

**EXHIBIT B**

**SUPERIOR COURT OF CALIFORNIA**  
**County of SAN DIEGO**
**Register of Actions Notice**

Case Number:	37-2019-00038992-CU-BT-CTL	Filing Date:	07/26/2019
Case Title:	Tovey vs. Trusted Media Brands Inc [EFILE]	Case Age:	32 days
Case Status:	Pending	Location:	Central
Case Category:	Civil - Unlimited	Judicial Officer:	Timothy Taylor
Case Type:	Business Tort	Department:	C-72

**Future Events**

Date	Time	Department	Event
12/27/2019	09:15 AM	C-72	Civil Case Management Conference - Complaint

**Participants**

Name	Role	Representation
Tovey, Dane	Plaintiff	Dostart, Zach P; HANNINK, JAMES T; Trusted Media Brands Inc
Trusted Media Brands Inc	Defendant	

**Representation**

Name	Address	Phone Number
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TRUSTED MEDIA BRANDS INC	Not Available	

ROA#	Entry Date	Short/Long Entry	Filed By
1	07/26/2019	Complaint filed by Tovey, Dane. Refers to: Trusted Media Brands Inc	Tovey, Dane (Plaintiff)
2	07/26/2019	Civil Case Cover Sheet filed by Tovey, Dane. Refers to: Trusted Media Brands Inc	Tovey, Dane (Plaintiff)
3	07/26/2019	Statement of Venue filed by Tovey, Dane. Refers to: Trusted Media Brands Inc	Tovey, Dane (Plaintiff)
4	07/26/2019	Case assigned to Judicial Officer Taylor, Timothy.	
5	07/29/2019	Civil Case Management Conference scheduled for 12/27/2019 at 09:15:00 AM at Central in C-72 Timothy Taylor.	
6	07/29/2019	Case initiation form printed.	
7	07/29/2019	[Another document for ROA# 7]	
7	07/29/2019	[Another document for ROA# 7]	
7	07/29/2019	[Another document for ROA# 7]	
7	07/29/2019	E-filing transaction partially accepted.	
8	07/29/2019	Original Summons filed by Tovey, Dane. Refers to: Trusted Media Brands Inc	Tovey, Dane (Plaintiff)
9	08/21/2019	Proof of Service of 30-day Summons & Complaint - Personal filed by Tovey, Dane. Refers to: Trusted Media Brands Inc	Tovey, Dane (Plaintiff)

**ELECTRONICALLY FILED**

Superior Court of California,  
County of San Diego

**07/26/2019** at 05:07:50 PM

Clerk of the Superior Court  
By Vanessa Bahena, Deputy Clerk

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 DANE TOVEY,  
11 individually and on behalf of all others  
12 similarly situated,

13 Plaintiff,

14 vs.

15 TRUSTED MEDIA BRANDS, INC.,  
16 a Delaware corporation;  
and DOES 1-50, inclusive,

17 Defendants.  
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CASE NO. 37-2019-00038992-CU-BT-CTL

CLASS ACTION

COMPLAINT FOR:

(1) VIOLATION OF THE CALIFORNIA  
AUTOMATIC RENEWAL LAW  
[Cal. Bus. & Prof. Code § 17600 *et seq.*]

(2) VIOLATION OF THE CALIFORNIA  
CONSUMERS LEGAL REMEDIES ACT  
[Cal. Civ. Code § 1750 *et seq.*]

(3) UNFAIR COMPETITION  
[Cal. Bus. & Prof. Code § 17200 *et seq.*]; and  
DEMAND FOR JURY TRIAL

1 **PRELIMINARY ALLEGATIONS**

2 1. This action alleges that Trusted Media Brands, Inc. violates California law by  
3 enrolling consumers in automatic-renewal magazine subscriptions and posting charges to  
4 consumers' credit cards, debit cards, or third-party payment accounts without providing the "clear  
5 and conspicuous" disclosures required by the California Automatic Renewal Law, Cal. Bus. & Prof.  
6 Code § 17600 *et seq.* ("ARL"). The same course of conduct also violates the Consumers Legal  
7 Remedies Act, Cal. Civ. Code § 1750 *et seq.* ("CLRA"), and the Unfair Competition Law, Cal. Bus.  
8 & Prof. Code § 17200 *et seq.* ("UCL").

9 **THE PARTIES**

10 2. Plaintiff Dane Tovey ("Plaintiff") is an individual residing in San Diego County,  
11 California.

12 3. Plaintiff is informed and believes and thereon alleges that defendant Trusted Media  
13 Brands, Inc. ("TMB") is a Delaware corporation that does business in San Diego County, including  
14 the marketing of magazine subscriptions.

15 4. Plaintiff does not know the names of the defendants sued as DOES 1 through 50 but  
16 will amend this complaint when that information becomes known. Plaintiff alleges on information  
17 and belief that each of the DOE defendants is affiliated with the named defendant in some respect  
18 and is in some manner responsible for the wrongdoing alleged herein, either as a direct participant,  
19 or as the principal, agent, successor, alter ego, or co-conspirator of or with one or more of the other  
20 defendants. For ease of reference, Plaintiff will refer to the named defendant and the DOE  
21 defendants collectively as "Defendants."

22 5. Venue is proper in San Diego County because the complained of conduct occurred  
23 in San Diego County.

24 **BACKGROUND**

25 6. TMB publishes several magazines, including *Reader's Digest*, *Taste of Home*,  
26 *Family Handyman*, *Birds & Blooms* and *Reminisce*. TMB makes the magazine content available  
27 through print and/or online subscriptions.

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

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

17           9.       Defendants have implemented a negative option model in which they “automatically  
 18 renew” subscriptions, and they do so in a way that violates California law.

### 19                   **THE CALIFORNIA AUTOMATIC RENEWAL LAW**

20           10.       In 2009, the California Legislature passed Senate Bill 340, which took effect on  
 21 December 1, 2010 as Cal. Bus. & Prof. Code § 17600 *et seq.* (the California Automatic Renewal  
 22 Law) (“ARL”), which is part of the False Advertising Law. (Unless otherwise stated, all statutory  
 23 references are to the Business & Professions Code). SB 340 was introduced because:

24           It has become increasingly common for consumers to complain about unwanted  
 25           charges on their credit cards for products or services that the consumer did not

26           <sup>1</sup> (See *Negative Options* (January 2009) Federal Trade Commission  
 27 <<https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf>> [as of June 7, 2019].)  
 28

1 explicitly request or know they were agreeing to. Consumers report they believed  
 2 they were making a one-time purchase of a product, only to receive continued  
 3 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.

4 (See Exhibit 2 at p. 7.)

5 11. The Assembly Committee on Judiciary provided the following background for the  
 6 legislation:

7 This non-controversial bill, which received a unanimous vote on the Senate floor,  
 8 seeks to protect consumers from unwittingly consenting to “automatic renewals” of  
 9 subscription orders or other “continuous service” offers. According to the author and  
 10 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.

11 (See Exhibit 3 at p. 11.)

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

17 a. Fail to present the automatic renewal offer terms or continuous service offer  
 18 terms in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled  
 19 and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the  
 20 request for consent to the offer. (§ 17602(a)(1).) For this purpose, the term “clear and conspicuous”  
 21 means “in larger type than the surrounding text, or in contrasting type, font, or color to the  
 22 surrounding text of the same size, or set off from the surrounding text of the same size by symbols  
 23 or other marks, in a manner that clearly calls attention to the language.” (§ 17601(c).) For an audio  
 24 disclosure, “clear and conspicuous” means “in a volume and cadence sufficient to be readily audible  
 25 and understandable.” (*Ibid.*)

26 b. Charge the consumer’s credit or debit card or the consumer’s account with a  
 27 third party for an automatic renewal or continuous service without first obtaining the consumer’s  
 28 affirmative consent to the agreement containing the automatic renewal offer terms or continuous

1 service offer terms. (§ 17602(a)(2).)

2 c. Fail to provide an acknowledgment that includes the automatic renewal or  
3 continuous service offer terms, cancellation policy, and information regarding how to cancel in a  
4 manner that is capable of being retained by the consumer. (§ 17602(a)(3).) If the offer includes a  
5 free trial, the business must disclose in the acknowledgment how to cancel and allow the consumer  
6 to cancel before the consumer pays for the goods or services. The acknowledgment must include a  
7 toll-free telephone number, electronic mail address, or other mechanism for cancellation.  
8 (§ 17602(b).)

9 13. Section 17603 provides: “In any case in which a business sends any goods, wares,  
10 merchandise, or products to a consumer, under a continuous service agreement or automatic renewal  
11 of a purchase, without first obtaining the consumer’s affirmative consent as described in Section  
12 17602, the goods, wares, merchandise, or products shall for all purposes be deemed an unconditional  
13 gift to the consumer, who may use or dispose of the same in any manner he or she sees fit without  
14 any obligation whatsoever on the consumer’s part to the business, including, but not limited to,  
15 bearing the cost of, or responsibility for, shipping any goods, wares, merchandise, or products to the  
16 business.”

17 **FACTS GIVING RISE TO PLAINTIFF’S CLAIM**

18 14. In or about October 2017, while Plaintiff was located in San Diego County, Plaintiff  
19 submitted a request for a one-year subscription for *Reader’s Digest*. In connection with that  
20 subscription, Plaintiff paid the amount of \$10.00, which was charged to his credit card.

21 15. Documents evidencing the specific advertising and offer materials that Defendants  
22 presented to Plaintiff are in the exclusive possession, custody, and control of Defendants. Plaintiff  
23 will seek production of such documents during the course of discovery, which Plaintiff believes will  
24 support the allegations herein.

25 16. Unbeknownst to Plaintiff and without his consent, Defendants enrolled Plaintiff in a  
26 program under which his subscription would automatically renew. Thereafter, in or about August  
27 2018, without Plaintiff’s authorization, Defendants posted a charge to Plaintiff’s credit card in the  
28 amount of \$14.98.

1           17. After Plaintiff discovered that his credit card had been charged \$14.98, he called  
2 TMB and disputed the charge. TMB refunded that \$14.98 to Plaintiff. Plaintiff was not refunded  
3 the initial charge of \$10.00 that was made in connection with Defendants' automatic renewal  
4 program.

5           18. If Plaintiff had known that Defendants were going to enroll him in an automatic  
6 renewal program, he would not have requested any subscription from Defendants and would not  
7 have paid any money to Defendants.

8           19. Plaintiff alleges that Defendants have made and continue to make offers to California  
9 consumers, in connection with which Defendants do not disclose the statutorily-mandated  
10 "automatic renewal offer terms" and do not make disclosures in a manner that is "clear and  
11 conspicuous"; that Defendants charge the consumers' credit cards, debit cards, and/or third-party  
12 payment accounts without obtaining the consumers' affirmative consent to an agreement that  
13 contains clear and conspicuous disclosure of the automatic renewal offer terms; and that Defendants  
14 do not provide the statutorily-mandated acknowledgment. For example, a copy of an on-line offer  
15 page currently used by Defendants to solicit subscriptions for *Reader's Digest* is attached hereto as  
16 Exhibit 4.

17           20. Notwithstanding legislative and regulatory efforts, including enactment of the  
18 California ARL and similar legislation in other states, "automatically renewed" magazine  
19 subscriptions continue to be a perennial source of consumer complaints. On October 15, 2011, the  
20 *New York Times* published an article drawing attention to the problem. (See Ex. 5 [*"How Did This  
21 Become a Commitment?"*].) The article describes consumer complaints of unauthorized credit card  
22 charges arising out of magazine subscriptions that were supposedly "automatically renewed." The  
23 risk of consumer fraud or deception has increased as credit card billing has become more widely  
24 adopted and as marketers have focused on luring consumers with "free trials" or similar offers that  
25 turn into auto-renew charges. (See Ex. 6 [*"Beware of auto-renewals' endless charges: Easy to sign  
26 up for, hard to shut off; complaints mount"*] (Jan. 28, 2015), available at  
27 [https://www.creditcards.com/credit-card-news/auto-renewals-endless-charges-complaints-  
28 1282.php](https://www.creditcards.com/credit-card-news/auto-renewals-endless-charges-complaints-1282.php) (last accessed June 7, 2019)); Ex. 7 [*"Buy now, pay forever: Beware negative option*



plans” (Oct. 6, 2014), available at <http://www.creditcards.com/credit-card-news/negative-option-buy-now-pay-forever-1581.php> (last accessed June 7, 2019)].)

### **CLASS ACTION ALLEGATIONS**

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

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

23. Common Questions of Fact or Law. There are questions of fact or law that are common to the members of the Class, which predominate over individual issues. Common questions regarding the Class include, without limitation: (1) Whether, in connection with automatic renewal or continuous service offers to California residents, Defendants present all automatic renewal offer terms and, if so, whether such terms are presented in a manner that is “clear and conspicuous” within the meaning of California law; (2) Defendants’ policies, practices and procedures for obtaining affirmative consent from customers before charging a credit card, debit card, or third-party payment account; (3) whether Defendants provide consumers with an acknowledgment that informs them of the automatic renewal offer, the cancellation policy, and information regarding how to cancel, in a manner that is capable of being retained by the consumer; (4) Defendants’ record-keeping practices; (5) the appropriate remedies for Defendants’ conduct; and (6) the appropriate terms of an injunction.

24. Numerosity. The Class is so numerous that joinder of all Class members would be impracticable. Plaintiff is informed and believes and thereon alleges that the Class consists of at least 100 members.

25. Typicality and Adequacy. Plaintiff’s claims are typical of the claims of the Class members. Plaintiff alleges on information and belief that Defendants enrolled Class members in

1 automatic renewal programs without disclosing all terms required by law, and without presenting  
 2 such terms in the requisite “clear and conspicuous” manner; charged Class members’ credit cards,  
 3 debit cards, or third-party accounts without first obtaining Class members’ affirmative consent to  
 4 an agreement containing clear and conspicuous disclosure of all automatic renewal offer terms in  
 5 the manner required by California law; and failed to provide the requisite acknowledgment in a  
 6 manner capable of being retained by the Class members. Plaintiff has no interests that are adverse  
 7 to those of the other Class members. Plaintiff will fairly and adequately protect the interests of the  
 8 Class members.

9       26. Superiority. A class action is superior to other methods for resolving this  
 10 controversy. Because the amount of restitution to which each Class member may be entitled is low  
 11 in comparison to the expense and burden of individual litigation, it would be impracticable for Class  
 12 members to redress the wrongs done to them without a class action forum. Furthermore, on  
 13 information and belief, Class members do not know that their legal rights have been violated. If  
 14 Defendants are not enjoined from continuing their business practices as alleged herein, they will  
 15 continue to violate the rights of California consumers. Class certification would also conserve  
 16 judicial resources and avoid the possibility of inconsistent judgments.

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

## 20                                   **FIRST CAUSE OF ACTION**

21                                   Violation of the California Automatic Renewal Law

22                                   (Bus. & Prof. Code § 17600 *et seq.* and § 17535)

23       28. Plaintiff incorporates the allegations of paragraphs 1-27 as though set forth herein.

24       29. Plaintiff is informed and believes and thereon alleges that, during the applicable  
 25 statute of limitations period, Defendants have enrolled consumers, including Plaintiff and Class  
 26 members, in automatic renewal programs and/or continuous service programs and have violated the  
 27 ARL by, among other things, (a) failing to present automatic renewal or continuous service offer  
 28 terms in a clear and conspicuous manner before a selection, subscription, or purchasing agreement

1 is fulfilled and in visual proximity, or in the case of an offer conveyed by voice, in temporal  
2 proximity, to a request for consent to the offer; (b) charging the consumer's credit card, debit card,  
3 or third-party payment account for an automatic renewal or continuous service without first  
4 obtaining the consumer's affirmative consent to an agreement containing clear and conspicuous  
5 disclosure of all automatic renewal offer terms or continuous service offer terms; and (c) failing to  
6 provide an acknowledgment that includes clear and conspicuous disclosure of all automatic renewal  
7 or continuous service offer terms, the cancellation policy, and information regarding how to cancel  
8 in a manner that is capable of being retained by the consumer.

9       30. As a result of Defendants' statutory violations, any automatic renewal or continuous  
10 service offers made or attempted to be made by Defendants to Plaintiff and Class members were in  
11 violation of law and, therefore, such offers or attempted offers were not accepted by Plaintiff or  
12 Class members and did not give rise to an agreement for automatic renewal or continuous service.

13       31. As a result of Defendants' conduct, pursuant to §§ 17603 and 17535, Plaintiff and  
14 Class members are entitled to restitution of all amounts that Defendants charged or caused to be  
15 charged to Plaintiff's and Class members' credit cards, debit cards, or third-party payment accounts  
16 during the four years preceding the commencement of this action and continuing until Defendants'  
17 statutory violations cease.

18       32. Plaintiff has suffered injury in fact and has lost money as a result of Defendants'  
19 statutory violation.

20       33. Unless enjoined and restrained by this Court, Defendants will continue to commit  
21 the violations alleged herein. Pursuant to § 17535, on behalf the Class, and also for the benefit of  
22 the general public of the State of California, Plaintiff seeks an injunction that:

23           a. Prohibits Defendants from making any automatic renewal or continuous  
24 service offer to any consumer in the State of California without first presenting all "automatic  
25 renewal offer terms" (as defined in § 17601(b)) in a manner that is "clear and conspicuous" (as  
26 defined in § 17601(c)), as required by § 17602(a)(1);

27           b. Prohibits Defendants from charging any California consumer's credit card,  
28 debit card, or third-party payment account for a subscription that includes automatic renewal or

1 continuous service without first obtaining the consumer's affirmative consent to an agreement  
 2 containing clear and conspicuous disclosure of all automatic renewal offer terms, as those terms are  
 3 defined in § 17601(b) and (c); and

4 c. Requires Defendants to provide each California consumer who enters into a  
 5 subscription that includes automatic renewal or continuous service with an acknowledgement that  
 6 meets the requirements of § 17602(a)(3).

7 34. Plaintiff reserves the right to seek other prohibitory or mandatory aspects of  
 8 injunctive relief, whether on behalf of the Class and/or for the benefit of the general public of the  
 9 State of California.

## 10 **SECOND CAUSE OF ACTION**

### 11 Violation of the Consumers Legal Remedies Act

12 (Civ. Code § 1750 *et seq.*)

13 35. Plaintiff incorporates the allegations of paragraphs 1-27 as though set forth herein.

14 36. Plaintiff and Class members are "consumers" within the meaning of Civil Code  
 15 § 1761(d) in that Plaintiff and Class members sought or acquired Defendants' goods and/or services  
 16 for personal, family, or household purposes.

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

19 38. The purchases by Plaintiff and Class members are "transactions" within the meaning  
 20 of Civil Code § 1761(e).

21 39. Defendants have violated Civil Code §§ 1770(a)(5) and (a)(9) by representing that  
 22 Defendants' goods and services have certain characteristics or quantities that they do not have and  
 23 advertising goods and services with the intent not to sell them as advertised.

24 40. Unless enjoined and restrained by this Court, Defendants will continue to commit  
 25 the violations alleged herein. Pursuant to Civil Code § 1780(a)(2), on behalf of the Class, and also  
 26 for the benefit of the general public of the State of California, Plaintiff seeks an injunction  
 27 prohibiting Defendants from continuing their unlawful practices as alleged herein.

**THIRD CAUSE OF ACTION**

Violation of the California Unfair Competition Law)

(Bus. & Prof. Code § 17200 *et seq.*)

41. Plaintiff incorporates the allegations of paragraphs 1-40 as though set forth herein.

42. The Unfair Competition Law defines unfair competition as including any unlawful, unfair, or fraudulent business act or practice; any unfair, deceptive, untrue, or misleading advertising; and any act of false advertising under section 17500. (Bus. & Prof. Code § 17200.)

43. In the course of conducting business in California within the applicable limitations period, Defendants committed unlawful, unfair, and fraudulent business practices, and engaged in unfair, deceptive, untrue, or misleading advertising, by, inter alia and without limitation, (a) failing to present statutorily-mandated “automatic renewal offer terms,” and failing to present such terms in a “clear and conspicuous” manner, in violation of § 17602(a)(1); (b) charging the consumer’s credit card, debit card, or third-party payment account for an automatic renewal without first obtaining the consumer’s affirmative consent to an agreement containing clear and conspicuous disclosure of all required automatic renewal offer terms, in violation of § 17602(a)(2); (c) failing to provide an acknowledgment that includes clear and conspicuous disclosure of all required automatic renewal offer terms, the cancellation policy, and information regarding a cancellation mechanism that is cost-effective, timely, and easy-to-use, and failing to provide such an acknowledgment in a manner capable of being retained by the consumer, in violation of § 17602(a)(3); (d) representing that Defendants’ goods or services have certain characteristics that they do not have, in violation of Civil Code § 1770(a)(5); and (e) advertising goods and services with the intent not to sell them as advertised, in violation of Civil Code § 1770(a)(9). Plaintiff reserves the right to identify other acts or omissions that constitute unlawful, unfair or fraudulent business acts or practices, unfair, deceptive, untrue or misleading advertising, and/or other prohibited acts.

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

1           45.     There were and are reasonably available alternatives to further Defendants'  
2 legitimate business interests, other than the conduct described herein.

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

5           47.     Plaintiff has suffered injury in fact and has lost money as a result of Defendants' acts  
6 of unfair competition.

7           48.     Unless enjoined and restrained by this Court, Defendants will continue to commit  
8 the violations alleged herein. Pursuant to § 17203, on behalf of the Class, and also for the benefit  
9 of the general public of the State of California, Plaintiff seeks an injunction that:

10           a.     Prohibits Defendants from making any automatic renewal or continuous  
11 service offer to any consumer in the State of California without first presenting all "automatic  
12 renewal offer terms" (as defined in § 17601(b)) in a manner that is "clear and conspicuous" (as  
13 defined in § 17601(c)), as required by § 17602(a)(1);

14           b.     Prohibits Defendants from charging any California consumer's credit card,  
15 debit card, or third-party payment account for a subscription that includes automatic renewal or  
16 continuous service without first obtaining the consumer's affirmative consent to an agreement  
17 containing clear and conspicuous disclosure of all automatic renewal offer terms, as those terms are  
18 defined in § 17601(b) and (c);

19           c.     Requires Defendants to provide each California consumer who enters into a  
20 subscription that includes automatic renewal or continuous service with an acknowledgement that  
21 meets the requirements of § 17602(a)(3);

22           d.     Prohibits Defendants from representing that Defendants' goods or services  
23 have characteristics that they do not have; and

24           e.     Prohibits Defendants from advertising goods or services with the intent not  
25 to sell them as advertised.

26           49.     Plaintiff reserves the right to seek other prohibitory or mandatory aspects of  
27 injunctive relief, whether on behalf of the Class and/or for the benefit of the general public of the  
28

1 State of California, to prevent Defendants' use or employment of practices that constitute unfair  
2 competition.

3 **PRAYER**

4 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

5 On the First Cause of Action (Violation of the ARL):

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

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

- 9 3. For a public injunction for the benefit of the People of the State of California;
- 10 4. For reasonable attorneys' fees, pursuant to Civil Code section 1780(e);

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

- 12 5. For restitution;
- 13 6. For a public injunction for the benefit of the People of the State of California;

14 On All Causes of Action:

- 15 7. For reasonable attorneys' fees, pursuant to Code of Civil Procedure § 1021.5;
- 16 8. For costs of suit;
- 17 9. For pre-judgment interest; and
- 18 10. For such other relief as the Court may deem just and proper.

19 Dated: July 26, 2019

DOSTART HANNINK & COVENEY LLP

20   
21 ZACH P. DOSTART  
22 Attorneys for Plaintiff

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury of all claims and causes of action so triable.

Dated: July 26, 2019

DOSTART HANNINK & COVENEY LLP



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ZACH P. DOSTART  
Attorneys for Plaintiff

888950.3



# Exhibit 1

# Negative Option: When No Means Yes

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



By [Mark Huffman](#)

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

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

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

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

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

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

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

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

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

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

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

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

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

## Banned in Motown

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

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

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

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

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

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

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

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

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

## Defending The Status Quo

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

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

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

## Staying Out Of The Negative Option Trap

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

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

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

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

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

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

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

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

## Exhibit 2

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

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

**SUBJECT**

Advertising: Automatic Renewal Purchases

**DESCRIPTION**

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

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

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

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

**BACKGROUND**

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

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



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

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

### **CHANGES TO EXISTING LAW**

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

Existing law, the FAA, includes the following:

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

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

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

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

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





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

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

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

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

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

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





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

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

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

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

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

### COMMENT

#### 1. Stated need for the bill

The author writes:

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

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



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

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

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

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

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

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

3. Remedies available under the bill

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



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

#### 4. Key terms defined

This bill would define the following key terms:

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

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

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



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

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

6. Author's amendments

On page 3, line 17, insert:

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

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

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

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

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

On page 4, line 5, insert:

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

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

Opposition: None Known

**HISTORY**

Source: Author

Related Pending Legislation: None Known

Prior Legislation: None Known

\*\*\*\*\*



# Exhibit 3

Date of Hearing: June 30, 2009

ASSEMBLY COMMITTEE ON JUDICIARY

Mike Feuer, Chair

SB 340 (Yee) – As Amended: June 24, 2009

PROPOSED CONSENT (As Proposed to be Amended)

SENATE VOTE: 37-0

SUBJECT: AUTOMATIC RENEWAL AND CONTINUOUS SERVICE OFFERS

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

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

**SYNOPSIS**

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

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

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



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

#### EXISTING LAW:

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





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

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

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

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

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

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





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

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

- On page 4 after line 9 insert:

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

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

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

REGISTERED SUPPORT/OPPOSITION:

Support:

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

Opposition:

None on file

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



# Exhibit 4

**Reader's**  
Digest

## LIMITED-TIME-ONLY \$10 DEAL

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# Exhibit 5

## YOUR MONEY

# How Did This Become a Commitment?

The Haggler

By DAVID SEGAL    OCT. 15, 2011

EVER get the sense that the junk mail you throw out every day includes an item or two that you really ought to read? Ever wonder if some ought-to-read letters have been designed to look junky on purpose?

The Haggler does, because he receives e-mails like the one sent recently by Barbara Rockefeller of Southbury, Conn. She complained about a magazine service that had renewed her subscriptions to Time and the Atlantic, even though she thought those subscriptions would run out after an introductory offer expired.

“The source of the credit card charge is not the subscription department of the magazines but rather some kind of service,” she wrote. “The bill shows a telephone number, but you get only an automated voice routine, not a human being. The number is (877) 754-4892.”

Naturally, the Haggler Googled those digits. And it was as if a door had swung open to a basement packed with angry people.

“Company offers ‘free trial’ of magazines, promising that you are free to ‘cancel after trial,’ but after they obtain your credit card number they continue charging without notice or permission,” wrote someone identified as “bhdsn” on Ripoffreport.com.

“They charged my credit card for a subscription without my authorization,” huffed John on 800notes.com, a site with complaints about specific phone numbers. “When I called the number an automated voice system answered — not allowing me to talk to a real person. It then took me about 10 minutes to go through all the questions and answers before I finally was able to cancel the subscription entirely.”

All of these people, it turns out, are complaining about the Synapse Group of Stamford, Conn. A subsidiary of Time Inc., Synapse partners with airlines, retailers, banks and others, offering subscriptions in exchange for, say, frequent-flier miles. It markets hundreds of magazines from publishers like Condé Nast, Hearst

and Rodale, and says on its Web site that it handles 50 million customer transactions a year.

Judging from the online ravings, Synapse is skilled at signing up subscribers but miserable at alerting them later that their subscriptions are being renewed. So bad that a plaintiff's lawyer, Gary Graifman, filed a class-action lawsuit against it, contending that it purposely tries to make its renewal notices look like junk mail. (A federal judge in New Jersey has rebuffed his efforts to certify a class; his appeal is pending.)

"You subscribe to, say, Sports Illustrated, but you get a notice from a company called Synapse, which no one has ever heard of," says Mr. Graifman, of the New York law firm Kantrowitz, Goldhamer & Graifman. "The whole game is to discourage as many people as possible from canceling, and these guys are very sophisticated about how they do that."

He sent a copy of the renewal notice that Synapse sends to customers. The front reads: "Less time at the newsstand means more time enjoying your favorite magazines." Next to that is: "Subscriber rate enclosed. Up to 40 percent off newsstand prices."

If that doesn't say "Toss me, I'm junk mail," what does?

To be fair, the other side of the letter, which has far smaller type, includes lines like, "Thank you for being a valued customer." Later, there is this: "For the next term of issues, the credit card you previously provided for your selections will charged for [fill in the name of the magazine] at [fill in the annual subscription rate]."

Compare that with the notice sent by Sports Illustrated, if you subscribe to it directly. "Important advance notice to our valued automatic renewal customers," it says in big bold type on the front, under the even larger words "Sports Illustrated." If you toss out this card, you're not paying attention.

Here's the odd part. Sports Illustrated is published by Time Inc. And Time Inc., as noted, owns Synapse. Given their shared parentage, why is Synapse's renewal notice so muffled and circuitous while Sports Illustrated's is so loud and direct?

Mr. Graifman has a guess. In 2006, he notes, Time Inc. signed an agreement with 23 attorneys general that ended an investigation into the company's auto-renew notices. In the agreement, Time denied that it had violated any laws or tried to

deceive anyone. It also agreed to a host of particulars about the way renewal notices would look in the future. They would, for instance, include the words “automatic renewal,” in clear and conspicuous letters, on the front.

Guess what? Synapse, which was acquired by Time Inc. in 2005, was not part of the agreement.

EFFORTS to speak with Synapse yielded several not-very-helpful e-mails from Kristen Kish, a member of the communications team who would not send her phone number or call the Haggler.

Honestly, Synapse — a horde fumes about your phone maze, and the *communications* staff won’t talk? Keith Coccozza, a spokesman for Time Warner, which owns Time Inc., was more responsive. In several conversations, he emphasized that the online complainers were a small fraction of Synapse’s customer base.

He also wrote this: “Millions of subscribers enjoy the ease of automatic renewal for receiving the magazines they love. But if a customer is unclear or unhappy about the service they’ve signed up for, we work with them to remedy the situation to their satisfaction.”

E-mail: haggler@nytimes.com. Keep it brief and family-friendly, and go easy on the caps-lock key. Letters may be edited for clarity and length.

A version of this article appears in print on October 16, 2011, on Page BU8 of the New York edition with the headline: How Did This Become a Commitment?.

# Exhibit 6



# Beware auto-renewals' endless charges

## Easy to sign up for, hard to shut off; complaints mount

By [Susan Ladika](#) | Published: January 28, 2015

If you aren't vigilant when you sign up for a great magazine subscription deal or a free trial offer on health care products, it could haunt you for months or years, ringing up endless charges on your credit card through automatic renewals.

"Companies sometimes make it very easy to auto renew and very hard to stop a renewal," says Lauren Sanders, associate director of the National Consumer Law Center.

In many cases, consumers sign up for low-priced subscriptions, free trial offers, annual memberships or recurring services without realizing that after the initial period ends, charges for the goods and services will continue to be billed to their credit cards.

In other cases, consumers will agree to the terms, but can't figure out how to stop the charges if they no longer want the product or service.

These practices have generated a mountain of complaints. Now regulators, public officials and lawyers are taking legal action against these controversial practices.

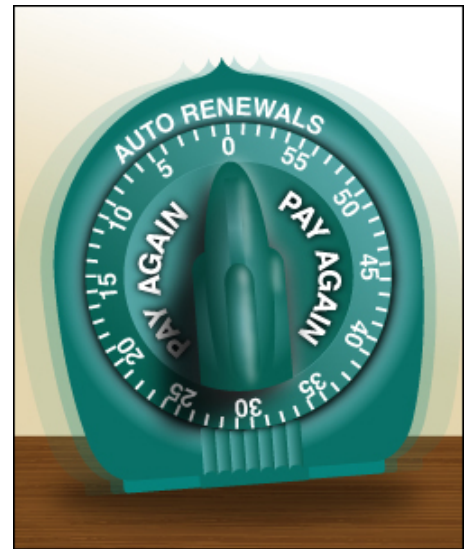
### First prosecutions under new law

In October 2014, the Federal Trade Commission (FTC) [pursued two cases](#) under the Restore Online Shoppers' Confidence Act, or [ROSCA](#) -- the first cases since the law was enacted in 2010. It prevents companies from charging consumers for an online transaction unless all terms are clearly disclosed and the company has received the consumer's informed consent.

In the first case, a judge issued a temporary restraining order against Health Formulas LLC and related companies and individuals selling weight loss, skin care, virility and other products. Consumers thought they were getting a free trial or buy-one-get-one offer and that their debit or credit card would be used to cover shipping costs. Instead, consumers were billed repeatedly for \$60 to \$120 a month.

Along with violating ROSCA, the companies were accused of violating the [Electronic Fund Transfer Act](#) by debiting consumers' accounts without written authorization.

The FTC reached a settlement with JDI Dating Ltd., which runs a series of dating websites. Along with creating fake profiles so consumers thought they were hearing from potential love interests rather than made-up people, their subscriptions were



Have you ever  
been  
automatically  
charged a

automatically renewed without their consent at a cost of \$10 to \$30 a month. The company agreed to stop its deceptive practices.

Meanwhile, attorneys general in 45 states reached a \$3.8 million settlement with satellite radio service Sirius XM for automatically renewing contracts and making it difficult for consumers to cancel contracts and receive refunds. Along with the settlement with the states, Sirius XM agreed to pay restitution to affected consumers.

### Can't shut off renewals

Problems often begin as they did with Florida resident Jason Herman, who in December 2014 filed a \$5 million federal lawsuit against SeaWorld Parks & Entertainment over its automatic renewal practice.

Herman purchased two annual passes in 2013 using the EZpay system, which allows consumers to pay in installments with monthly charges to their credit cards. Although the passes were paid off, the charges of about \$35 a month continued and the passes were automatically renewed. His request for a refund was denied.

Like Herman, many consumers don't realize the charge will continue into perpetuity unless you turn it off -- if you can figure out how to turn it off.

With some merchants, just a phone call or email will shut it off. Others make it almost impossible to cancel once you've signed up, says Ralph Dangelmaier, CEO of BlueSnap, a global payment services provider.

With merchant data breaches gaining national attention, consumers need to be particularly vigilant about charges to their credit card. Sanders says, "In light of all of the data breaches recently, companies should be allowed to keep and store consumers' credit card information only if the consumer actively chooses an auto-renewal."

Much of the controversy centers around the practice of "[negative option](#)" renewals, in which your credit card is automatically charged for a particular good or service unless you specifically opt out.

Problems often occur when consumers sign up for a free 30-day trial offer for a product or service and don't realize they'll continue to receive the merchandise or service after the trial period ends and their credit card will be billed, Dangelmaier says.

If that happens, you can't just call your credit card provider to cancel the payments. Instead, you'll need to go back to the merchant to get the charge turned off, representatives of Wells Fargo and Chase say.

You do have leverage, however, if you ask a merchant to stop billing you, and the charges continue. Then you can dispute the charges through your credit card issuer.

"If a consumer is unable to resolve a billing issue with a merchant, he or she can file a claim with Chase if they used a Chase card," spokesman Rob Tacey says.

The FTC outlines steps consumers should follow to [dispute credit card charges](#) under the Fair Billing Credit Act. You should put your complaint in writing and send it so it reaches the creditor within 60 days after the first bill with the error was sent to you.

monthly fee for a service you no longer wanted?

- ☐ Yes, make it stop!
- ☐ Yes, but it wasn't that hard to cancel.
- ☐ No, I guess I'm one of the luck few.

[VOTE](#)

**But what if you want a renewal?**

There are plenty of instances when consumers want their subscriptions to automatically renew. Maybe you're a Netflix fan, or your Internet security software is on automatic renewal.

If you've lost your credit card or been the victim of a data breach and your bank has issued you a new credit card, Visa, MasterCard and American Express all have systems that automatically update your credit card information with merchants so you don't have to notify each one that your card number has changed, says Shawn Budde, CEO of 2Checkout, an online payment processing service.

So if Bank of America issues you a new credit card because of a data breach, the Internet security software that automatically renews to your credit card each year will find your new card number and continue uninterrupted, Budde says.

But it also means unwanted charges will continue unabated.

**'Zombie accounts'**

Dumping your current credit card provider and switching to a new one will prevent the vendor from finding you, but you could end up creating a debt monster.

The system that automatically updates your credit card information won't let merchants know if you cancel your Bank of America card and switch to an American Express card, says Tyler Griffin, CEO of Prism Money, a budget and bill paying app.

But your closed card could continue to rack up charges. "The card number still exists in the bank's records; it's not as if the card is permanently erased. If the biller can make a compelling case that the customer signed a binding contract, the bank will accept the charge and bill the consumer based on the information they have on file," Griffin says. "These are kind of like zombie accounts."

If there's no contract in place, Griffin says the charges should be disputed with your credit card company. "Billing without the consumer's consent is fraudulent activity and will be treated as such by the card company."

When enough complaints roll in about a particular company, the merchants will be charged higher swipe fees, Dangelmaier says. These are the fees merchants pay to banks and credit card companies for processing card transactions. "If this happens too many times, it can cost them a lot of money."

**Legitimate debts still pile up**

It can also cost you if you've signed a contract and simply decide to stop paying. If you do that, the debt could be sent to collections, Griffin says, putting a big dent in your credit score.

IN LIGHT OF ALL  
OF THE DATA  
BREACHES  
RECENTLY,  
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SHOULD BE  
ALLOWED TO  
KEEP AND  
STORE  
CONSUMERS'  
CREDIT CARD  
INFORMATION  
ONLY IF THE  
CONSUMER  
ACTIVELY  
CHOOSES AN  
AUTO-RENEWAL.

-- Lauren Sanders  
National Consumer Law Center

But, he says, "There's a big disparity in how aggressive billers are." Those with legitimate debts will work hard to pursue those claims. "Ones that are openly shady and who have a business model of tricking consumers into ongoing charges tend to back off when confronted."

If you can't resolve the issues on your own, you can also [file complaints with the FTC](#) and your state attorney general.

U.S. Sen. Bob Casey, a Pennsylvania Democrat, wrote the FTC and the Consumer Financial Protection Bureau (CFPB), urging them to ensure consumers receive better warnings about automatic renewals and asking that they make it easier for consumers to cancel these contracts.

"Consumers shouldn't be charged for automatic renewals that are buried in fine print and nearly impossible for the average person to identify," [Casey wrote](#).

He requested the two agencies "increase efforts to alert and inform consumers about the risks of these clauses. I also request that you explore regulatory options to clarify or standardize the use of these contracts in order to better protect consumers from any potential abuse or unexpected financial strain."

# Exhibit 7

# Buy now, pay forever: Beware negative option plans

## FTC decides not to change rules for automatic renewals, free trials that aren't free

By [Michelle Crouch](#) | Published: October 6, 2014

Have you ever signed up for a "free" trial that ended up being anything but free? Or have you ever been charged for something you didn't realize you had signed up for?

If so, you were likely the victim of a controversial sales practice called negative option marketing. Negative option ads follow a simple principle: they assume that if you don't say no, you mean yes.

Often, customers sign up for something like a free credit report or a trial shipment of vitamins, enter their credit card information and then get hit with months and months of charges because they don't realize they have to cancel, can't figure out how to cancel or they just forget. Other times, they click a button to do a survey or get a free report and don't see the fine print that says they're signing up for a service with a cost.

A [Visa survey](#) in 2009 found that 29 percent of American consumers had unauthorized recurring card charges from negative option plans. The Federal Trade Commission, Better Business Bureaus and consumer groups from across the country have gotten hundreds of complaints about the practice.

"A lot of the people who complain are irate," says Jeannette Kopko, senior vice president of communications with the Better Business Bureau in Dallas. "They really feel misled and taken advantage of when they realize they have these charges on their account. If there really was a clear and conspicuous disclosure, there wouldn't be such a pattern of complaints."

Negative option plans take many different forms. Here are some common ones:

- You sign up to get a "free trial" of e-cigarettes or teeth whitener, and you're automatically enrolled to receive regular shipments of the product (which you must pay for), unless you opt out.
- You pay for an annual subscription for a magazine, and when it runs out, the magazine automatically renews your subscription and charges you.
- A book club sends you an offer for a book of the month. If you don't call and decline it within a specified time limit, the club sends you the book and charges you for it.
- You buy an airline ticket online and don't notice a box that is pre-checked for travelers insurance. The next thing you know, you're being charged every month for the service.



Kimberly Rotter of San Diego says she was duped by a negative options offer after signing up for a free trial with an Internet dating site. "I canceled before it ended, but apparently I did not cancel early enough," she says. "Their fine print was extremely fine and I missed the part that said cancellations had to be a certain number of days in advance of the renewal date, so they charged me."

Rotter complained to her credit card issuer, provided documentation, and the issuer reversed the charge. But she was banned for life from the dating site. The lesson, according to Rotter: "Anytime you give your credit card number, comb through the fine print carefully to find out what the cancellation policy is," she says. "Just assume it's tricky."

### FTC declines to act

The Federal Trade Commission announced in July 2014, after five years of deliberation, that it would not make any changes to its rules related to negative option plans, even though attorneys general from more than a dozen states and many frustrated consumers had asked the agency for more regulation. Written in 1973, the current rules apply only to one narrow type of negative option plan, the ones that notify you that they will send you a specific item (like a book) unless you opt out.

The FTC decided not to expand its [negative option rules](#) partly because a law Congress passed in 2010 called the Restore Online Shoppers' Confidence Act (ROSCA) included some of the protections consumers had asked for.

**NEGATIVE OPTION  
OFFERS:  
HOW NOT TO GET DUPED**



Still, some consumer advocates are frustrated that the FTC isn't using ROSCA to go after more companies. "It was so evident there needed to be change that Congress stepped in and enacted an entirely new law," says Bonnie Patten, executive director of Truth in Advertising, a nonprofit group. "But here we are four years later, the FTC has never used that new law, and negative option offer abuse is rampant."

FTC officials acknowledge there have been no public cases involving ROSCA, but said the commission has started to put resources into its enforcement. They noted that the agency has applied another law that prohibits deceptive marketing to successfully shut down a number of scammers that were using negative option ads.

"We just got a multi-million dollar court victory in one case," says Robert Anguizola, assistant director in the division of marketing practices. "We do go after these people. If we're shutting them down, I'm not sure why it matters what statute we used."

The Brand Activation Association, a division of the Association of National Advertisers, and the Association of Magazine Media argued against any changes to the FTC's negative options rule. They say there are already enough safeguards to protect consumers, and that free trials and automatic renewals are beneficial for customers.

"Obviously, there are always people who abuse things, but we represent legitimate brands," says Ed Kabak, the Brand Activation Association's chief legal officer. "Our concern was overregulating. Consumers can benefit from free trials and getting continuous shipments. They're convenient for everyone."

#### The rules: What merchants are supposed to do

Because of ROSCA, the rules companies must abide by are now fairly clear, at least for offers on the Internet. The law requires sellers who market a negative option offer online to meet the following criteria:

- Terms must be "clearly and conspicuously disclosed" before they get your billing information.
- They must obtain your "express informed consent" before they charge your financial account.
- They must provide a "simple mechanism" you can use to stop any recurring charges on the account.

In addition, some states have enacted even more stringent laws applying to these types of plans. In California, for example, companies must give customers a heads up before they automatically renew a subscription or contract, including a disclosure of the full terms and instructions on how to cancel.

"If you look at all the laws, it would appear that they may be adequate but we'll never know unless the FTC and state agencies start using them more," Patten says. "They really need to bring more enforcement actions."

While many merchants are following the laws, others still pre-check consent boxes (which is now prohibited), bury details of the offer in fine print that's several clicks away and make cancellations or returns difficult.

In a recent [investigation of negative options offers peddled by e-cigarette manufacturers](#), Truth in Advertising found many of the companies were difficult or impossible to reach by customers trying to cancel. In addition, the companies promised free samples but required you to cancel before you even got the product, or said you had to pay for the sample if you opened the packaging. One customer who filed a complaint with the FTC wrote:

*"The paperwork that came with the kit states that [to return the kit] ... the kit must be in reusable condition. How can you return a kit in reusable condition when you have to open the package and put the cigarette in your mouth [to sample it]?"*

Several e-cigarette companies are now facing fines and have been cited by Utah consumer protection officials for deceptive advertising.

#### New rules for phone calls?

Meanwhile, the FTC is now [asking for comment](#) on the portion of its rules regarding telemarketing sales, and that includes negative options offers made by phone.

- Read the fine print, *before* you buy, to understand the terms and conditions.
- If you sign up for a "free trial" offer, mark your calendar and to cancel on time, so you won't be auto-billed. Be persistent: I won't be as easy to cancel as it was to sign up.
- Use a prepaid credit card to prevent repeated and unwanted charges. That keeps the company from having access to your account.
- Read online reviews and investigate the business on [bbb.org](#) before you give your credit card number.

#### NEGATIVE OPTION OFFERS: WHAT TO DO IF YOU WERE DUPED

- Ask the merchant for a refund.
- If you can't resolve the dispute with the merchant, ask your card issuer to dispute the charge.
- Complain: to the [FTC](#), to [Truth In Advertising](#), your local [Better Business Bureau](#) and to your [state consumer protection division](#).

The disclosures required are already fairly strict when a telemarketer calls a consumer with an offer, says

Susan Grant, director of consumer protection at the Consumer Federation of America. But inbound calls -- when a customer calls about a product after seeing it in a television, print or radio ad -- are not as regulated.

"We would argue that the tiny, tiny print at bottom of a TV ad or the terms that are mentioned briefly in a fleeting radio advertisement aren't enough to allow consumers to make informed decisions," Grant says. "We want merchants to have to provide that information again before a consumer is enrolled in a negative option offer where they're going to start getting charged every month."

The public comment period on the FTC's telemarketing sales rule ends Nov. 13. Have a comment or an opinion? You can file it via the [FTC's public comment form](#).



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): Plaintiff Dane Tovey	<b>FOR COURT USE ONLY</b>  <b>ELECTRONICALLY FILED</b> Superior Court of California, County of San Diego  <b>07/26/2019 at 05:07:50 PM</b> Clerk of the Superior Court By Vanessa Bahena, Deputy Clerk
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego 92101 BRANCH NAME: Hall of Justice	CASE NUMBER: <b>37-2019-00038992-CU-BT-CTL</b>  JUDGE: <b>Judge Timothy Taylor</b> DEPT:
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

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:
- |   |  |  |
|---|--|--|
| <b>Auto Tort</b><br><input type="checkbox"/> Auto (22)<br><input type="checkbox"/> Uninsured motorist (46)<br><b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b><br><input type="checkbox"/> Asbestos (04)<br><input type="checkbox"/> Product liability (24)<br><input type="checkbox"/> Medical malpractice (45)<br><input type="checkbox"/> Other PI/PD/WD (23)<br><b>Non-PI/PD/WD (Other) Tort</b><br><input checked="" type="checkbox"/> Business tort/unfair business practice (07)<br><input type="checkbox"/> Civil rights (08)<br><input type="checkbox"/> Defamation (13)<br><input type="checkbox"/> Fraud (16)<br><input type="checkbox"/> Intellectual property (19)<br><input type="checkbox"/> Professional negligence (25)<br><input type="checkbox"/> Other non-PI/PD/WD tort (35)<br><b>Employment</b><br><input type="checkbox"/> Wrongful termination (36)<br><input type="checkbox"/> Other employment (15) | <b>Contract</b><br><input type="checkbox"/> Breach of contract/warranty (06)<br><input type="checkbox"/> Rule 3.740 collections (09)<br><input type="checkbox"/> Other collections (09)<br><input type="checkbox"/> Insurance coverage (18)<br><input type="checkbox"/> Other contract (37)<br><b>Real Property</b><br><input type="checkbox"/> Eminent domain/Inverse condemnation (14)<br><input type="checkbox"/> Wrongful eviction (33)<br><input type="checkbox"/> Other real property (26)<br><b>Unlawful Detainer</b><br><input type="checkbox"/> Commercial (31)<br><input type="checkbox"/> Residential (32)<br><input type="checkbox"/> Drugs (38)<br><b>Judicial Review</b><br><input type="checkbox"/> Asset forfeiture (05)<br><input type="checkbox"/> Petition re: arbitration award (11)<br><input type="checkbox"/> Writ of mandate (02)<br><input type="checkbox"/> Other judicial review (39) | <b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)</b><br><input type="checkbox"/> Antitrust/Trade regulation (03)<br><input type="checkbox"/> Construction defect (10)<br><input type="checkbox"/> Mass tort (40)<br><input type="checkbox"/> Securities litigation (28)<br><input type="checkbox"/> Environmental/Toxic tort (30)<br><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)<br><b>Enforcement of Judgment</b><br><input type="checkbox"/> Enforcement of judgment (20)<br><b>Miscellaneous Civil Complaint</b><br><input type="checkbox"/> RICO (27)<br><input type="checkbox"/> Other complaint (not specified above) (42)<br><b>Miscellaneous Civil Petition</b><br><input type="checkbox"/> Partnership and corporate governance (21)<br><input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|--|
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<br>b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve<br>c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input checked="" type="checkbox"/> Large number of witnesses<br>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<br>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; and 3. Unfair Competition
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: July 26, 2019

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.

Page 1 of 2

**ELECTRONICALLY FILED**

Superior Court of California,  
County of San Diego

**07/26/2019** at 05:07:50 PM

Clerk of the Superior Court  
By Vanessa Bahena, Deputy Clerk

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6 Attorneys for Plaintiff

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 DANE TOVEY,  
individually and on behalf of all others  
11 similarly situated,

12 Plaintiff,

13 vs.

14 TRUSTED MEDIA BRANDS, INC.,  
a Delaware corporation;  
15 and DOES 1-50, inclusive,

16 Defendants.

CASE NO. 37-2019-00038992-CU-BT-CTL

**DECLARATION OF DANE TOVEY  
PURSUANT TO CALIFORNIA CIVIL  
CODE SECTION 1780(d)**

1 I, Dane Tovey, declare as follows:

2 1. I submit this declaration pursuant to Section 1780(d) of the Cal. Civ. Code.

3 2. Defendants have done and are doing business in San Diego County, including the  
4 marketing of magazine subscriptions. I entered into a discounted magazine subscription with  
5 defendants within San Diego County.

6 I declare under penalty of perjury under the laws of the State of California that the  
7 foregoing is true and correct. Executed on July 18, 2019, at San Diego, California.

8  
9 *Dane Tovey 7/18/19*

10 DANE TOVEY

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<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>	
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) 450-7072	
PLAINTIFF(S) / PETITIONER(S): Dane Tovey	
DEFENDANT(S) / RESPONDENT(S):	
TOVEY VS. TRUSTED MEDICA BRANDS INC [EFILE]	
<b>NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE</b>	CASE NUMBER: 37-2019-00038992-CU-BT-CTL

**CASE ASSIGNED FOR ALL PURPOSES TO:**

Judge: Timothy Taylor

Department: C-72

**COMPLAINT/PETITION FILED:** 07/26/2019

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	12/27/2019	09:15 am	C-72	Timothy Taylor

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.

**MANDATORY eFILE:** Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at [www.onelegal.com](http://www.onelegal.com). Refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases or guidelines and procedures.

**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](http://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).



# SUMMONS (CITACION JUDICIAL)

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

TRUSTED MEDIA BRANDS, INC., a Delaware corporation  
and DOES 1-50, inclusive

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

DANE TOVEY, 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

07/29/2019 at 10:08:00 AM

Clerk of the Superior Court  
By Melissa Reyes, 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](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://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](http://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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://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):

37-2019-00038992-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: 07/29/2019  
(Fecha)

Clerk, by  
(Secretario)

M. Reyes

, Deputy  
(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)).

[SEAL]



## 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):
 

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
- ☐ by personal delivery on (date):

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Zachariah Dostart, 255071 Dostart Hannink & Coveney LLP 4180 La Jolla Village Drive, Suite 530 La Jolla, CA 92037 TELEPHONE NO.: (858)623-4285 ATTORNEY FOR (Name):	<b>ELECTRONICALLY FILED</b> Superior Court of California, County of San Diego <b>08/21/2019</b> at 12:58:00 PM Clerk of the Superior Court By E- Filing, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, San Diego County 330 W. Broadway San Diego, CA 92101-3409	
PLAINTIFF/PETITIONER: DANE TOVEY, individually DEFENDANT/RESPONDENT: TRUSTED MEDIA BRANDS, INC., a Delaware corporation	CASE NUMBER: 37-2019-00038992-CU-BT-CTL
<b>PROOF OF SERVICE OF SUMMONS</b>	Ref. No. or File No.: 17665-1

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
2. I served copies of: Class Action Complaint, Civil Case Cover Sheet, Declaration of Dane Tovey Pursuant to California Civil Code Section 1780(d), Notice of Case Assignment, Notice to Litigants, Stipulation to Alternative Dispute Resolution Process, Alternative Dispute Resolution Packet
3. a. Party served: Trusted Media Brands, Inc., a Delaware corporation

b. Person Served: Frances Ferendez-Managing agent - Person Authorized to Accept Service of Process

4. Address where the party was served: 160 Greentree Drive, Suite 101  
Dover, DE 19904

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 service of process for the party (1) on (date): 08/01/2019 (2) at (time): 3:35PM

6. The "Notice to the Person Served" (on the summons) was completed as follows:

d. on behalf of:

Trusted Media Brands, Inc., a Delaware corporation  
under: CCP 416.10 (corporation)

7. Person who served papers

- a. Name: Sharlene Ryan
- b. Address: One Legal - 194-Marin  
1400 North McDowell Blvd, Ste 300  
Petaluma, CA 94954

c. Telephone number: 415-491-0606

d. The fee for service was: \$ 180.00

e I am:

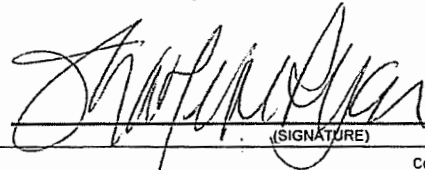
- (1) Not a registered California process server.

8. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: 08/13/2019

Sharlene Ryan

(NAME OF PERSON WHO SERVED PAPERS)



(SIGNATURE)