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6 Attorneys for Defendant
Consumer Reports, Inc.
7

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 NINO KOLLER and MICHELLE
BROWN, individually and on behalf of all
12 others similarly situated,

13 Plaintiffs,

14 vs.

15 CONSUMER REPORTS, INC., a New
York nonprofit corporation; and DOES 1-
16 50, inclusive,

17 Defendants.
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Case No. '20CV0660 JLS KSC

San Diego County Superior Court Case
No. 37-2020-00011819-CU-BT-CTL

**DEFENDANT'S NOTICE OF
REMOVAL OF ACTION UNDER 28
U.S.C. §§ 1332(d)(2), 1441(a), 1446**

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
2 SOUTHERN DISTRICT OF CALIFORNIA:

3 PLEASE TAKE NOTICE that Defendant CONSUMER REPORTS, INC.
4 (“Consumer Reports” or “Defendant”) removes this action from the Superior Court of
5 the State of California, County of San Diego, to the United States District Court for the
6 Southern District of California pursuant to 28 U.S.C. §§ 1332(d)(2), 1441(a), and 1446.

7 **LIMITED PURPOSE**

8 1. The filing of this Notice does not, in any way, waive any right, privilege,
9 immunity, or defense Consumer Reports may have under any applicable law relating to
10 the claims asserted in this matter. By filing this Notice, Consumer Reports does not
11 concede that Plaintiffs Nino Koller (“Koller”) or Michelle Brown’s (“Brown”)
12 (collectively, “Plaintiffs”) or the putative class’ claims have merit. Specifically, by filing
13 this Notice, Consumer Reports does not concede that any “automatic subscription”
14 programs referred to herein constitute an “automatic renewal” or “continuous service”
15 offer pursuant to Business and Professions Code §§ 17600, *et seq.*

16 **BACKGROUND**

17 2. Koller alleges that in October 2018 he downloaded a Consumer Reports
18 application on his iPhone and submitted an order for a one-year subscription to *Consumer*
19 *Reports* for \$55.00. Declaration of Robert A. Cocchia (“Cocchia Dec.”) at ¶ 2, Exhibit
20 (“Ex.”) A, Complaint (“Compl.”) at ¶ 16. Koller alleges he agreed to the order and
21 submitted his credit card information to complete the purchase. *Id.* Koller alleges that
22 upon submission of the order for a one-year subscription to *Consumer Reports*, Consumer
23 Reports enrolled him into an automatic subscription program without his knowledge or
24 consent. *Id.* at ¶ 19. Pursuant to that program, Koller alleges that in or about October
25 2019, Consumer Reports posted an additional charge to Koller’s credit card in the amount
26 of \$59.00 without Koller’s authorization. *Id.* at ¶ 18.

27 3. Brown alleges that in March 2017 she responded to an offer from Defendant
28 to receive ten months of *Consumer Reports* at a cost of \$20.00. *Id.* at ¶ 20. Brown alleges

1 she accepted the offer and provided Defendant with her credit card information in order
2 to complete the purchase. *Id.* Brown alleges that upon submission of the order for ten
3 months of *Consumer Reports*, she also was enrolled into an automatic subscription
4 renewal program without her knowledge or consent. *Id.* at ¶ 21. Brown alleges that in
5 July 2017, July 2018, and July 2019, she was charged an additional \$26.00 as part of the
6 alleged automatic subscription program. *Id.* at ¶ 22. Brown alleges she discovered the
7 renewal in or about December 2019, at which point Brown called to cancel her
8 subscription and Defendant refunded her \$16.00. *Id.* at ¶ 23.

9 4. Plaintiffs filed a class action Complaint against Consumer Reports on March
10 2, 2020 in the Superior Court of the State of California, County of San Diego
11 (“Complaint”), entitled *Koller v. Consumer Reports, Inc.*, Case Number 37-2020-
12 00011819-CU-BT-CTL (“State Court Action”). Cocchia Dec. at ¶ 2, Ex. A, Compl.

13 5. Plaintiffs claim Consumer Reports violated California law by enrolling them
14 and putative class members in an automatic subscription program without adequate
15 notice and consent. Plaintiffs assert four causes of action against Consumer Reports on a
16 putative class basis: (1) violation of the California Automatic Renewal Law, Cal. Bus. &
17 Prof. Code §§ 17600, *et seq.* (“ARL”) (Cocchia Dec. at ¶ 2, Ex. A, Compl. at ¶¶ 1, 35-
18 39); (2) violation of the California Consumers Legal Remedies Act, Cal. Civ. Code §§
19 1750, *et seq.* (“CLRA”) (*id.* at ¶¶ 1, 40-45); (3) violation of the California Unfair
20 Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”) (*id.* at ¶¶ 1, 46-54);
21 and (4) for unjust enrichment (*id.* at ¶¶ 55-57).

22 6. Plaintiffs define the putative class as “[a]ll individuals in California who,
23 within the applicable limitations period, were enrolled by [Consumer Reports] in an
24 automatic renewal or continuous service program[.]” Cocchia Dec. at ¶ 2, Ex. A, Compl.
25 at ¶ 28. For the purposes of this Notice, the applicable statute of limitations is four years
26 from the date of filing the Complaint - i.e., March 2, 2016 to the present. Cocchia Dec.
27 at ¶ 2, Ex. A, Compl. at ¶ 38 (alleging a four year statute of limitations); Cal. Code Civ.
28 Proc. § 338(a) (action upon a liability created by statute is three years); Cal. Bus. & Prof.

1 Code § 17208 (statute of limitations for claims brought under the UCL is four years).
2 Plaintiffs seek the return of all initial and automatic subscription fees and charges,
3 injunctive relief, and an award of attorneys’ fees. Cocchia Dec. at ¶ 2, Ex. A, Compl. at
4 ¶¶ 38, 45, 53, 56, Prayer.

5 **TIMELINESS OF REMOVAL**

6 7. 28 U.S.C. § 1446(b)(1) generally requires that a notice of removal be filed
7 within 30 days after the receipt by the defendant of a copy of the original pleading setting
8 forth the claim for relief upon which such action is based. Plaintiffs served the Complaint
9 on Consumer Reports, via Corporate Creations Network Inc., on March 5, 2020. Cocchia
10 Dec. at ¶ 5, Ex. D. The deadline to file a notice of removal is therefore April 6, 2020, and
11 this Notice is timely.

12 **VENUE**

13 8. Venue is proper in this Court because Plaintiffs filed this matter in the
14 Superior Court of the State of California, County of San Diego, which lies within the
15 Southern District of California. *See* 28 U.S.C. §§ 84(d), 1441(a). Venue is also
16 appropriate because Plaintiffs allege they reside in San Diego County and that the
17 “complained of conduct” occurred in San Diego County. 28 U.S.C. § 1391(b)(2);
18 Cocchia Dec. at ¶ 2, Ex. A, Compl. at ¶¶ 2-3, 6.

19 **JURISDICTION**

20 9. The State Court Action is a civil action over which this Court has original
21 jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2)
22 (“CAFA”). CAFA provides “original jurisdiction” to this Court to hear a putative class
23 action if the class has more than 100 members, the parties are minimally diverse, and the
24 matter in controversy “exceeds the sum value of \$5,000,000.” 28 U.S.C. §§ 1332(d)(2),
25 (d)(5). A class action that meets CAFA standards may be removed to federal court.
26 28 U.S.C. § 1441(a).

27 10. Congress intended CAFA jurisdiction to be “interpreted expansively.” *Jose*
28 *L. Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015). Thus,

1 unlike other removal cases, “no antiremoval presumption attends cases involving
2 CAFA.” *Dart Cherokee Basin Operating Co., LLC v. Brandon W. Owens*, 574 U.S. 81,
3 89 (2014). The burden of establishing removal jurisdiction is on the removing party.
4 *Washington State, et al. v. Chimel Innolux Corp.*, 659 F.3d 842, 847 (9th Cir. 2011).

5 11. As set forth below, the State Court Action is a civil action that may be
6 removed pursuant to CAFA because: (1) the putative class has more than 100 putative
7 class members; (2) minimal diversity exists between Plaintiffs and Consumer Reports;
8 and (3) the amount in controversy exceeds \$5,000,000 exclusive of interest and cost. 28
9 U.S.C. §§ 1332(d)(2), (d)(5); *John Bryant v. NCR Corp.*, 284 F. Supp. 3d 1147, 1149
10 (S.D. Cal. 2018).

11 PUTATIVE CLASS SIZE

12 12. Plaintiffs define the putative class as “[a]ll individuals in California who,
13 within the applicable limitations period, were enrolled by [Consumer Reports] in an
14 automatic renewal or continuous service program.” Cocchia Dec. at ¶ 2, Ex. A, Compl.
15 at ¶ 28. The applicable statute of limitations for the purpose of this Notice is March 2,
16 2016 to the present. Cocchia Dec. at ¶ 2, Ex. A, Compl. at ¶ 38 (alleging a four year
17 statute of limitations); Cal. Code Civ. Proc. § 338(a) (action upon a liability created by
18 statute is three years); Cal. Bus. & Prof. Code § 17208 (statute of limitations for claims
19 brought under the UCL is four years).

20 13. Based on a review of Consumer Reports’ records, the total number of
21 putative class members in California who were enrolled by Consumer Reports in an
22 alleged “automatic renewal or continuous service program” for Consumer Reports’ print
23 and digital publications during the relevant time period is over 296,000, well beyond the
24 100 class member threshold. Declaration of Chaim E. Cohen (“Cohen Dec.”) at ¶ 6.

25 DIVERSITY OF CITIZENSHIP

26 14. Minimal diversity under CAFA means that “any member of a class of
27 plaintiffs is a citizen of a State different from any defendant[.]” 28 U.S.C. § 1332(d)(2).
28 “A party’s allegation of minimal diversity may be based on ‘information and belief.’”

1 and “[t]he pleading ‘need not contain evidentiary submissions.’” *David Ehrman v. Cox*
2 *Comms.*, 932 F.3d 1223, 1227 (9th Cir. 2019) (quoting *Carolina Cas. Ins. Co. v. Team*
3 *Equip., Inc.*, 741 F.3d 1082, 1087 (9th Cir. 2014)). Moreover, “[t]he pleading ‘need not

4 contain evidentiary submissions.’” *Id.* (quoting *Dart Cherokee*, 574 U.S. at 84).

5 Plaintiffs’ Citizenship

6 15. Plaintiffs are the only named plaintiffs in the Complaint. Both allege they
7 are individuals residing in San Diego County. Cocchia Dec. at ¶ 2, Ex. A, Compl. at ¶¶ 2-
8 3. Upon information and belief, they are both also domiciled in California. Cohen Dec.
9 at ¶ 4.

10 16. A natural person’s state of citizenship is determined by his or her state of
11 domicile. *Susan Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). A
12 person’s domicile is his or her permanent home, “where [he or] she resides with the
13 intention to remain or to which [he or] she intends to return.” *Id.* Although the Ninth
14 Circuit has yet to formally adopt the so-called “residence presumption” (see *Jose*
15 *Mondragon v. Capital One Auto Fin.*, 736 F.3d 880, 887 (9th Cir. 2013); see also *Jes*
16 *Solar Co. Ltd. v. Ton Soo Chung*, 725 F. App’x 467, 469 (9th Cir. Feb. 12, 2018)),
17 numerous courts treat a party’s residence as *prima facie* evidence of his or her domicile.
18 See, e.g., *J. C. Anderson v. James S. Watts*, 138 U.S. 694, 705-06 (1891); *State Farm*
19 *Mut. Auto Ins. Co. v. Teddy Ray Dyer*, 19 F.3d 514, 520 (10th Cir. 1994); *Toni Hollinger*
20 *v. Home State Mut. Ins. Co.*, 654 F.3d 564, 571 (5th Cir. 2011); *Zoroastrian Ctr. & Darb-*
21 *E-Mehr of Metro. Wash., D.C. v. Rustam Guiv Co.*, 822 F.3d 739, 750 n.6 (4th Cir. 2016).

22 17. Plaintiffs allege they are residents of California (Cocchia Dec. at ¶ 2, Ex. A,
23 Compl. at ¶¶ 2-3), and Consumer Reports alleges upon information and belief they are
24 domiciled in California (Cohen Dec. at ¶ 4). Based on the residence presumption,
25 Plaintiffs are citizens of California for the purposes of this Notice.

26 Consumer Reports’ Citizenship

27 18. Consumer Reports, Inc. is the named defendant in this suit. Consumer
28 Reports, Inc. is a domestic not-for-profit corporation. Accordingly, the citizenship of

1 Consumer Reports will be analyzed from a corporate perspective.

2 19. The citizenship analysis turns on the “principal place of business” test for
3 corporations. For a corporation, the phrase “principal place of business” refers to the
4 place where its “officers direct, control, and coordinate” the entity’s activities. *Hertz*
5 *Corp. v. Melinda Friend*, 559 U.S. 77, 92 (2010). In practice, this is “normally. . . the
6 place where the [entity] maintains its headquarters – provided that the headquarters is the
7 actual center of direction, control, and coordination, i.e., the ‘nerve center,’ and not
8 simply an office where the [entity] holds its board meetings. . . .” *Id.* at 79.

9 20. Applying the “principal place of business” test to Consumer Reports, Inc.,
10 the named defendant, Consumer Reports, Inc. is incorporated in New York and
11 headquartered in Yonkers, New York, where Consumer Reports’ officers direct, control,
12 and coordinate the company’s activities. Cohen Dec. at ¶ 3. Thus, Consumer Reports,
13 Inc. is a citizen of New York and is minimally diverse from Plaintiffs, who are citizens
14 of California.

15 21. Accordingly, there is minimal diversity between Plaintiffs and Consumer
16 Reports.

17 AMOUNT IN CONTROVERSY

18 22. A “removing defendant need only include a plausible allegation that the
19 amount in controversy exceeds the jurisdictional threshold [under CAFA], and the
20 defendant’s amount in controversy should be accepted if not contested by the plaintiff or
21 questioned by the court.” *Bryant*, 284 F. Supp. 3d at 1149. Under this standard, Consumer
22 Reports need only establish that the “potential damages could exceed the jurisdictional
23 amount.” *P. Rea v. Michaels Stores Inc.*, 742 F.3d 1234, 1239 (9th Cir. 2014) (internal
24 quotations and citations omitted). This “burden is not daunting and only requires that the
25 defendant provide evidence establishing that it is *more likely than not* that the amount in
26 controversy exceeds [\$5 million].” *Rita Varsam v. Lab. Corp. of Am.*, 2015 WL 4199287,
27 at *2 (S.D. Cal. July 13, 2015) (internal quotations and citations omitted, emphasis in
28 original). Claims regarding the amount in controversy under a preponderance of the

1 evidence standard should be “tested by consideration of real evidence and the reality of
2 what is at stake in the litigation, using reasonable assumptions underlying the defendant’s
3 theory of damages exposure.” *Ibarra*, 775 F.3d at 1198.

4 23. Although Plaintiffs do not specify how much they seek in restitution (see
5 Cocchia Dec. at ¶ 2, Ex. A, Compl. at ¶¶ 38, 53, Prayer), the evidence demonstrates that
6 it is more likely than not that the amount in controversy relating to restitution will exceed
7 the \$5,000,000 jurisdictional threshold.

8 24. Plaintiffs allege a putative class of all individuals in California who,
9 between March 2, 2016 and the present, were enrolled in an “automatic renewal or
10 continuous service program” by Consumer Reports. Cocchia Dec. at ¶ 2, Ex. A, Compl.
11 at ¶ 28. Based on a review of subscriber records, the total number of putative class
12 members under this definition is over 296,000. Cohen Dec. at ¶¶ 5-6.

13 25. Plaintiffs seek an order returning all money paid to Consumer Reports by
14 putative class members during the relevant time period, including the original
15 subscription fee and any automatic renewal charges. *See* Cocchia Dec. at ¶ 2, Ex. A,
16 Compl. at ¶ 19 (“If Koller had known that Defendants were going to enroll him in an
17 automatically renewing subscription program, Koller would not have submitted the order
18 for *Consumer Reports* and would not have paid any money to Defendants”), Compl. at
19 ¶ 24 (“If Brown had known that Defendants were going to enroll her in an automatically
20 renewing magazine subscription program, Brown would not have submitted the order for
21 *Consumer Reports* and would not have paid any money to Defendants”), Compl. at ¶ 37
22 (“Plaintiffs have suffered injury in fact and lost money as a result of Defendants” alleged
23 violations of the ARL), Compl. at ¶ 38 (“Plaintiffs and Class members are entitled to
24 restitution of all amounts that Defendants charged to Plaintiffs’ and Class members’
25 credit cards, debit cards, or third-party payment accounts during the four years preceding
26 the filing of this Complaint and continuing until Defendants’ statutory violations cease”),
27 Compl. at ¶ 52 (“Plaintiffs have suffered injury in fact and lost money as a result of
28 Defendants’ acts of unfair competition”), Compl. at ¶ 53 (“Plaintiffs and the Class

1 members are entitled to an order: (1) requiring Defendants to make restitution to Plaintiffs
2 and Class members”), Compl. at ¶ 56 (“Defendants should be ordered to restore said
3 funds to Plaintiffs and the class members”), Prayer (seeking restitution).

4 26. The total amount paid during the relevant time period for initial subscription
5 fees and subsequent renewal subscriptions was over \$24,000,000.00, well exceeding the
6 \$5,000,000 jurisdictional threshold. Cohen Dec. at ¶¶ 5-6.

7 27. Based on the foregoing, the amount in controversy will more likely than not
8 exceed the \$5,000,000 jurisdictional threshold based on Plaintiffs’ request for restitution
9 alone.

10 **COMPLIANCE WITH 28 U.S.C. § 1446**

11 28. No previous application has been made for the relief requested herein.

12 29. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and
13 orders served on Consumer Reports are attached with this Notice. Cocchia Dec. at ¶¶ 2-
14 6, Exs. A-E.

15 30. Pursuant to 28 U.S.C. § 1446(d), Defendant will serve on Plaintiffs and
16 will file with the Clerk of the Superior Court for the County of San Diego a written
17 “Notice to the Clerk of the San Diego Superior Court and Plaintiffs of Filing of Notice
18 of Removal of Civil Action to Federal Court,” attaching a copy of this Notice of
19 Removal and all supporting papers.

20
21 DATED: April 6, 2020

DENTONS US LLP

22
23 By: s/Robert A. Cocchia
24 ROBERT A. COCCHIA

25 Attorneys for Defendant
26 CONSUMER REPORTS, INC.
E-mail: robert.cocchia@dentons.com

27 114491677

CIVIL COVER SHEET

JS 44 (Rev. 09/19)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Nino Koller and Michelle Brown

(b) County of Residence of First Listed Plaintiff San Diego, California (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

James T. Hannink, State Bar No. 131747
Zach P. Dostart, State Bar No. 255071
Dostart Hannink & Coveney LLP, 4180 La Jolla Village Drive, Suite 530, La Jolla, CA 92037 Telephone: (858) 623-4200

DEFENDANTS

Consumer Reports, Inc.

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

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

Attorneys (If Known)

Robert A. Cocchia, State Bar No. 172315
Rachel L. Ross, State Bar No. 322881
Dentons US LLP, 4655 Executive Drive, Suite 700, San Diego, CA 92121 Telephone: (619) 236-1414

'20CV0660 JLS KSC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
4 4
5 5
6 6

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

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332(d)(2), 1441(a), 1446
Brief description of cause:
Class Action Fairness Act 28 USC 1332(d)(2)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 0.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE April 6, 2020

SIGNATURE OF ATTORNEY OF RECORD s/Robert A. Cocchia

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE



INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

- V. **Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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6 Attorneys for Defendant
Consumer Reports, Inc.
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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 NINO KOLLER and MICHELLE
BROWN, individually and on behalf of all
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Case No. '20CV0660 JLS KSC

San Diego County Superior Court Case
No. 37-2020-00011819-CU-BT-CTL

**DECLARATION OF ROBERT A.
COCCHIA IN SUPPORT OF
DEFENDANT'S NOTICE OF
REMOVAL OF ACTION**

1 I, Robert A. Cocchia, declare and state:

2 1. I am an attorney licensed to practice law in the State of California and am
3 an attorney with the law firm of Dentons US LLP, counsel of record for Consumer
4 Reports, Inc. (“Consumer Reports”) in this action. All of the facts set forth in this
5 declaration are known to me personally and if called as a witness in this proceeding I
6 would testify competently to them.

7 2. Attached hereto as Exhibit “A” is a true and correct copy of the complaint
8 filed on March 2, 2020 by Plaintiffs Nino Koller and Michelle Brown (collectively,
9 “Plaintiffs”) in the Superior Court of the State of California, County of San Diego,
10 entitled *Koller v. Consumer Reports, Inc.*, Case Number 37-2020-00011819-CU-BT-
11 CTL (the “State Court Action”).

12 3. Attached hereto as Exhibit “B” is a true and correct copy of the Civil Case
13 Cover Sheet filed by Plaintiffs in the State Court Action.

14 4. Attached hereto as Exhibit “C” is a true and correct copy of the Summons
15 filed by Plaintiffs in the State Court Action.

16 5. Attached hereto as Exhibit “D” is a true and correct copy of the Proof of
17 Service of Summons filed by Plaintiffs in the State Court Action.

18 6. Attached hereto as Exhibit “E” is a true and correct copy of the Notice of
19 Case Assignment and Case Management Conference on Mandatory eFile Case that was
20 served along with the complaint filed by Plaintiffs in the State Court Action.

21 I declare under penalty of perjury under the laws of the United States of America
22 that the foregoing is true and correct. Executed this 6th day of April, 2020 at San
23 Diego, California.

24 *s/Robert A. Cocchia*
25 ROBERT A. COCCHIA

**INDEX OF EXHIBITS TO DECLARATION OF ROBERT A. COCCHIA IN
SUPPORT OF DEFENDANT’S NOTICE OF REMOVAL**

Exhibit	Description	Pages
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EXHIBIT A

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By Iris Tellez, Deputy Clerk

6 Attorneys for Plaintiffs

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10
11 NINO KOLLER and
12 MICHELLE BROWN,
13 individually and on behalf of all others
similarly situated,

14 Plaintiffs,

15 vs.

16 CONSUMER REPORTS, INC., a New York
17 nonprofit corporation; and
DOES 1-50, inclusive,

18 Defendants.
19
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21
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CASE NO. 37-2020-00011819-CU-BT-CTL

CLASS ACTION

COMPLAINT FOR:

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

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

(3) VIOLATION OF THE CALIFORNIA
UNFAIR COMPETITION LAW; and

(4) UNJUST ENRICHMENT.

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

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

12 **THE PARTIES**

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

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

17 4. Plaintiffs are informed and believe and thereon allege that defendant Consumer
18 Reports is a New York nonprofit corporation 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 and is in some
23 manner responsible for the wrongdoing alleged herein, either as a direct participant, or as the
24 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. Consumer Reports provides consumers with product reviews through a monthly
3 magazine entitled *Consumer Reports*, which is available in a print and/or digital format.

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

11 9. During the 1990s, some marketers came to view the traditional model as constraint
12 on sales and profits, and advocated instead adoption of a “negative option” model. In a “negative
13 option,” the seller “interpret[s] a customer’s failure to take affirmative action, either to reject an
14 offer or cancel an agreement, as assent to be charged for goods or services.” (See “*Negative*
15 *Options*,” Federal Trade Commission, January 2009, available at
16 [https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-](https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf)
17 [commission-workshop-analyzing-negative-option-marketing-report-](https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf)
18 [staff/p064202negativeoptionreport.pdf](https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf) [last accessed March 2, 2020].) Defendants have
19 implemented a negative option model that does not comply with California law.

20 10. Defendants have adopted a negative option model in which they solicit orders for
21 magazine subscriptions that purport to be for a fixed period of time (e.g., one year, or two years),
22 whereas upon receipt of an order, Defendants enroll the consumer in a program under which the
23 magazine subscription will be “automatically renewed” for subsequent periods, with corresponding
24 charges posted to the consumer’s credit card, debit card, or other payment account. Defendants
25 enroll consumers in such “automatic renewal” subscriptions without making the clear and
26 conspicuous disclosures required by California law.

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SUMMARY OF APPLICABLE LAW

The California Automatic Renewal Law

11. In 2009, the California Legislature passed Senate Bill 340, which took effect on December 1, 2010 as Article 9 of Chapter 1 of the False Advertising Law. (Bus. & Prof. Code, § 17600 *et seq.* (the California Automatic Renewal Law or “ARL”).) SB 340 was introduced because:

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.

(See Exhibit 1 at p. 4.)

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

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.

(See Exhibit 2 at p. 8.)

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

(1) Fail to present the automatic renewal offer terms or continuous service offer terms in a clear and conspicuous manner 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. For this purpose, “clear and conspicuous” means “in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same

1 size, or set off from the surrounding text of the same size by symbols or other marks, in a manner
2 that clearly calls attention to the language.” (Bus. & Prof. Code, § 17601(c).) In the case of an
3 audio disclosure, ‘clear and conspicuous’ means in a volume and cadence sufficient to be readily
4 audible and understandable.” (*Id.*) The statute defines “automatic renewal offer terms” to mean the
5 “clear and conspicuous” disclosure of the following: (a) that the subscription or purchasing
6 agreement will continue until the consumer cancels; (b) the description of the cancellation policy
7 that applies to the offer; (c) the recurring charges that will be charged to the consumer’s credit or
8 debit card or payment account with a third party as part of the automatic renewal plan or
9 arrangement, and that the amount of the charge may change, if that is the case, and the amount to
10 which the charge will change, if known; (d) the length of the automatic renewal term or that the
11 service is continuous, unless the length of the term is chosen by the consumer; and (e) the minimum
12 purchase obligation, if any. (Bus. & Prof. Code § 17601(b).)

13 (2) Charge the consumer’s credit or debit card, or the consumer’s account with a
14 third party, for an automatic renewal or continuous service without first obtaining the consumer’s
15 affirmative consent to the agreement containing the automatic renewal offer terms or continuous
16 service offer terms, including the terms of an automatic renewal offer or continuous service offer
17 that is made at a promotional or discounted price for a limited period of time. (Bus. & Prof. Code
18 § 17602(a)(2).)

19 (3) Fail to provide an acknowledgment that includes the automatic renewal or
20 continuous service offer terms, cancellation policy, and information regarding how to cancel in a
21 manner that is capable of being retained by the consumer. (Bus. & Prof. Code § 17602(a)(3).)

22 14. Bus. & Prof. Code § 17602(b) requires that the acknowledgment specified in
23 § 17602(a)(3) include a toll-free telephone number, electronic mail address, a postal address if the
24 seller directly bills the consumer, or it shall provide another cost-effective, timely, an easy-to-use
25 mechanism for cancellation that shall be described in the acknowledgment.

26 15. If a business sends any goods to a consumer under a purported automatic renewal or
27 continuous service arrangement without first obtaining the consumer’s affirmative consent to an
28 agreement containing the “clear and conspicuous” disclosures as specified in the ARL, the goods

1 are deemed to be an unconditional gift to the consumer, who may use or dispose of them without
2 any obligation whatsoever. (Bus. & Prof. Code, § 17603.) In addition, violation of the ARL gives
3 rise to restitution and injunctive relief under the general remedies provision of the False Advertising
4 Law, Bus. & Prof. Code § 17535. (Bus. & Prof. Code, § 17604, subd. (a).)

5 **FACTS GIVING RISE TO THIS ACTION**

6 **Nino Koller's Transaction with Defendants**

7 16. In October 2018, Plaintiff Koller downloaded a Consumer Reports app on his iPhone
8 and submitted an order for a one-year subscription to *Consumer Reports*. Koller paid \$55.00 for
9 that one-year subscription (print and digital), which amount was paid with Koller's credit card.
10 Koller believes that the online checkout screens were similar to what is depicted in Exhibit 3. On
11 that basis, Koller alleges that the checkout screen through which he submitted the order and made
12 the payment did not contain clear and conspicuous disclosure of automatic renewal offer terms as
13 required by Bus. & Prof. Code § 17601(b) and (c) and § 17602(a)(1) and (a)(2).

14 17. On October 8, 2018, Koller received an email from Defendants confirming that his
15 subscription was active, with a "Start Date" of October 8, 2018 and an "End Date" of October 7,
16 2019. A true and correct copy of that email is attached hereto as Exhibit 4. That email does not
17 contain clear and conspicuous disclosure of automatic renewal offer terms as required by Bus. &
18 Prof. Code § 17601(b) and (c) and § 17602(a)(3).

19 18. In October 2019, without Koller's authorization or consent, Defendants posted a
20 charge of \$59.00 to Koller's credit card, purportedly for renewal of *Consumer Reports*.

21 19. When Koller submitted the order for the one-year subscription to *Consumer Reports*,
22 he was not aware that Defendants were going to enroll him in a program under which the
23 subscription would automatically renew for subsequent periods, and he did not consent to be
24 enrolled in such a program. If Koller had known that Defendants were going to enroll him in an
25 automatically renewing subscription program, Koller would not have submitted the order for
26 *Consumer Reports* and would not have paid any money to Defendants.

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28

1 **Michelle Brown's Transaction with Defendants**

2 20. In March 2017, Brown responded to an offer from Defendants to receive *Consumer*
3 *Reports* for ten months at a discounted rate of \$20.00. Brown accepted the offer and provided
4 Defendants with her credit card information in order to complete the purchase. Brown does not
5 remember whether she provided her credit card information to Defendants over the internet or in
6 writing. Brown does not have a copy of either the advertisement to which she responded or the form
7 by which her credit card information was submitted to Defendants. Brown is informed and believes
8 and thereon alleges that both the advertisement to which she responded and the form by which her
9 credit card information was submitted are in the possession, custody, or control of Defendants.
10 Therefore, Brown will seek production of the advertisement/order form and the payment form from
11 Defendants through discovery.

12 21. When Brown submitted the order form and when she made the \$20.00 credit card
13 payment, she was not aware that Defendants were going to enroll her in a program under which the
14 subscription would automatically renew for subsequent periods, and she did not consent to be
15 enrolled in such a program. On that basis, Brown is informed and believes that the
16 advertisement/order form to which she responded and the payment form through which the credit
17 card payment was submitted did not contain clear and conspicuous disclosure of automatic renewal
18 offer terms as required by Bus. & Prof. Code § 17601(b) and (c) and § 17602(a)(1) and (a)(2).
19 Brown believes this allegation will likely have documentary support after a reasonable opportunity
20 for discovery.

21 22. In July 2017, without Brown's authorization or consent, Defendants posted a charge
22 to Brown's credit card in the amount of \$26.00. Subsequently, without Brown's authorization or
23 consent, Defendants posted additional charges to Brown's credit card in the amount of \$26.00 in
24 July 2018 and again in July 2019.

25 23. In or about December 2019, Brown realized for the first time that her credit card had
26 been charged by Defendants for purported renewal of *Consumer Reports*. Upon discovering that
27 fact, Brown called to cancel her subscription. Defendants cancelled her subscription and refunded
28 her \$16.00.

1 24. If Brown had known that Defendants were going to enroll her in an automatically
2 renewing magazine subscription program, Brown would not have submitted the order for *Consumer*
3 *Reports* and would not have paid any money to Defendants.

4 **EXPERIENCES OF OTHER CONSUMERS**

5 25. Plaintiffs are not the only consumers to be charged without consent in connection
6 with Defendants' magazine subscriptions. There are consumer complaints about similar
7 experiences posted on a variety of websites, including but not limited to *consumeraffairs.com* and
8 *pissedconsumer.com*.

9 26. The consumer complaints below were reported on *consumeraffairs.com* by
10 consumers in California.

11 **Shonya. Penn Valley, California (October 25, 2019).** They auto renewed my
12 membership which I absolutely remember not authorizing when I joined last year. I
13 called them the very day they charged me for an additional year within minutes of
14 the email coming through. While they cancelled my membership, they would not
refund the total amount. Even though it had been 10 minutes, they charged me for a
whole month. Crooks! I will never join again, they are totally dishonest.

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

16 **Kimberly. Huntington Beach, California (October 15, 2018).** Consumer Reports
17 charged my credit card (October 2018) after canceling this account almost 10 years
18 ago. The customer service rep said "after you cancel auto renew, you need to cancel
19 every year so you don't get charged"! What?! I have to call every year AFTER I
20 cancel the account? This is fraudulent and I plan to investigate this further. They
should not be able to get away with charging canceled decade-old accounts! All of
the information they provide is online for FREE through customer reviews. They're
obviously hurting for cash and trying to find ways to stay around. Not cool!

21 A true and correct printout of that complaint is attached as Exhibit 6.

22 **Lucinda. Thousand Oaks, California (April 23, 2015).** Years ago I enrolled in
23 CR for what I thought was a year. Every year I attempt to be discontinued from their
24 billing access to my credit card but these guys have become as corrupt as those they
deemed to protect American population from.

25 A true and correct printout of that complaint is attached as Exhibit 7.

26 27. A few of the customer reviews of Consumer Reports posted on *pissedconsumer.com*
27 are shown below.

28

1 **San Jacinto, California (June 28, 2016).** I am thoroughly discussed with
2 Consumer's Report! I had gone online last month and cancelled my upcoming
renewal scheduled for this month.

3 Unbeknownst to me, they automatically debited \$30.00 from my account this
4 morning! When I called the company they said that they had never received my
cancellation.

5 It should be a law that ANY automatic debits should be prefaced with an email alert
6 at least 72 hours before, a my very credible Geico insurance company does on a
7 monthly basis. I will most definitely be following up on this, but please beware of
this company in the meantime

8 A true and correct printout of that complaint is attached as Exhibit 8.

9 **Cancelling my subscription seems impossible (June 4, 2019).** Consumers beware.
10 I have requested a cancellation for my Consumer Reports subscription twice via their
website no success.

11 Despite my cancellation request confirmations, they have still renewed my
12 membership for the past two years without my consent.

13 I recently tried to email customer care from the link on their website and the link
14 does not work. I am very concerned about the business practices of this company and
would not recommend anyone to sign up for their magazine or services.

15 A true and correct printout of that complaint is attached as Exhibit 9.

16 **Levie (July 8, 2019).** For over two years now I have tried to cancel my consumer
17 reports subscription. Then June/July comes and they bill me again.

18 I call them each year within a few days after receiving the bill and demand a full
19 refund and tell them to permanently cancel my subscription. This year they had the
20 nerve to tell me they can't keep giving me a refund each year! I demanded to speak
to a supervisor, then they agreed to a full refund. I once again asked them to
permanently cancel my subscription.

21 I also this year put a permanent stop for consumer reports with my credit card
22 company. It is ironic the publication we looked up to for protection of consumer
rights, abuses consumer rights so blatantly.

23 A true and correct printout of that complaint is attached as Exhibit 10.

24 **CLASS ACTION ALLEGATIONS**

25 28. Plaintiffs bring this lawsuit as class action under Code of Civil Procedure § 382 on
26 behalf of the following Class: "All individuals in California who, within the applicable limitations
27 period, were enrolled by Defendants in an automatic renewal or continuous service program.
28 Excluded from the Class are all employees of Defendants, all employees of Plaintiffs' counsel, and

1 the judicial officers to whom this case is assigned.”

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

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

17 31. Numerosity. The Class is so numerous that joinder of all Class members would be
18 impracticable. Plaintiffs are informed and believe and thereon allege that the Class consists of at
19 least 100 members.

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

1 Plaintiffs will fairly and adequately protect the interests of the Class members.

2 33. Superiority. A class action is superior to other methods for resolving this
3 controversy. Because the amount of restitution to which each Class member may be entitled is low
4 in comparison to the expense and burden of individual litigation, it would be impracticable for Class
5 members to redress the wrongs done to them without a class action forum. Furthermore, on
6 information and belief, Class members do not know that their legal rights have been violated. Class
7 certification would also conserve judicial resources and avoid the possibility of inconsistent
8 judgments.

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

12 **FIRST CAUSE OF ACTION**

13 **False Advertising -- Violation of the Automatic Renewal Law**

14 35. Plaintiffs incorporate the previous allegations as though set forth herein.

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

27 37. Plaintiffs have suffered injury in fact and lost money as a result of Defendants'
28 business practices alleged herein.

1 38. Pursuant to Bus. & Prof. Code §§ 17603 and 17535, Plaintiffs and Class members
2 are entitled to restitution of all amounts that Defendants charged to Plaintiffs' and Class members'
3 credit cards, debit cards, or third-party payment accounts during the four years preceding the filing
4 of this Complaint and continuing until Defendants' statutory violations cease.

5 39. Pursuant to Bus. & Prof. Code § 17535, Plaintiffs and Class members are entitled to
6 an injunction enjoining Defendants from making automatic renewal or continuous service offers to
7 California consumers that do not comply in all respects with California law, and enjoining
8 Defendants from charging California consumers' credit cards, debit cards, and/or third party
9 payment accounts until such time as Defendants obtain the consumer's affirmative consent to an
10 agreement that contains clear and conspicuous disclosure of all automatic renewal or continuous
11 service offer terms.

12 **SECOND CAUSE OF ACTION**

13 Violation of the Consumers Legal Remedies Act

14 40. Plaintiffs incorporate the allegations of paragraphs 1-34 as though set forth herein.

15 41. Plaintiffs and the Class members are "consumers" within the meaning of Civil Code
16 § 1761(d) in that Plaintiffs and the goods and/or services sought or acquired were for personal,
17 family, or household purposes.

18 42. Defendants' magazine offers and the magazines pertaining thereto are "goods"
19 and/or "services" within the meaning of Civil Code § 1761(a) and (b).

20 43. The purchases and payments by Plaintiffs and Class members are "transactions"
21 within the meaning of Civil Code § 1761(e).

22 44. Defendants have violated Civil Code § 1770, subdivisions (a)(5), (a)(9), (a)(13),
23 (a)(14), and (a)(17), by representing that Defendants' goods and services have certain characteristics
24 that they do not have; advertising goods and services with the intent not to sell them as advertised;
25 making false and misleading statements of fact concerning the reasons for, existence of and amounts
26 of price reductions; representing that a transaction confers or involves rights, remedies, or
27 obligations that it does not have or involve, or that are prohibited by law; and by representing that
28 the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit

1 is contingent on an event to occur subsequent to the consummation of the transaction.

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

5 **THIRD CAUSE OF ACTION**

6 **Violation of the California Unfair Competition Law**

7 46. Plaintiffs incorporate the previous allegations as though fully set forth herein.

8 47. The California Unfair Competition Law (“UCL”), Bus. & Prof. Code § 17200 *et seq.*,
9 defines unfair competition as including any unlawful, unfair or fraudulent business act or practice
10 and unfair, deceptive, untrue, or misleading advertising.

11 48. In the course of conducting business within the applicable limitations period,
12 Defendants committed “unlawful,” “unfair,” and/or “fraudulent” business practices, and engaged in
13 conduct that constitutes unfair, deceptive, untrue, or misleading advertising, by *inter alia* and
14 without limitation: (a) failing to present the terms of automatic renewal or continuous service offers
15 in a clear and conspicuous manner before a subscription or purchasing agreement is fulfilled and in
16 visual proximity (or in the case of an offer conveyed by voice, in temporal proximity), to a request
17 for consent to the offer, in violation of Bus. & Prof. Code § 17602(a)(1); (b) charging the consumer’s
18 credit card, debit card, or third-party payment account for an automatic renewal or continuous
19 service without first obtaining the consumer’s affirmative consent to an agreement containing clear
20 and conspicuous disclosures of automatic renewal offer terms or continuous service offer terms, in
21 violation of Bus. & Prof. Code § 17602(a)(2); (c) failing to provide an acknowledgment that
22 includes clear and conspicuous disclosure of automatic renewal or continuous service offer terms,
23 cancellation policy, and information regarding how to cancel, in violation of Bus. & Prof. Code
24 § 17602(a)(3); (d) representing that Defendants’ goods and services have certain characteristics that
25 they do not have, in violation of Civil Code § 1770(a)(5); (e) advertising goods and services with
26 the intent not to sell them as advertised, in violation of Civil Code § 1770(a)(9); (f) making false
27 and misleading statements of fact concerning the reasons for, existence of and amounts of price
28 reductions, in violation of Civil Code § 1770(a)(13); (g) representing that a transaction confers or

1 involves rights, remedies, or obligations that it does not have or involve, or that are prohibited by
2 law, in violation of Civil Code § 1770 (a)(14); and (h) representing that the consumer will receive a
3 rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to
4 occur subsequent to the consummation of the transaction, in violation of Civil Code § 1770(a)(17).
5 Plaintiffs reserve the right to allege other violations of law that constitute unlawful or unfair business
6 acts or practices.

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

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

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

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

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

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

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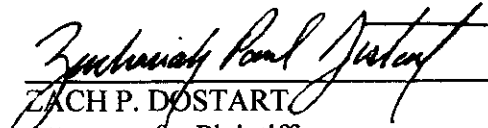
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On All Causes of Action:

- 9. For an award of attorneys' fees pursuant to 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: March 2, 2020

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: March 2, 2020

DOSTART HANNINK & COVENEY LLP



 ZACH P. DOSTART
 Attorneys for Plaintiffs

906455.4

Exhibit 1

**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.)



SB 340 (Yee)

Page 3 of 7

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



SB 340 (Yee)
Page 7 of 7

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

LEGISLATIVE INTENT SERVICE (800) 666-1917



Exhibit 2

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:

LEGISLATIVE INTENT SERVICE (800) 666-1917



- 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

LEGISLATIVE INTENT SERVICE (800) 666-1917



Exhibit 3

12:07



CR Ratings



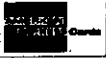






AA secure.consumerreports.org



Digital Membership \$39.00 / year

STEP 2 OF 3

Select a Payment Method

- 




- 

- 




Secure Checkout

[Need Help?](#)

[Privacy Policy](#) [User Agreement](#) [Ad Choices](#)

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12:07
CR Ratings



AA secure.consumerreports.org



Digital Membership \$39.00 / year

STEP 3 OF 3

Billing Address

First Name	Last Name
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Street Address

Zip Code	State
----------	-------

City

United States

Payment Information



enter number



United States

Payment Information



enter number

01

2020

enter CVC

[What's this?](#)

By clicking Place My Order, you authorize us to charge your payment method at the above rate plus applicable sales tax and automatically renew at the rate and term then in effect. You can cancel at any time by going to ConsumerReports.org/myaccount or calling 1-800-333-0663. You also accept the terms of the [User Agreement](#) and [Privacy Policy](#).

Place My Order



Secure Checkout

[Need Help?](#)

Exhibit 4

From: "Customer Service" <mail@cro.consumer.org>
To: "[Redacted]@att.net" <[Redacted]@att.net>
Sent: Mon, Oct 8, 2018 at 5:01 PM
Subject: Welcome to Consumer Reports!



Welcome to Consumer Reports!

Dear Nino,

Congratulations! Your All Access membership to Consumer Reports is now active. Get started right now with access to our unbiased ratings and reviews, Ask CR and other membership benefits.

[Go to My CR](#)

For your Records

Bill to:
Nino Koller
[Redacted]
[Redacted]
United States

Email/Username: [Redacted]@att.net

Order Number: 103808758

Order Date: 10/08/2018

Start Date: 10/08/2018

End Date: 10/07/2019

Card Type: Visa

Card Number: [Redacted]

Membership type: Annual All Access Membership
(Confirmation of authorized renewal at then current rate)

Price: \$ 55.00

Total: \$ 55.00

You'll need your email/username to sign into your membership account on consumerreports.org, so please keep this e-mail somewhere handy for later reference. For your privacy, we did not include your password in this e-mail.

NOTE: Passwords are case sensitive.

Thanks again for becoming a member of Consumer Reports!

Regards,

Sue Melfi

Director of Member Services

P.S. Sign up for our email newsletters to get the latest info sent right to your inbox!

Please note: This email was sent from an automated address that cannot reply to incoming email, including member services inquiries. For support and to contact Member Services, go here.

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Exhibit 5



Shonya of Penn Valley, CA

✓ Verified Reviewer

Original review: Oct. 25, 2019

They auto renewed my membership which I absolutely remember not authorizing when I joined last year. I called them the very day they charged me for an additional year within minutes of the email coming through. While they cancelled my membership, they would not refund the total amount. Even though it had been 10 minutes, they charged me for a whole month. Crooks! I will never join again, they are totally dishonest.

Exhibit 6



Kimberly of Huntington Beach, CA

✓ Verified Reviewer

Original review: Oct. 15, 2018

Consumer Reports charged my credit card (October 2018) after canceling this account almost 10 years ago. The customer service rep said "after you cancel auto renew, you need to cancel every year so you don't get charged"! What?! I have to call every year AFTER I cancel the account? This is fraudulent and I plan to investigate this further. They should not be able to get away with charging canceled decade-old accounts! All of the information they provide is online for FREE through customer reviews. They're obviously hurting for cash and trying to find ways to stay around. Not cool!

Exhibit 7

2/25/2020

Top 178 Reviews about Consumer Reports | Page 4



Lucinda of Thousand Oaks, CA

✓ Verified Reviewer

Original review: April 23, 2015

Years ago I enrolled in CR for what I thought was a year. Every year I attempt to be discontinued from their billing access to my credit card but these guys have become as corrupt as those they deemed to protect American population from.

Exhibit 8

2/25/2020

Consumer Reports Subscription Review from San Jacinto, California Jun 28, 2016 @ Pissed Consumer

San Jacinto, California

Jun 28, 2016

NOT RESOLVED

2.0 Details

0 comments

I am thoroughly discussed with Consumer's Report! I had gone online last month and cancelled my upcoming renewal scheduled for this month.

Related: Reoccurring monthly charge - Consumer Reports

Unbeknownst to me, they automatically debited \$30.00 from my account this morning! When I called the company they said that they had never received my cancellation.

It should be a law that ANY automatic debits should be prefaced with an email alert atleast 72 hours before, a my very credible Geico insurance company does on a monthly basis. I will most definitely be following up on this, but please beware of this company in the meantime

Product or Service Mentioned: Consumer Reports Subscription.

Reason of review: Return, Exchange or Cancellation Policy.

Exhibit 9

2/25/2020

Consumer Reports - Cancelling my subscription seems impossible Jul 08, 2019 @ Pissed Consumer

Jun 04, 2019

NOT RESOLVED

1.0 Details

2 comments

Consumers beware. I have requested a cancellation for my Consumer Reports subscription twice via their website no success.

Related: Customer support - Consumer Reports

Despite my cancellation request confirmations, they have still renewed my membership for the past two years without my consent.

I recently tried to email customer care from the link on their website and the link does not work. I am very concerned about the business practices of this company and would not recommend anyone to sign up for their magazine or services.

Product or Service Mentioned: Consumer Reports Subscription.

Reason of review: Return, Exchange or Cancellation Policy.

Consumer Reports Pros: Magazine and articles.

Consumer Reports Cons: Renew my subscription each year despite requests to cancel, Auto renew and non responsiveness, Deceptive auto renew practices, Unable to contact customer care.

PIP OFF SUBSCRIPTION

Exhibit 10

2/25/2020

48 Consumer Reports Subscription Reviews and Complaints @ Pissed Consumer

Levie Jul 08, 2019 #1713637

For over two years now I have tried to cancel my consumer reports subscription. Then June/July comes and they bill me again.

I call them each year within a few days after receiving the bill and demand a full refund and tell them to permanently cancel my subscription. This year they had the nerve to tell me they can't keep giving me a refund each year! I demanded to speak to a supervisor, then they agreed to a full refund. I once again asked them to permanently cancel my subscription.

I also this year put a permanent stop for consumer reports with my credit card company. It is ironic the publication we looked up to for protection of consumer rights, abuses consumer rights so blatantly.

Exhibit 10
Page 21

EXHIBIT B

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): James T. Hannink (131747) Zach P. Dostart (255071) DOSTART HANNINK & COVENEY LLP 4180 La Jolla Village Drive, Suite 530, La Jolla, CA 92037 TELEPHONE NO.: (858) 623-4200 FAX NO.: (858) 623-4299 ATTORNEY FOR (Name): Plaintiffs Nino Koller and Michelle Brown	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 03/02/2020 at 12:02:01 PM Clerk of the Superior Court By Iris Tellez, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego 92101 BRANCH NAME: Hall of Justice	CASE NUMBER: 37-2020-00011819-CU-BT-CTL
CASE NAME: Koller, et al. v. Consumer Reports, Inc.	JUDGE: Judge Ronald L. Styn DEPT:
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Complex Case Designation Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	JUDGE: Judge Ronald L. Styn DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input checked="" type="checkbox"/> Large number of witnesses
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 1. Violation of ARL; 2. Violation of CLRA; 3. Unfair Competition; and 4. Unjust Enrichment.

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **March 2, 2020**

 Zach P. Dostart
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

EXHIBIT C

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

CONSUMER REPORTS, INC., a New York nonprofit corporation; and DOES 1-50, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

NINO KOLLER and MICHELLE BROWN, individually and on behalf of all others similarly situated

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

03/02/2020 at 12:02:01 PM

Clerk of the Superior Court
By Iris Tellez, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): **San Diego Superior Court**
330 West Broadway
San Diego, CA 92101

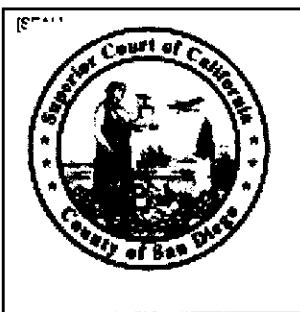
CASE NUMBER:
(Número del Caso): **37-2020-00011819-CU-BT-CTL**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
James T. Hannink (131747); Zach P. Dostart (255071); DOSTART HANNINK & COVENEY LLP
4180 La Jolla Village Dr., Ste. 530, La Jolla, CA 92037; Tel: (858) 623-4200

DATE: **03/03/2020**
(Fecha)

Clerk, by *Iris Tellez*, Deputy
(Secretario) I. Tellez (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): **Consumer Reports, Inc., a New York nonprofit corporation**
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):

EXHIBIT D

<i>Attorney or Party without Attorney:</i> James T. Hannink, Esq. Dostart Hannink & Coveney LLP 4180 La Jolla Village Drive Suite 530 La Jolla, CA 92037 Telephone No: 858-623-4200				<i>For Court Use Only</i> ELECTRONICALLY FILED Superior Court of California, County of San Diego 03/10/2020 at 04:07:00 PM Clerk of the Superior Court By E- Filing, Deputy Clerk	
<i>Attorney for:</i> Plaintiff				<i>Ref. No. or File No.:</i>	
<i>Insert name of Court, and Judicial District and Branch Court:</i>					
San Diego County Superior Court					
<i>Plaintiff:</i> Nino Koller and Michelle Brown, et al.					
<i>Defendant:</i> Consumer Reports, Inc, et al.					
PROOF OF SERVICE Summons & Complaint		<i>Hearing Date:</i>	<i>Time:</i>	<i>Dept/Div:</i>	<i>Case Number:</i> 37202000011819CUBTCTL

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the Summons; Class Action Complaint; Civil Case Cover Sheet; Notice of Case Assignment; Declaration of Nino Koller Pursuant to California Civil Code Section 1780(d); Declaration of Michelle Brown Pursuant to California Civil Code Section 1780(d); ADR Information; Stipulation to Use ADR (blank); Electronic Filing Requirements of the San Diego Superior Court - Civil Division; General Order of the Presiding Department
3. *a. Party served:* Consumer Reports, Inc., a New York nonprofit corporation
b. Person served: Christian Iarranaga, Person Authorized to Accept Service
4. *Address where the party was served:* Corporate Creations Network Inc.
4640 Admiralty Way, 5th Floor
Marina Del Rey, CA 90292
5. *I served the party:*
 - a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Thu., Mar. 05, 2020 (2) at: 2:53PM
6. *The "Notice to the Person Served" (on the Summons) was completed as follows:*
on behalf of: Consumer Reports, Inc., a New York nonprofit corporation
 Under CCP 416.10 (corporation)
7. **Person Who Served Papers:**
 - a. John Gonzalez
 - b. **Class Action Research & Litigation**
P O Box 740
Penryn, CA 95663
 - c. (916) 663-2562, FAX (916) 663-4955
 - d. *The Fee for Service was:* \$106.25
 Recoverable Cost Per CCP 1033.5(a)(4)(B)
 - e. I am: (3) registered California process server
 - (i) Independent Contractor
 - (ii) *Registration No.:* 2971
 - (iii) *County:* Los Angeles

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

Date: Thu, Mar. 05, 2020

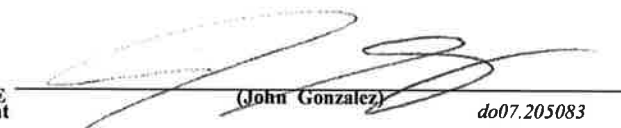

(John Gonzalez)

EXHIBIT E

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7074	
PLAINTIFF(S) / PETITIONER(S): Nino Koller et.al.	
DEFENDANT(S) / RESPONDENT(S): Consumer Reports Inc	
KOLLER VS CONSUMER REPORTS INC [IMAGED]	
NOTICE OF CASE ASSIGNMENT and CASE MANAGEMENT CONFERENCE	CASE NUMBER: 37-2020-00011819-CU-BT-CTL

CASE ASSIGNED FOR ALL PURPOSES TO:

Judge: Ronald L. Styn

Department: C-74

COMPLAINT/PETITION FILED: 03/02/2020

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	09/04/2020	10:00 am	C-74	Ronald L. Styn

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at www.sdcourt.ca.gov.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

1 ROBERT A. COCCHIA (SBN 172315)
robert.cocchia@dentons.com
2 RACHEL L. ROSS (SBN 322881)
rachel.ross@dentons.com
3 DENTONS US LLP
4655 Executive Drive, Suite 700
4 San Diego, CA 92121
Telephone: (619) 236-1414
5 Facsimile: (619) 232-8311

6 Attorneys for Defendant
Consumer Reports, Inc.
7

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 NINO KOLLER and MICHELLE
12 BROWN, individually and on behalf of all
others similarly situated,

13 Plaintiffs,

14 vs.

15 CONSUMER REPORTS, INC., a New
16 York nonprofit corporation; and DOES 1-
50, inclusive,

17 Defendants.
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Case No. '20CV0660 JLS KSC

San Diego County Superior Court Case
No. 37-2020-00011819-CU-BT-CTL

**DECLARATION OF CHAIM E.
COHEN IN SUPPORT OF
DEFENDANT'S NOTICE OF
REMOVAL OF ACTION**

1 I, Chaim E. Cohen, declare and state:

2 1. I am employed by Consumer Reports, Inc. (“Consumer Reports” or
3 “Defendant”) as Director, Customer Strategy and Intelligence. I have been in this role
4 since September 2017. In my present role, I am responsible for overseeing Consumer
5 Reports’ internal subscriber database platform as well as managing the individuals who
6 use this platform on a daily basis to provide reports, predictive models and select
7 marketing campaigns for our business.

8 2. I provide this declaration in support of Defendant’s Notice of Removal of
9 Action. I am authorized to make this declaration on Defendant’s behalf. I have personal
10 knowledge of the matters set forth herein or have acquired knowledge by review and
11 analysis of the business records kept by Consumer Reports in the normal course of
12 business. If called, I could and would competently testify thereto, under oath.

13 3. Consumer Reports is headquartered in Yonkers, New York. That is the
14 place where Consumer Reports’ officers direct, control, and coordinate the company’s
15 activities. Many of Consumer Reports’ officers live near, and work out of the
16 company’s Yonkers, New York headquarters. Consumer Reports is incorporated in
17 New York.

18 4. Based on my review of Consumer Reports’ records, the last known
19 addresses associated with Plaintiffs Nino Koller and Michelle Brown are in California.
20 Thus, upon information and belief, both Mr. Koller and Ms. Brown reside in, and are
21 domiciled in California.

22 5. On or about April 1, 2020, under my direction, our data analytics team
23 queried our database to determine the total number of subscriptions to Consumer
24 Reports’ print and digital publications that were initiated or confirmed online through
25 our website by California residents between March 2, 2016 and March 31, 2020 and
26 that were automatically renewed at least once in that time period. The search queried, to
27 the best of our ability, the total number of California subscribers during that time period
28 who ordered directly from Consumer Reports, and the total amount paid for auto-

1 renewing print and digital subscriptions after they were first initiated or confirmed
2 online, including the amounts paid for subsequent subscriptions pursuant to an
3 automatic renewal.

4 6. Based on this search, there were over 296,000 California subscribers
5 during the relevant time period who paid a total of over \$24,000,000.

6 I declare under penalty of perjury under the laws of the United States of America
7 that the foregoing is true and correct. Executed this 2nd day of April, 2020 at Pomona,
8 New York.

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10 
11 CHAIM E. COHEN

12 114491890

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1 ROBERT A. COCCHIA (SBN 172315)
robert.cocchia@dentons.com
2 RACHEL L. ROSS (SBN 322881)
rachel.ross@dentons.com
3 DENTONS US LLP
4655 Executive Drive, Suite 700
4 San Diego, CA 92121
Telephone: (619) 236-1414
5 Facsimile: (619) 232-8311

6 Attorneys for Defendant
Consumer Reports, Inc.
7

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 NINO KOLLER and MICHELLE
BROWN, individually and on behalf of all
12 others similarly situated,

13 Plaintiffs,

14 vs.

15 CONSUMER REPORTS, INC., a New
York nonprofit corporation; and DOES 1-
16 50, inclusive,

17 Defendant.
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Case No. '20CV0660 JLS KSC

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I, Robert A. Cocchia, certify that I caused to be served upon the following counsel and parties of record a copy of the following document(s):

- **DEFENDANT’S NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §§ 1332(d)(2), 1441(a), 1446**
- **CIVIL COVER SHEET**
- **DECLARATION OF ROBERT A. COCCHIA IN SUPPORT OF DEFENDANT’S NOTICE OF REMOVAL OF ACTION**
- **DECLARATION OF CHAIM E. COHEN IN SUPPORT OF DEFENDANT’S NOTICE OF REMOVAL OF ACTION**
- **DEFENDANT’S NOTICE OF PARTY WITH FINANCIAL INTEREST (LOCAL RULE 40.2)**

via personal service, overnight mail (Via Federal Express), facsimile, first class mail or e-mail, as indicated below:

Via U.S. Mail

James T. Hannink, Esq.
Zach P. Dostart, Esq.
DOSTART HANNINK & COVENEY LLP
4180 La Jolla Village Drive, Suite 530
La Jolla, CA 92037-1474
Tel: (858) 623-4200
Fax: (858) 623-4299
E-mail: jhannink@sdlaw.com
zdostart@sdlaw.com

Attorneys for Plaintiffs

Executed on **April 6, 2020**, in San Diego, California.

s/Robert A. Cocchia
ROBERT A. COCCHIA

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Consumer Reports Hit with Class Action in California Over Automatic Renewal Program](#)
