.

24. Customer reviews of Conde Nast posted on the Better Business Bureau (“BBB”) website (and other consumer websites) illustrate that Defendants’ scheme is effective and has affected many consumers. Consumer complaints include being automatically renewed for magazines without consent. For example:

**Billing/Collection Issues (July 11, 2019)** Conde Nast billed me an introductory rate for Architectural Digest subscription, then never stated the amount for a renewal, or when the renewal would occur. I was then billed \$34.99 without any advance notice, or ability to cancel. I am requesting a full refund of \$34.99.

A true and correct printout of that complaint is attached as Exhibit 4.

**Billing/Collection Issues (September 22, 2016).** I got a renewal notice on the \*\*\*\* and did not renew. The presence of the notice assured me that I had no auto renew to worry about, falsely. I didn't have the money so I was glad to see the renewal notice and delete it. Charges hit the same day I got the notice in an email and those charges overdue my account. Now customer service credited my account the charges good enough but not the overdraft. It is a bad business practice to automatically renew things on people. Really bad because they are doing it by the thousands and taking peoples money, causing harm to some, like me. They misled me to believe I was in control of renewal to boot! It was deceptive.

A true and correct printout of that complaint is attached as Exhibit 5.

**CLASS ACTION ALLEGATIONS**

25. Plaintiffs bring this lawsuit as class action under Code of Civil Procedure § 382 on behalf of the following Class: “All individuals in California who, within the applicable limitations period, were enrolled by Defendants in an automatic renewal or continuous service program. Excluded from the Class are all employees of Defendants, all employees of Plaintiffs’ counsel, and the judicial officers to whom this case is assigned.”

26. Ascertainability. The members of the Class may be ascertained by reviewing records in the possession of Defendants and/or third parties, including without limitation Defendants’ marketing and promotion records, customer records, and billing records.

1           27.     Common Questions of Fact or Law. There are questions of fact or law that are  
2 common to the members of the Class, which predominate over individual issues. Common  
3 questions regarding the Class include, without limitation: (1) Whether Defendants present the terms  
4 of the subscription in a manner that is “clear and conspicuous” within the meaning of California law  
5 and in “visual proximity” to a request for consent to the offer (or in the case of an offer conveyed  
6 by voice, in temporal proximity to a request for consent to the offer); (2) Defendants’ policies,  
7 practices and procedures for obtaining affirmative consent from customers before charging a credit  
8 card, debit card, or third-party payment account; (3) whether Defendants provide consumers with  
9 an acknowledgment that includes “clear and conspicuous” disclosure of all automatic renewal offer  
10 terms, the cancellation policy, and information regarding how to cancel; (4) Defendants’ record-  
11 keeping practices; and (5) the appropriate remedies for Defendants’ conduct.

12           28.     Numerosity. The Class is so numerous that joinder of all Class members would be  
13 impracticable. Plaintiffs are informed and believe and thereon allege that the Class consists of at  
14 least 100 members.

15           29.     Typicality and Adequacy. Plaintiffs’ claims are typical of the claims of the Class  
16 members. Plaintiffs allege on information and belief that Defendants enrolled Plaintiffs and Class  
17 members in automatic renewal or continuous service programs without disclosing all terms required  
18 by law, and without presenting such terms in the requisite “clear and conspicuous” manner; charged  
19 Class members’ credit cards, debit cards, or third-party accounts without first obtaining Class  
20 members’ affirmative consent to an agreement containing clear and conspicuous disclosure of all  
21 automatic renewal offer terms in the manner required by California law; and failed to provide the  
22 requisite acknowledgment with the required disclosures and information. Plaintiffs have no  
23 interests that are adverse to those of the other Class members. Plaintiffs will fairly and adequately  
24 protect the interests of the Class members.

25           30.     Superiority. A class action is superior to other methods for resolving this  
26 controversy. Because the amount of restitution to which each Class member may be entitled is low  
27 in comparison to the expense and burden of individual litigation, it would be impracticable for Class  
28 members to redress the wrongs done to them without a class action forum. Furthermore, on

1 information and belief, Class members do not know that their legal rights have been violated. Class  
2 certification would also conserve judicial resources and avoid the possibility of inconsistent  
3 judgments.

4 31. Risk of Inconsistent or Varying Adjudications. Prosecuting separate actions by  
5 individual Class members would create a risk of inconsistent or varying adjudications with respect  
6 to individual Class members that would establish incompatible standards of conduct for Defendants.  
7 As a practical matter, adjudication with respect to individual Class members would be also  
8 dispositive of the interests of others not parties to the individual adjudications or would substantially  
9 impair or impede their ability to protect their interests.

10 32. Defendants Have Acted on Grounds Generally Applicable to the Class. Defendants  
11 have acted on grounds that are generally applicable to each Class member, thereby making  
12 appropriate final injunctive relief and/or declaratory relief with respect to the Class as a whole.

13 **FIRST CAUSE OF ACTION**

14 False Advertising - Violation of the Automatic Renewal Law

15 (Bus. & Prof. Code, § 17600 et seq. and § 17535)

16 33. Plaintiffs incorporate the previous allegations as though fully set forth herein.

17 34. Plaintiffs are informed and believe and thereon allege that, during the applicable  
18 statute of limitations period, Defendants have enrolled consumers, including Plaintiffs and Class  
19 members, in automatic renewal programs and/or continuous service programs and have (a) failed to  
20 present the automatic renewal or continuous service offer in a clear and conspicuous manner before  
21 the subscription or purchasing agreeing is fulfilled and in visual proximity, or in the case of an offer  
22 conveyed by voice, in temporal proximity, to the request for consent to the offer; (b) charged the  
23 consumer's credit or debit card or the consumer's third-party payment account for an automatic  
24 renewal or continuous service without first obtaining the consumer's affirmative consent to an  
25 agreement containing clear and conspicuous disclosure of the automatic renewal or continuous  
26 service offer terms; (c) failed to provide an acknowledgment that includes clear and conspicuous  
27 disclosure of all automatic renewal or continuous service offer terms, the cancellation policy, and  
28 information regarding how to cancel.



1 of price reductions; representing that a transaction confers or involves rights, remedies, or  
2 obligations that it does not have or involve, or that are prohibited by law; and by representing that  
3 the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit  
4 is contingent on an event to occur subsequent to the consummation of the transaction.

5 43. On behalf of themselves, all Class members, and the general public of the State of  
6 California, Plaintiffs seek an injunction prohibiting Defendants from continuing their unlawful  
7 practices in violation of the Consumers Legal Remedies Act, as described above.

8 **THIRD CAUSE OF ACTION**

9 Violation of the California Unfair Competition Law

10 (Bus. & Prof. Code, § 17200 et seq.)

11 44. Plaintiffs incorporate the previous allegations as though set forth herein.

12 45. The California Unfair Competition Law (“UCL”), Bus. & Prof. Code § 17200 *et seq.*,  
13 defines unfair competition as including “any unlawful, unfair or fraudulent business act or practice.”

14 46. In the course of conducting business within the applicable limitations period,  
15 Defendants committed “unlawful,” “unfair,” and/or “fraudulent” business practices by, *inter alia*  
16 and without limitation: (a) failing to present all automatic renewal or continuous service offers terms  
17 in a clear and conspicuous manner before a subscription or purchasing agreement is fulfilled and in  
18 visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to a request  
19 for consent to the offer, in violation of § 17602(a)(1); (b) charging the consumer’s credit card, debit  
20 card, or third-party payment account for an automatic renewal or continuous service without first  
21 obtaining the consumer’s affirmative consent to an agreement containing clear and conspicuous  
22 disclosure of all automatic renewal or continuous service offer terms, in violation of § 17602(a)(2);  
23 (c) failing to provide an acknowledgment that includes clear and conspicuous disclosure of all  
24 automatic renewal or continuous service offer terms, the cancellation policy, and information  
25 regarding how to cancel, in violation of § 17602(a)(3); (d) representing that Defendants’ goods and  
26 services have certain characteristics that they do not, in violation of Civil Code § 1770(a)(5);  
27 (e) advertising goods or services with the intent not to sell them as advertised, in violation of Civil  
28 Code § 1770(a)(9); (f) making false and misleading statements of fact concerning the reasons for,

1 existence of and amounts of price reductions, in violation of Civil Code § 1770(a)(13);  
2 (g) representing that a transaction confers or involves rights, remedies, or obligations that it does  
3 not have or involve, or that are prohibited by law; and (h) representing that the consumer will receive  
4 a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event  
5 to occur subsequent to the consummation of the transaction, in violation of Civil Code  
6 § 1770(a)(17). Plaintiffs reserve the right to allege other violations of law that constitute unlawful  
7 or unfair business acts or practices.

8 47. Defendants' acts and omissions as alleged herein violate obligations imposed by  
9 statute, are substantially injurious to consumers, offend public policy, and are immoral, unethical,  
10 oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits  
11 attributable to such conduct.

12 48. There were reasonably available alternatives to further Defendants' legitimate  
13 business interests, other than the conduct described herein.

14 49. Defendants' acts, omissions, nondisclosures, and misleading statements as alleged  
15 herein were and are false, misleading, and/or likely to deceive the consuming public.

16 50. Plaintiffs have suffered injury in fact and lost money as a result of Defendants' acts  
17 of unfair competition.

18 51. Pursuant to Bus. & Prof. Code § 17203, Plaintiffs and the Class members are entitled  
19 to an order: (1) requiring Defendants to make restitution to Plaintiffs and Class members;  
20 (2) enjoining Defendants from making automatic renewal or continuous service offers in the State  
21 of California that do not comply in all respects with the California law; and (3) enjoining Defendants  
22 from charging California consumers' credit cards, debit cards, and/or third party payment accounts  
23 until such time as Defendants obtain the consumer's affirmative consent to an agreement that  
24 contains clear and conspicuous disclosure of all automatic renewal or continuous service offer terms.

25 52. Plaintiffs reserve the right to seek other prohibitory or mandatory aspects of  
26 injunctive relief, whether on behalf of the Class and/or for the benefit of the general public of the  
27 State of California, to prevent Defendants' use or employment of practices that constitute unfair  
28 competition.

1 **FOURTH CAUSE OF ACTION**

2 Unjust Enrichment

3 53. Plaintiffs incorporate the previous allegations as though fully set forth herein.

4 54. Defendants have received money from Plaintiffs and Class members in connection  
5 with Defendants' conduct in violation of California law. Defendants would be unjustly enriched if  
6 they were permitted to retain those funds, and Defendants should be ordered to restore said funds to  
7 Plaintiffs and the Class members.

8 55. Plaintiffs allege this unjust enrichment claim in the alternative to relief provided  
9 under any legal claim alleged herein.

10 **PRAYER**

11 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

12 On the First Cause of Action (False Advertising - Violation of the ARL):

- 13 1. For restitution;  
14 2. For a public injunction for the benefit of the People of the State of California;

15 On the Second Cause of Action (Violation of the CLRA):

- 16 4. For a public injunction for the benefit of the People of the State of California;  
17 5. For reasonable attorneys' fees, pursuant to Civil Code § 1780(e);

18 On the Third Cause of Action (Unfair Competition):

- 19 6. For restitution;  
20 7. For a public injunction for the benefit of the People of the State of California;

21 On the Fourth Cause of Action (Unjust Enrichment):

- 22 8. For restitution;

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On all Causes of Action:

- 9. For reasonable attorneys' fees pursuant to Cal. Code Civ. Proc. § 1021.5;
- 10. For costs of suit;
- 11. For pre-judgment interest; and
- 12. For such other relief that the Court deems just and proper.

DATED: September 27, 2019

DOSTART HANNINK & COVENEY LLP

ZACH P. DOSTART  
Attorneys for Plaintiffs

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury of all claims and causes of action so triable.

Dated: September 27, 2019

DOSTART HANNINK & COVENEY LLP

ZACH P. DOSTART  
Attorneys for Plaintiffs

891902.5

# Exhibit 1

# Negative Option: When No Means Yes

**Instead of the merchant having to "sell" you a product or service, it starts with the assumption that youve already bought it**



By [Mark Huffman](#)

11/07/2005 | [ConsumerAffairs](#) | [Legal News](#)

For centuries, commerce was simple and straightforward. A merchant would offer a good or service for sale and a consumer would decide whether or not to buy. Today, with "negative option" marketing, commerce can be anything but simple, and consumers can end up being charged for products or services they never intended to purchase.

Simply put, negative option turns the sales transaction around. Instead of the merchant having to "sell" you a product or service, it starts with the assumption that youve already bought it. Its up to you, the consumer, to contact the merchant and cancel the order if you dont want to complete the transaction.

The Columbia Record Club and various "book-of-the-month" clubs were early pioneers of negative option marketing. The hook was an offer of five or ten books or records for free or at a heavily discounted price.

By accepting the offer, the consumer agreed to "join" the club and receive regular shipments of other books or records at the full price, unless the consumer took the "negative option," telling the company it did not want to receive that months offering.

As you might expect, negative option has been abused as its use has become more prevalent. The widespread use of credit cards and the growth of the Internet have fueled that abuse, to the point that federal and state consumer authorities have taken action.

In 2001, the Federal Trade Commission cracked down on negative option abuses, suing nine companies for charging customers credit cards for products or services without gaining their express approval. The FTC found the companies, as part of a transaction with consumers, offered "free offers" or "trial offers" of other products and services, without disclosing that consumers would be billed for additional products or services unless they exercised the negative option.

"Negative option marketing is particularly troubling when marketers already have consumers' credit card or billing account information and can easily charge consumers' accounts without their permission or when marketers fail to disclose that consumers' credit card numbers will be transferred to another company and charged unless consumers call to cancel," the FTCs Elaine Kolish told Congress in November, 2001.

But Congress took no action, and in the last four years, negative option marketing has increased, and so has its abuse.

According to the FTC, companies selling magazine subscriptions through the negative option are among the worst offenders. In 2001 the FTC logged 204,000 complaints about deceptive magazine sales. Two years later, the number of complaints had more than doubled, to well over 500,000.

Magazine publishers are a bit defensive about that. In fact, the Magazine Publishers of America, an industry trade association, says it prefers to call negative option marketing "advance consent marketing." The group defends the practice, saying continuous service and automatic renewals also benefit consumers.

"The FTC has expressed concern about the disclosures associated with such marketing techniques and ensuring that consumers understand the terms and conditions of the marketing offers. A number of industry groups have established guidelines for advance consent marketing. MPA has created an educational document around one such set of guidelines," the group said in a statement on its Website.

The lengthy MPA document, written in 1998, is a set of "voluntary" guidelines for the independent contractors hired by publishers to sell magazine subscriptions. Judging from the growing number of complaints received at the FTC about magazine sales, a reader might conclude these guidelines are not always followed.

## Banned in Motown

Michigan Attorney General Mike Cox warns consumers in his state to be wary of negative option traps. He says businesses employ them for one simple reason they work.

"Studies show that if a company asks a customer to sign up for a new service or product, less than 15 percent of consumers receiving the solicitation will sign up," Cox said. "On the other hand, if the service or product is supplied without the consent of the consumer, up to 80 percent of the consumers will be recruited into the new service plan."

In Michigan, negative option marketing is illegal, based on the states interpretation of the law.

"Basic contract law requires an agreement, not a unilateral tender of goods by a shady merchant," said Allison Pierce, Communications Director for the Michigan Attorney Generals Office.

"Thus, a pure negative option arrangement is no good under contract law, and a bill for the goods involved is deceptive and violates various laws, including the Michigan Consumer Protection Act and state and federal unsolicited merchandise laws."

Even though negative option marketing is considered illegal in Michigan, consumers in that state still fall victim to the systems abusive practices. Clarence, of Pleasant Lake, Michigan complained to ConsumerAffairs.com about an unauthorized charge of \$149 on his credit card from Triligiants Health Saver Plan.

"I called the phone number for their health saver plan to find out how and why I was charged for a membership on my credit card," Clarence told us.

"For starters, the individual I spoke to was very rude. When I asked him how and why my credit card was charged he said I cashed a \$2.50 check that authorized them to set up and charge me for a membership. In the first place, I don't remember any check for \$2.50. Secondly, I purposely don't cash these checks when they come in the mail for this specific reason. When I gave him the opportunity to take this charge off from my credit card he proceeded to tell me the benefits of their plan. I told him I had insurance and wasn't interested in their plan but, instead of listening to me, he continued to try to push their plan."

State and federal governments all have rules in place that are designed to protect consumers from inadvertently committing to purchases through a negative option pitch. Still, angry consumers complain they are being victimized. How can this be?

## Defending The Status Quo

Very simply, some companies follow the rules while some don't. Any attempt to toughen these rules even outlawing negative option marketing, for example would be met with stiff opposition from magazine publishers, specific marketing companies, and the marketing industry as a whole.

The Electronic Retailing Association, which represents radio, TV and Internet marketers, has noted with alarm, on its Web site, that "state and federal regulatory activity threaten the effectiveness and viability of these types of promotions potentially resulting in a loss of convenience for consumers as well as unnecessarily burden industry with increased costs associated with compliance."

The association said it believes that current law provides an adequate infrastructure to protect consumers from "rogue" companies abusing "advance consent marketing (negative option) practices."

## Staying Out Of The Negative Option Trap

The law does, in fact, provide many consumer-friendly remedies. The problem is, they aren't all that well publicized and therefore rarely enforced. The problem is compounded by the fact that most consumers who fall victim to negative option marketing are completely blindsided by it.

The law requires that consumers give an informed consent before a negative option purchase can be considered legitimate. Yet the overwhelming majority of complaints received at ConsumerAffairs.com are from consumers who have no idea why they are being charged for a particular service. Under the law, the burden of proof is on the marketer, not the consumer.

"Telemarketers need to be sure that consumers agree to be charged, and what account will be charged -- even if they have an account number from another transaction," said Howard Beales, Director of the FTC's Bureau of Consumer Protection.

"If you charge consumers without their permission, we'll charge you with committing a fraud."

When an unauthorized charge appears on their credit card statement, many consumers make the mistake of calling the toll-free customer service number of the company placing that charge, which appears on the same line of the statement. That rarely leads to satisfaction.

A more successful and less frustrating action is to call your credit card issuer's customer service number and report the charge as unauthorized. The credit card company, which controls the flow of money, will be a much more effective advocate.

In addition to taking action to remove the charge, consumers should always file complaints with ConsumerAffairs.com and appropriate government agencies.

Finally, consumers should be aware of the pitfalls that lurk behind many ordinary purchases. Anytime a consumer is offered a "free gift" or "trial offer," more than likely there is a longer-term, more expensive negative option transaction taking place. The best policy is to just say no. Otherwise, read the fine print very carefully.

# Exhibit 2

**SENATE JUDICIARY COMMITTEE**  
**Senator Ellen M. Corbett, Chair**  
**2009-2010 Regular Session**

SB 340  
Senator Yee  
As Amended April 2, 2009  
Hearing Date: April 14, 2009  
Business and Professions Code  
ADM;jd

**SUBJECT**

Advertising: Automatic Renewal Purchases

**DESCRIPTION**

This bill would require, in any automatic renewal offer, a business to clearly and conspicuously state the automatic renewal offer terms and obtain the customer's affirmative consent to those terms before fulfilling any subscription or purchasing agreement on an automatic renewal basis. This bill would also require all marketing materials to clearly and conspicuously display a toll-free telephone number, if available, telephone number, postal address, or electronic mechanism the customer could use for cancellation.

This bill would require the order form to clearly and conspicuously disclose that the customer is agreeing to an automatic renewal subscription or purchasing agreement.

This bill would impose similar requirements for any automatic renewal offer made over the telephone or on an Internet Web page.

(This analysis reflects author's amendments to be offered in committee.)

**BACKGROUND**

Current consumer protection statutes do not address automatic renewal clauses or provisions in subscriptions or purchasing agreements. Senate Bill 340 is intended to close this gap in the law.

When some businesses began using automatic renewals for subscriptions and purchase agreements for products and services, consumer complaints began to surface regarding those automatic renewals. Consumers complained that they were unaware of and had



not requested the automatic renewals until they either received a bill or a charge on their credit card.

An example of this problem is illustrated by the Time, Inc. (Time) case. After receiving numerous consumer complaints, the Attorneys General of 23 states, including California, launched an investigation into Time's automatic renewal subscription offers. In 2006, the investigation resulted in a settlement agreement between the Attorneys General and Time that includes a number of reforms to automatic renewals that Time sends to their customers. Those reforms include, among others, expanded disclosure requirements and customers' affirmative consent to automatic renewals. (See Comment 2 for details.)

### **CHANGES TO EXISTING LAW**

Existing law, the Unfair Competition Law (UCL), provides that unfair competition means and includes any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising, and any act prohibited by the False Advertising Act (FAA). (Bus. & Prof. Code Sec. 17200 et seq.)

Existing law, the FAA, includes the following:

- prohibits any person with the intent, directly or indirectly, to dispose of real or personal property, to perform services, or to make or disseminate or cause to be made or disseminated to the public any statement concerning that real or personal property that is untrue or misleading and known or should be known to be untrue or misleading; and
- prohibits any person from making or disseminating any untrue or misleading statement as part of a plan or scheme with the intent not to sell that personal property or those services at the stated or advertised price. (Bus. & Prof. Code Sec. 17500.)

Existing law provides that any violation of the FAA is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine of \$2,500, or by both. (Bus. & Prof. Secs. 17500, 17534.)

Existing law provides that any person who violates any provision of the FAA is liable for a civil penalty not to exceed \$2,500 for each violation that must be assessed and recovered in a civil action by the Attorney General or by any district attorney, county counsel, or city attorney. (Bus. & Prof. Code Sec. 17536.)

Existing law provides that a person who has suffered injury in fact and has lost money or property as a result of unfair competition may bring a civil action for relief. (Bus. & Prof. Code Sec. 17204.)

Existing law provides for injunctive relief, restitution, disgorgement, and civil penalties. (Bus. & Prof. Code Secs. 17203, 17206.)



This bill would require all printed marketing materials containing an offer with an automatic renewal term to comply with the following: the customer's agreement to the automatic renewal offer must be obtained in accordance with either (1) or (2) below so that the customer is given the opportunity to expressly consent to the offer:

1. All automatic renewal offer terms must appear on the order form in immediate proximity to the area on the form where the customer selects the subscription or purchasing agreement billing terms or where the subscription or purchasing agreement billing terms are described; the order form must clearly and conspicuously disclose that the customer is agreeing to an automatic renewal subscription or purchasing agreement; and the automatic renewal offer terms must appear on materials that can be retained by the customer.
2. Both of the following:
  - a. on the front of the order form, the marketing materials must (i) refer to the subscription or purchasing agreement using the term "automatic renewal" or "continuous renewal," (ii) clearly and conspicuously state that the customer is agreeing to the automatic renewal, and (iii) specify where the full terms of the automatic renewal offer may be found; and
  - b. the marketing materials must clearly and conspicuously state the automatic renewal offer terms presented together preceded by a title identifying them specifically as the "Automatic Renewal Terms," "Automatic Renewal Conditions," "Automatic Renewal Obligations," or "Continuous Renewal Service Terms," or other similar description.

This bill would require all marketing materials that offer an automatic renewal, when viewed as a whole, to clearly and conspicuously disclose the material terms of the automatic renewal offer and must not misrepresent the material terms of the offer.

This bill would require an automatic renewal to clearly and conspicuously describe the cancellation policy and how to cancel, including, but not limited to, a toll-free telephone number, if available, telephone number, postal address, or electronic mechanism on the Internet Web page or on the publication page of the printed materials.

This bill would require, in any automatic renewal offer made over the telephone, a business to clearly and conspicuously state the automatic renewal terms prior to obtaining a customer's consent and payment information. The business must obtain a clear affirmative statement from the customer agreeing to the automatic renewal offer terms and must send a written acknowledgement that contains the toll-free number, if available, telephone number, postal address, or electronic mechanism for cancellation.

This bill would require, in any automatic renewal offer made on an Internet Web page, the business to clearly and conspicuously disclose the automatic renewal offer terms prior to the button or icon on which the customer must click to submit the order. In any automatic renewal offer made on an Internet Web page where the automatic renewal terms do not appear immediately above the submit button, the customer must be required to affirmatively consent to the automatic renewal offer terms. The automatic



renewal terms must be preceded by a title identifying them as the “Automatic Renewal Terms,” “Automatic Renewal Conditions,” “Automatic Renewal Obligations,” “Continuous Renewal Service Terms,” or other similar description.

This bill would require, in any automatic renewal offer, a business to clearly and conspicuously state the automatic renewal offer terms and obtain the customer’s affirmative consent to those terms before fulfilling any subscription or purchasing agreement on an automatic renewal basis and all marketing materials that offer an automatic renewal subscription or purchasing agreement must clearly and conspicuously display the cancellation policy and how to cancel.

This bill would provide that no business may represent that a product is “free” if the cost of the product is incorporated in the price of the accompanying item purchased under automatic renewal conditions.

This bill would provide that a violation of the bill’s provisions would not be a crime, but all applicable civil remedies would be available.

This bill would define key terms, including “automatic renewal” and “automatic renewal terms.” (See Comment 4.)

### COMMENT

#### 1. Stated need for the bill

The author writes:

It has become increasingly common for consumers to complain about unwanted charges on their credit cards for products or services that the consumer did not explicitly request or know they were agreeing to. Consumers report they believed they were making a one-time purchase of a product, only to receive continued shipments of the product and charges on their credit card. These unforeseen charges are often the result of agreements enumerated in the “fine print” on an order or advertisement that the consumer responded to. The onus falls on the consumer to end these product shipments and stop the unwanted charges to their credit card.

A widespread instance of these violations resulted in the 2006 Time, Inc. case, in which Time settled a multi-state investigation into its automatic renewal offers and solicitations. The states launched their probe after receiving complaints from consumers that Time was billing them or charging their credit cards for unwanted magazine subscriptions. The states’ investigation found that these mail solicitations misled some consumers into paying for unwanted or unordered subscriptions.



2. Time's Assurance of Voluntary Compliance or Discontinuance (Assurance) with Attorneys General; SB 340 modeled after the Assurance

The Attorneys General of 23 states (States), including California, investigated Time's automatic renewal subscription offers. Time publishes over 150 magazines worldwide, including Time, People, Sports Illustrated, This Old House, Entertainment Weekly, Fortune, and Popular Science. Time required customers to notify it if they did not want a subscription renewal; otherwise Time charged customers' credit cards or billed customers. The automatic renewal terms replaced "the industry's prior practice of offering limited-term subscriptions that were renewed at the Customer's affirmative election." The States investigated:

[W]hether the [automatic renewal] terms were clearly and adequately disclosed; whether the Customer was given an opportunity to expressly consent to the offer; whether the Customer was likely to believe the purchase was for a limited-term subscription, rather than an automatically renewed subscription; whether Customers were subsequently informed of the activation of an Automatic Renewal, and, if so, the manner in which they were so informed; the manner by which Customers were billed or charged; and how Time sought to collect payments for charges resulting from an Automatic Renewal. (Matters Investigated set forth in the Assurance.)

As a result of the investigation, in 2006, the States reached a settlement agreement – the Assurance – with Time. In the Assurance, Time agreed to:

- provide clear and conspicuous disclosures to consumers concerning all the material terms for automatic subscription renewals and, for the next five years, provide consumers the option to affirmatively choose an automatic renewal option and Time will send those consumers who have chosen an automatic subscription renewal written reminders, including information on the right and procedure to cancel;
- honor all requests to cancel subscriptions as soon as reasonably possible and to provide refunds to consumers charged for magazines they did not order;
- stop mailing solicitations to consumers for subscriptions that resemble bills, invoices, or statements of amounts due; and
- not submit unpaid accounts of automatic renewal customers for third party collection.

Time also agreed to refund to customers up to \$4.3 million, which included up to \$828,463 to 20,238 eligible California consumers, approximately \$41 per consumer. Senate Bill 340 is modeled in large part after the Assurance.

3. Remedies available under the bill

Senate Bill 340 would provide that a violation of its provisions would not be a crime, but all applicable civil remedies would be available.



Under the FAA, any person who violates any provision of the FAA is liable for a civil penalty not to exceed \$2,500 for each violation that must be assessed and recovered in a civil action by the Attorney General or by any district attorney, county counsel, or city attorney. Under the UCL, a private party may bring a civil action for injunctive relief and/or for restitution of profits that the defendant unfairly obtained from that party. However, the party must have suffered injury in fact and lost money or property.

#### 4. Key terms defined

This bill would define the following key terms:

- a. "Automatic renewal" would mean a plan or agreement in which a subscription or purchasing agreement is automatically renewed at the end of a definite term for a subsequent term.
- b. "Automatic renewal offer terms" would mean the following clear and conspicuous disclosure:
  - that the subscription or purchasing agreement will continue unless the customer notifies the business to stop;
  - that the customer has the right to cancel;
  - that the customer will be billed, credit card charged, or other appropriate description of the payment method depending on the method described to the customer, or chosen by the customer on the front of the order form, and that the bill, charge, or other payment method will take place before the start of each new automatic renewal term;
  - the length of the automatic renewal term or that the renewal is continuous, unless the length of the term is chosen by the customer;
  - that the price paid by the customer for future automatic renewal terms may change; and
  - the minimum purchase obligation, if any.
- c. "Clear and conspicuous" or "clearly and conspicuously" would mean a statement or communication, written or oral, presented in a font, size color, location, and contrast against the background in which it appears, compared to the other matter which is presented, so that it is readily understandable, noticeable, and readable.
- d. "Marketing materials" would include any offer, solicitation, script, product description, publication, or other promotional materials, renewal notice, purchase order device, fulfillment material, or any agreement for the sale or trial viewing of products that are delivered by mail, in person, television or radio broadcast, e-mail, Internet, Internet Web page, or telephone device, or appearing in any newspaper or magazine or on any insert thereto, or Internet link or pop-up window.

#### 5. Recording of telephone automatic renewal offers

Assembly Bill 88 (Corbett, Ch. 77, Stats. 2003) incorporated into state law a rule adopted by the Federal Trade Commission intended to protect consumers from "abusive" telemarketing practices. The rule requires, among other things, that telemarketers make



and maintain an audio recording of all telephone solicitations. (Telemarketing Sales Rule, 16 C.F.R. Part 310, 310.4(a)(6)(i), and 310.5(a)(5), effective March 31, 2009.)

The author may want to consider requiring that telephone automatic renewal offers be audio recorded and that the recording be maintained.

6. Author's amendments

On page 3, line 17, insert:

(c) "Continuous renewal" means a plan or arrangement in which a subscription or purchasing agreement is continuously renewed until the customer cancels the renewal.

On page 3, line 19, delete (c) and insert (d).

On page 3, line 34, delete (d) and insert (e).

On page 3, line 36, delete (e) and insert (f).

On page 4, line 4, insert (f).

On page 4, line 5, insert:

(g) All automatic renewal provisions in this article shall apply to continuous renewals.

Support: California Public Interest Research Group; Consumer Federation of California; American Federation of State, County and Municipal Employees; California Alliance for Consumer Protection

Opposition: None Known

**HISTORY**

Source: Author

Related Pending Legislation: None Known

Prior Legislation: None Known

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# Exhibit 3

Date of Hearing: June 30, 2009

ASSEMBLY COMMITTEE ON JUDICIARY  
Mike Feuer, Chair  
SB 340 (Yee) – As Amended: June 24, 2009

PROPOSED CONSENT (As Proposed to be Amended)

SENATE VOTE: 37-0

SUBJECT: AUTOMATIC RENEWAL AND CONTINUOUS SERVICE OFFERS

KEY ISSUE: SHOULD A BUSINESS THAT MARKETS A PRODUCT WITH AN "AUTOMATIC RENEWAL OFFER" BE REQUIRED TO CLEARLY AND CONSPICUOUSLY DISCLOSE RENEWAL TERMS AND CANCELLATION POLICIES, AND TO OBTAIN THE CUSTOMER'S AFFIRMATIVE CONSENT TO AN AUTOMATIC RENEWAL?

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

**SYNOPSIS**

*This non-controversial bill, which received a unanimous vote on the Senate floor, seeks to protect consumers from unwittingly consenting to "automatic renewals" of subscription orders or other "continuous service" offers. According to the author and supporters, consumers are often charged for renewal purchases without their consent or knowledge. For example, consumers sometimes find that a magazine subscription renewal appears on a credit card statement even though they never agreed to a renewal. Indeed, this problem led 23 state attorneys general to launch an investigation of Time, Inc., in response to claims that the company used deceptive practices in signing up customers for automatic subscription renewals. As part of a settlement of this dispute, Time agreed to institute new practices so that customers are fully aware of and affirmatively consent to automatic renewals. This bill, following the lead of the Times' settlement, would require that renewal terms and cancellation policies be clearly and conspicuously presented to the consumer, whether the offer is made on printed material or through a telephone solicitation. In addition, the bill would require that the consumer make some affirmative acknowledgement before an order with an automatic renewal can be completed. Finally, the bill specifies that violation of the bill's provisions do not constitute a crime. The author has worked closely with affected business interests and has made several amendments that appear to address all stakeholders' concerns. There is no registered opposition to the bill.*

SUMMARY: Requires any business making an "automatic renewal" or "continuous service" offer to clearly and conspicuously, as defined, disclose terms of the offer and obtain the consumer's affirmative consent to the offer. Specifically, this bill:

- 1) Makes it unlawful for any business making an automatic renewal offer or a continuous service offer to a consumer to do any of the following:



- a) Fail to present the offer terms in a clear and conspicuous manner, as defined, before the subscription or purchasing agreement is fulfilled and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the request for consent to the offer.
  - b) Charge the consumer's credit or debit card or the consumer's account with a third party for an automatic renewal or continuous service offer without first obtaining the consumer's affirmative consent.
  - c) Fail to provide automatic renewal or continuous service offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer. If the offer includes a free trial, the business shall disclose how to cancel and allow the consumer to cancel before the consumer pays for the goods or services.
- 2) Requires a business making automatic renewal or continuous service offers to provide a toll-free telephone number, electronic mail address, a postal address if the seller directly bills the customer, or another cost-effective, timely, and easy-to-use mechanism for cancellation that shall be described in the written acknowledgment.
  - 3) Specifies that in the case of a material change in the terms of an automatic renewal or continuous service offer that has been accepted by the consumer, the business shall provide the consumer with a clear and conspicuous notice of the material change and provide information regarding how to cancel in a manner that is capable of being retained by the consumer.
  - 4) Specifies that the requirements of this bill shall only apply to the completion of the initial order for the automatic renewal or continuous service, except as provided.
  - 5) Provides that in any case in which a business sends any goods, wares, merchandise, or products to a consumer, under a continuous service or automatic renewal, without first obtaining the consumer's affirmative consent, in the manner required by this bill, then the goods, wares, merchandise, or products shall be deemed an unconditional gift to the consumer, and the business shall bear any shipping or other related costs.
  - 6) Provides that violation of the provisions of this bill shall not be a crime, but that all civil remedies that apply to a violation may be employed. Specifies, however, that if a business complies with the provisions of this bill in good faith, it shall not be subject to civil remedies.
  - 7) Exempts from the provisions of this bill any service provided by certain businesses or entities, including those regulated by the California Public Utilities Commission, the Federal Communication Commission, or the Federal Energy Regulatory Commission.

EXISTING LAW:

- 1) Provides, under the Unfair Competition Law (UCL), that unfair competition includes any unlawful, unfair, or fraudulent business act or practice, including any unfair, deceptive, or untrue advertising, or any act prohibited by the False Advertising Act (FAA). (Business & Professions Code Section 17200 *et seq.*)
- 2) Prohibits any person with the intent, directly or indirectly, to sell any goods or services by making or disseminating statements that the person knows, or should know, to be untrue or misleading, and prohibits any person from making or disseminating any untrue or misleading

statement as part of a plan or scheme to sell goods or services at other than the stated or advertised price. (Business & Professions Code section 17500.)

- 3) Provides that any violation of the FAA is a misdemeanor. (Business & Professions Code sections 17500, 17534.)
- 4) Provides that any person who violates any provision of the FAA is liable for a civil penalty not to exceed \$2,500 for each violation that must be assessed and recovered in a civil action by the Attorney General or by any district attorney, county counsel, or city attorney. (Business & Professions Code section 17536.)
- 5) Provides that a person who has suffered injury in fact and has lost money or property as a result of unfair competition may bring a civil action for relief. (Business & Professions Code section 17204.)
- 6) Provides for injunctive relief, restitution, disgorgement, and civil penalties for FAA violations. (Business & Professions Code sections 17203, 17206.)

COMMENTS: This non-controversial bill is a response to reported consumer complaints that certain businesses, especially those offering magazine subscriptions or other potentially continuous services, lure customers into signing up for "automatic renewals" without the consumer's full knowledge or consent. This bill seeks to address this problem by requiring clear disclosures and affirmative acts of customer consent. The author states:

It has become increasingly common for consumers to complain about unwanted charges on their credit cards for products or services that the consumer did not explicitly request or know they were agreeing to. Consumers report they believed they were making a one-time purchase of a product, only to receive continued shipments of the product and charges on their credit card. These unforeseen charges are often the result of agreements enumerated in the 'fine print' on an order or advertisement that the consumer responded to. The onus falls on the consumer to end these product shipments and stop the unwanted charges to their credit card.

As noted in the author's background material, this bill was prompted in part by an investigation brought by the attorneys general of 23 states, including California, against Time, Inc. The investigations found that subscribers to several magazines published by Time, Inc. were discovering that their subscriptions were automatically renewed even though the customers claimed that they had never knowingly consented to the renewals. In 2006, the investigation resulted in a settlement agreement between the Attorneys General and Time that requires Time to more clearly disclose renewal terms and ensure that the consumer take some affirmative step to acknowledge consent or rejection of the automatic renewal offer. According to the author, the specific disclosure and consent requirements in this measure are modeled after, though not identical to, those set forth in the Time settlement.

ARGUMENTS IN SUPPORT: According to the California Public Interest Research Group (CALPIRG), "this bill will help ensure that consumers only get into an ongoing subscription if they want to." According to the Consumer Federation of California, this measure will curb deceptive marketing practices that are used to sell everything from magazine subscriptions to "free trial" offers that lock consumers into an ongoing purchase agreement. Supporters generally



contend that this is a straightforward measure reflecting the basic premise that consumers deserve to know the terms and conditions to which they are agreeing.

Author's Technical Amendments: The author wishes to take the following technical and clarifying amendments:

- On page 4 after line 9 insert:

*(e) "Consumer" means any individual who seeks or acquires, by purchase or lease, any goods, services, money, or credit for personal, family, or household purposes.*

- On page 4 line 32 and on page line 16 change "customer" to "consumer"

PRIOR LEGISLATION: AB 88 (Chapter 77, Stats. of 2003) provides that a contract for a good or service that is made in connection with a telephone solicitation is unlawful if the telemarketer is in violation of a recent Federal Trade Commission (FTC) rule requiring that the seller obtain specified information and express consent directly from the consumer and, under certain circumstances, maintain a recording of the call. (This present bill would similarly require that automatic renewal offers made over the telephone comply with federal telephonic marketing regulations.)

REGISTERED SUPPORT/OPPOSITION:

Support:

California Alliance for Consumer Protection  
California Public Interest Research Group (CALPIRG)  
Consumer Federation of California

Opposition:

None on file

Analysis Prepared by: Thomas Clark / JUD. / (916) 319-2334



# Exhibit 4

**Complaint Type:** Billing/Collection Issues    **Status:** Unanswered 

07/11/2019



Conde Nast billed me an introductory rate for Architectural Digest subscription, then never stated the amount for a renewal, or when the renewal would occur. I was then billed \$34.99 without any advance notice, or ability to cancel. I am requesting a full refund of \$34.99.

# Exhibit 5

**Complaint Type:** Billing/Collection Issues    **Status:** Answered 

09/22/2016



I got a renewal notice on the \*\*\*\* and did not renew. The presence of the notice assured me that I had no auto renew to worry about, falsely. I didn't have the money so I was glad to see the renewal notice and delete it. Charges hit the same day I got the notice in an email and those charges overdue my account. Now customer service credited my account the charges good enough but not the overdraft. It is a bad business practice to automatically renew things on people. Really bad because they are doing it by the thousands and taking peoples money, causing harm to some, like me. They misled me to believe I was in control of renewal to boot! It was deceptive.