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7

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

10

11 LAURIE GORE and CYNTHIA TATE,
individually and on behalf of all others
12 similarly situated,

13 Plaintiffs,

14 vs.

15 POTPOURRI GROUP, INC., a Delaware
corporation; CLARUS COMMERCE LLC,
16 a Connecticut limited liability company;
17 and DOES 2-50, inclusive,

18 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
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CASE NO. 37-2020-00019745-CU-BT-CTL

CLASS ACTION

SECOND AMENDED COMPLAINT FOR:

(1) FALSE ADVERTISING (BASED ON
VIOLATION OF THE CALIFORNIA
AUTOMATIC RENEWAL LAW)
[Bus. & Prof. Code, § 17535 & § 17600 et
seq.]; and

(2) UNFAIR COMPETITION
[Bus. & Prof. Code, § 17200 et seq.].

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1 **INTRODUCTION**

2 1. This class action complaint alleges that defendants Potpourri Group, Inc. (“PGI”)
3 and Clarus Commerce LLC (“Clarus”) violate California law in connection with automatically
4 renewing membership programs for PGI’s various brands. Together, PGI and Clarus present offers
5 to California consumers regarding an automatic renewal or continuous service program without
6 providing “clear and conspicuous” disclosures of “automatic renewal offer terms,” as mandated by
7 California law; post charges to consumers’ credit or debit cards for purported membership charges
8 without first obtaining the consumers’ affirmative consent to an agreement containing the requisite
9 clear and conspicuous disclosures; and fail to provide an acknowledgment that includes the required
10 clear and conspicuous disclosures. This course of conduct gives rise to restitution and injunctive
11 relief pursuant to the general remedies provision of the False Advertising Law, Bus. & Prof. Code
12 § 17535, based on violation of the California Automatic Renewal Law (Bus. & Prof. Code, § 17600
13 et seq.) (“ARL”); violates the Consumers Legal Remedies Act (Civ. Code, § 1750 et seq.)
14 (“CLRA”); and violates the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) (“UCL”).

15 **THE PARTIES**

16 2. Plaintiff Laurie Gore (“Plaintiff”) is an individual residing in San Diego County,
17 California.

18 3. Defendant Potpourri Group, Inc. is a Delaware corporation that does business in San
19 Diego County, including the marketing of clothing and other merchandise and the dissemination
20 and conveyance of offers for its VIP membership program.

21 4. Defendant Clarus Commerce LLC is the true name of the entity previously sued
22 herein under the fictitious name DOE 1. Clarus is a limited liability company organized under the
23 laws of Connecticut and does business in San Diego County, including but not limited to the
24 dissemination and conveyance of offers for the automatically renewing or continuous service
25 membership programs.

26 5. Plaintiff does not know the names of the defendants sued as DOES 2 through 50 but
27 will amend this complaint when that information becomes known. Plaintiff alleges on information
28 and belief that each of the DOE defendants is affiliated with one or more of the named defendants

1 in some respect and is in some manner responsible for the wrongdoing alleged herein, either as a
2 direct participant, or as the principal, agent, successor, alter ego, or co-conspirator of or with one or
3 more of the other defendants. For ease of reference, Plaintiff will refer to the named defendants and
4 the DOE defendants collectively as “Defendants.”

5 6. Venue is proper in this judicial district. Neither PGI nor Clarus has designated a
6 principal office in California, and therefore venue is proper in any county designated by Plaintiff.

7 **BACKGROUND**

8 7. PGI markets and sells apparel and a variety of other merchandise. PGI describes itself
9 as “one of the most successful multi-brand direct-to-consumer merchants in America, serving
10 millions of customers a year.” PGI’s brands include, without limitation, *Cuddledown*, *NorthStyle*,
11 *The Pyramid Collection*, *Serengeti*, *In The Company Of Dogs*, *Magellan’s*, *Catalog Favorites*,
12 *Young Explorers*, *Back In The Saddle*, *Whatever Works*, *Country Store*, *Potpourri*, *Expressions*,
13 *Nature’s Jewelry*, *The Stitchery*, *SageFinds*, *TravelSmith*, and *Chadwicks*.

14 8. PGI has a VIP membership program for each of the foregoing brands (the “PGI VIP
15 membership program”). Consumers who are enrolled in a PGI VIP membership program qualify
16 for certain benefits including free or rebated shipping and 10% discount on purchases.

17 9. Clarus is a company that specializes in the design, development, and implementation
18 of loyalty programs. As described on its website, Clarus “launch[es] and maintain[s] premium
19 loyalty programs for some of the world’s most recognizable brands.” (See
20 <https://www.claruscommerce.com/premium-loyalty-programs/premium-loyalty-101/> [last accessed
21 January 11, 2021].) Pursuant to a contract between PGI and Clarus, those companies work together
22 and assist each other to advertise and operate the various PGI VIP membership programs.

23 10. After enrolling a consumer in a PGI VIP membership program, Defendants thereafter
24 post charges to the consumer’s credit or debit card in the amount of \$14.95 each and every month.
25 However, Defendants fail to provide the clear and conspicuous disclosures of automatic renewal
26 offer terms as mandated by California law.

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1 **THE CALIFORNIA AUTOMATIC RENEWAL LAW**

2 11. In 2009, the California Legislature passed Senate Bill 340, which took effect as the
3 ARL on December 1, 2010, and was codified as Article 9 of Chapter 1 of the False Advertising
4 Law. (Unless otherwise noted, statutory citations herein are to the California Business and
5 Professions Code.) SB 340 was introduced because:

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

13 (See Exhibit 1 at p. 4.)

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

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

23 (See Exhibit 2 at p. 8.)

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

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

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

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

17 (3) Fail to provide an acknowledgment that includes the automatic renewal or
18 continuous service offer terms, cancellation policy, and information regarding how to cancel in a
19 manner that is capable of being retained by the consumer. (§ 17602(a)(3).) If the offer includes a
20 free trial, the business must also disclose in the acknowledgment how to cancel and allow the
21 consumer to cancel before the consumer pays for the goods or services. (*Ibid.*) Section 17602(b)
22 requires that the acknowledgment specified in § 17602(a)(3) include a toll-free telephone number,
23 electronic mail address, a postal address if the seller directly bills the consumer, or it shall provide
24 another cost-effective, timely, and easy-to-use mechanism for cancellation.

25 14. Violation of the ARL gives rise to restitution and injunctive relief under the general
26 remedies provision of the False Advertising Law, § 17535, as well as under the remedies provision
27 of the UCL, § 17203. (See § 17604(a) (“[A]ll available civil remedies that apply to a violation of
28 this article may be employed.”).)

1 **Complaint Type: Billing/Collection Issues (May 21, 2020)**. On 7/22/2019 I made
2 a purchase from PGI Northstyle online using my credit card. Unbeknownst to me,
3 they have been charging this card \$14.95 monthly since August 19, 2019 for a VIP
4 membership which I never signed up for. I did not notice this until 5/21/2020 and
5 called the number listed on my credit card statement. I explained that I did not sign
6 up for this and I honestly did not even know what this VIP membership entailed. I
7 was curtly informed that I had to have intentionally signed up for this program as
8 you have to check a box and sign your name attesting to the fact that you are
intentionally signing up or this program. I never, ever sign up for these type of things
and as I only order from this particular company maybe twice a year at the most, I
would not have signed up for any such program as there would be no value in it for
me. The gentleman whom I spoke with cancelled my membership so I will not incur
any future charges but I have now been charged a total of \$163.83 for a membership
I never signed up for. Incidentally, on 11/22/2019 my card was charged \$29.28
instead of \$14.95. Puzzling to say the least.

9 (A true and correct printout of that complaint is attached as Exhibit 6.)

10 **Beth G. (April 9, 2020)**. Have been charged \$14.95 per month after using a coupon
11 on Catalog Favorites for a purchase. It was not clear that I was enrolling in a “VIP”
12 purchasing club. Same complaint as another reviewer below. I will never do
13 business with any of the Potpourri companies in the future. Am concerned that the
14 company(ies) still have an A+ rating after so many complaints. Terrible business
15 practice to dupe customers when promising free shipping.

16 (A true and correct printout of that complaint is attached as Exhibit 7.)

17 **Complaint Type: Billing/Collection Issues (January 28, 2020)**. I recently
18 discovered a charge that I have not signed up for. I have been charged 14.95 every
19 month for almost a year. I would like my involuntary membership cancelled but am
20 not sure where to go. I also want all of the illegitimate charges refunded.

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

22 **Complaint Type: Problems with Product/Service (December 27, 2019)**. After
23 purchasing one item from this catalog I was placed on the VIP membership without
24 my knowledge or consent and subsequently charged 15.94 every month. The
25 purchase was made in September 2019 and the “VIP” charges were made in Oct. and
26 Nov. at which time I called them to get an explanation for the charges. They then
27 removed me from the VIP membership which I never signed up for in the first place.

28 (A true and correct printout of that complaint is attached as Exhibit 9.)

Complaint Type: Problems with Product/Service (December 15, 2019). I have
repeatedly told this company that I do NOT want to be enrolled in their VIP plan.
This was done without my knowledge or permission! They bill me \$14.95 per month
for this “privilege”. I had the first charge reversed and they promised they would not
charge my credit again but they did. This is outright fraud. I made a purchase with
them some time ago and now that they have my credit card number they seem to feel
they can charge whatever they want on it. I will have this second charge reversed as
well and then I will close out the card. I am furious over the inconvenience and theft.
Please do something to put a stop to this very egregious practice! Thank you!

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

1 **Complaint Type: Advertising/Sales Issues (February 26, 2019).** I placed an order
2 for clothing in May 2018 and ever since then this company has been charging me a
3 stupid VIP club fee of \$14.95 each and every month since then. Evidently they have
4 this silently included in their defaults when ordering, because this charge does not
show up on the orders themselves. It only shows up as a separate charge each and
every month of which I never asked for. I need a refund immediately of \$149.50 for
each and every time they have charged my credit card.

5 (A true and correct printout of that complaint is attached as Exhibit 11.)

6 16. Consumer complaints about PGI's VIP program posted on the pissedconsumer.com
7 website describe similar experiences (copied verbatim):

8 **Melinda V. – Being charged for 14.95 a month for VIP program (Update by**
9 **user July 12, 2020).** I want VIP membership to end and to be reimbursed the money
I did not authorize a total of \$44.85. I have proof in my bank statements but I will
not be posting them.

10 I can provide exact dates monies where removed from my account.

11 May 14, 2020, June 11, 2020, and July 10, 2020. Thank you.

12 **(Original review posted by user Jul 12, 2020)** I have been calling to cancel and I
13 thought the charge was a one time charge not a recurring charge. Not able to get
anyone on the phone to cancel. Keep getting the run around.

14 User's recommendation: Don't buy from Potpourri save yourself the headache.

15 (A true and correct printout of that complaint is attached as Exhibit 12.)

16 **Donna O. – Pyramid Collection - VIP membership Scam/ Huge Money Loss**
17 **(May 14, 2020).** Livid consumer wondering how you took \$14.95 from my account
18 starting 7/11/2018 until 4/8/2019?? The amount changed to \$16.07 for 9 months,
then starting 1/2/2020 went back to \$14.95 up until this month, withdrawing the last
transaction on May 1st.

19 Chase Visa just sent me an alert yesterday????! I couldn't get through to either
20 number listed, no answer just hangs up. I did not ask to be a VIP member because I
21 rarely shop on this site, I received NO information about this VIP membership, nor
22 was I informed it was automatic if you ordered a sale item or received free shipping
which is what other people are getting as a response?? I haven't even spent over
\$353 from this company in total ever.

23 Extremely upset that you took it upon yourselves to take in total \$353.93 from my
24 bank account. I want my money returned.

25 I'm not a VIP member nor do I want to be. I haven't even ordered from this company
in 2+ years.

26 (A true and correct printout of that complaint is attached as Exhibit 13.)

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1 **Troy S. of Walnut, CA – Fraudulent Monthly Charges to Mom’s Credit Card**
2 **(May 31, 2019).** My mother is turning 82 in a few days. She bought something from
3 Potpourri once, and now her credit card is charged 14.95 per month. This has been
going on for several months. I just became aware of it today. I am trying to get
Potpourri to cancel the charge but they have refused.

4 (A true and correct printout of that complaint is attached as Exhibit 14.)

5 17. As described below, similar to many of the consumer complaints described above,
6 the plaintiff in this action was charged for a PGI VIP membership program without having received
7 clear and conspicuous disclosure of automatic renewal offer terms and without their affirmative
8 consent to an agreement setting forth the required clear and conspicuous disclosures.

9 **UNAUTHORIZED CHARGES TO PLAINTIFF**

10 18. In or about September 2019, Plaintiff made an online purchase through the website
11 of NorthStyle, one of PGI’s retail brands.

12 19. When a consumer purchases merchandise through the NorthStyle website, the first
13 step of the order flow is for the consumer to select one or more items of merchandise. To illustrate
14 that step, attached hereto as Exhibit 15 is a printout of the NorthStyle webpage showing a selection
15 of merchandise for purchase. The merchandise selection page does not contain disclosure of
16 automatic renewal offer terms relating to the VIP program.

17 20. When a consumer clicks the “CHECKOUT” button that appears on Exhibit 15, the
18 consumer is presented with a page on which the consumer selects whether to login as a returning
19 customer or to continue to the checkout step as a new customer. Attached hereto as Exhibit 16 is a
20 printout of the NorthStyle webpage showing that option.

21 21. When a consumer clicks the “CONTINUE” button that appears on Exhibit 16, the
22 consumer is then presented with a checkout page, a printout of which is attached hereto as
23 Exhibit 17. The checkout page includes spaces for the consumer to input shipping and payment
24 information, including credit card or debit card details. The checkout page does not contain
25 disclosure of automatic renewal offer terms regarding PGI’s VIP program.

26 22. After the consumer submits an order, the consumer is then presented with a pop-up
27 box (shown in Exhibit 18), which invites the consumer to enter his or her email address. The
28 consumer is told, in large white printing displayed against a contrasting dark red background, that

1 the consumer can “CLAIM FREE SHIPPING & 10% CASH BACK on Every Order!” and that, by
2 entering an email address, the consumer can claim “10% cash back and free shipping rebate on
3 today’s order.” On the same page, however, set forth in small and faint print, the following five-line
4 paragraph appears:

5 **Offer and Billing Details:** To activate your NorthStyle VIP membership simply enter your email address below as your
6 electronic signature and click the “Start Saving” button. You’ll enjoy all of your VIP benefits free for 30 days. If you
7 decide not to continue your NorthStyle VIP membership, simply call 855-888-8292 or log on to cancel during your
review. Otherwise, we’ll automatically extend your VIP membership and benefits for just \$14.95 per month, plus
taxes, if any, charged to the same card you used today.

8 That paragraph does not qualify as a “clear and conspicuous” disclosure of “automatic renewal offer
9 terms” as mandated by § 17601(b) and (c) and § 17602.

10 23. After the consumer clicks the “START SAVINGS” button on Exhibit 18, the
11 consumer is presented with a pop-up box entitled “Welcome to NorthStyle VIP,” as shown on
12 Exhibit 19. Exhibit 19 likewise does not contain “clear and conspicuous” disclosure of “automatic
13 renewal offer terms” as mandated by § 17601(b) and (c) and § 17602.

14 24. When Plaintiff made her online purchase through the NorthStyle website in
15 September 2019, she followed the sequence of steps set forth above. In doing so, Plaintiff submitted
16 her credit card information to complete the purchase.

17 25. In April 2020, Plaintiff discovered that Defendants were charging her credit card
18 \$14.95 per month for a PGI VIP membership program. On further investigation, Plaintiff discovered
19 that Defendants had posted charges to her credit card of \$14.95 each month since October 2019.

20 26. Upon discovering those charges, Plaintiff cancelled the membership. On April 17,
21 2020, Plaintiff received an email from Defendants confirming that the PGI VIP membership
22 program was canceled, effective on April 19, 2020. A true and correct copy of that cancellation
23 email is attached hereto as Exhibit 20. Nevertheless, on April 23, 2020, Defendants posted another
24 charge of \$14.95 to Plaintiff’s credit card.

25 27. Between October 2019 and April 2020, Defendants posted seven (7) charges of
26 \$14.95 each to Plaintiff’s credit card, without her authorization.

27 28. When Plaintiff made her online purchase in September 2019, she was not aware that
28 Defendants were going to enroll her in a program under which Defendants would post monthly

1 charges to her credit card, and Plaintiff did not consent to be enrolled in or charged for such a
2 program. If Plaintiff had known that Defendants were going to enroll her in a program that would
3 result in subsequent charges of \$14.95 each month, Plaintiff either would not have purchased
4 merchandise from NorthStyle in the first place, or would have declined to enter her email address
5 in the pop-up box, or would have taken other steps to avoid becoming enrolled in and being charged
6 for such a program, such that Plaintiff would not have paid money to Defendants for the PGI VIP
7 membership program.

8 29. Plaintiff received no value in return for the PGI VIP membership program charges
9 that Defendants posted to her credit card.

10 **CLASS ACTION ALLEGATIONS**

11 30. Plaintiff brings this lawsuit as a class action under Code of Civil Procedure § 382 on
12 behalf of the following Class: “All California residents who, between June 10, 2016 and February
13 15, 2022, were both (i) enrolled in any PGI VIP membership program and (ii) charged at least one
14 membership fee for such program. Excluded from the Class are all employees of Defendant, all
15 employees of Plaintiff’s counsel, and the judicial officers to whom this case is assigned.” The term
16 “PGI VIP membership program” consists of VIP programs relating to the following brands:
17 Cuddledown, NorthStyle, The Pyramid Collection, Serengeti, In The Company Of Dogs,
18 Magellan’s, Catalog Favorites, Young Explorers, Back In The Saddle, Whatever Works, Country
19 Store, Potpourri, Expressions, Nature’s Jewelry, The Stitchery, SageFinds, TravelSmith, and
20 Chadwicks.

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

24 32. Common Questions of Fact or Law. There are questions of fact or law that are
25 common to the members of the Class, which predominate over individual issues. Common questions
26 regarding the Class include, without limitation: (1) whether Defendants present all statutorily-
27 mandated automatic renewal offer terms, within the meaning of § 17601(b); (2) whether Defendants
28 present automatic renewal offer terms in a manner that is “clear and conspicuous,” within the

1 meaning of § 17601(c), and in “visual proximity” to a request for consent to the offer, or in the case
2 of an offer conveyed by voice, in temporal proximity to a request for consent to the offer, as required
3 by § 17602; (3) whether Defendants obtain consumers’ affirmative consent to an agreement
4 containing clear and conspicuous disclosure of automatic renewal offer terms before charging a
5 credit card, debit card, or third-party payment account; (4) whether Defendants provide consumers
6 with an acknowledgment that includes clear and conspicuous disclosure of all statutorily-mandated
7 automatic renewal or continuous service offer terms, the cancellation policy, and information
8 regarding how to cancel; (5) Defendants’ record-keeping practices; and (6) the appropriate remedies
9 for Defendants’ conduct.

10 33. Numerosity. The Class is so numerous that joinder of all class members would be
11 impracticable. Plaintiff is informed and believe and thereon allege that the Class consists of at least
12 100 members.

13 34. Typicality and Adequacy. Plaintiff alleges that Defendants enrolled Class members
14 in an automatic renewal membership program without disclosing all terms required by law, and
15 without presenting such terms in the requisite “clear and conspicuous” manner; charged Class
16 members’ credit cards, debit cards, or third-party accounts without first obtaining the Class
17 members’ affirmative consent to an agreement containing clear and conspicuous disclosure of
18 automatic renewal offer terms; and failed to provide the requisite acknowledgment. Plaintiff has no
19 interests that are adverse to those of the other Class members. Plaintiff will fairly and adequately
20 protect the interests of the Class members.

21 35. Superiority. A class action is superior to other methods for resolving this controversy.
22 Because the amount of restitution or damages to which each Class member may be entitled is low
23 in comparison to the expense and burden of individual litigation, it would be impracticable for class
24 members to redress the wrongs done to them without a class action forum. Furthermore, on
25 information and belief, Class members do not know that their legal rights have been violated. Class
26 certification would also conserve judicial resources and avoid the possibility of inconsistent
27 judgments.

28

1 **FIRST CAUSE OF ACTION**

2 False Advertising – Based on Violation of the Automatic Renewal Law

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

4 36. Plaintiff incorporates the previous allegations as though set forth herein.

5 37. Plaintiff is informed and believe and thereon allege that, during the applicable statute
6 of limitations period, Defendants have enrolled consumers, including Plaintiff and Class members,
7 in automatic renewal and/or continuous service membership programs for a PGI VIP membership
8 program and have (a) failed to present the automatic renewal or continuous service offer terms in a
9 clear and conspicuous manner before the membership agreement is fulfilled and in visual proximity,
10 or in the case of an offer conveyed by voice, in temporal proximity, to the request for consent to the
11 offer; (b) charged the consumer’s credit or debit card or the consumer’s third-party payment account
12 for an automatic renewal or continuous service without first obtaining the consumer’s affirmative
13 consent to an agreement containing clear and conspicuous disclosure of all automatic renewal offer
14 terms or continuous service offer terms; and (c) failed to provide an acknowledgment that includes
15 clear and conspicuous disclosure of automatic renewal or continuous service offer terms, the
16 cancellation policy, and information regarding how to cancel.

17 38. As a result of Defendants’ conduct, pursuant to § 17535, Plaintiff and Class members
18 are entitled to restitution of all amounts that Defendants charged for a PGI VIP membership program
19 during the four years preceding the filing of the initial Complaint in this action and continuing until
20 Defendants’ statutory violations cease.

21 39. Pursuant to § 17535, for the benefit of the general public of the State of California,
22 Plaintiff and Class members seek a public injunction enjoining Defendants from making offers to
23 California consumers for a PGI VIP membership program that do not comply with California law
24 and from posting membership charges to a consumer’s credit card, debit card, or third party payment
25 account without first obtaining the consumer’s affirmative consent to an agreement containing the
26 required clear and conspicuous disclosures.

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1 **SECOND CAUSE OF ACTION**

2 Unfair Competition

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

4 40. Plaintiff incorporates the previous allegations as though fully set forth herein.

5 41. The Unfair Competition Law defines unfair competition as including any unlawful,
6 unfair or fraudulent business act or practice; any unfair, deceptive, untrue, or misleading advertising;
7 and any act prohibited by Chapter 1 of Part 3 of Division 7 of the Business and Professions Code.
8 (§ 17200.)

9 42. Defendants committed unlawful, unfair, and/or fraudulent business practices, and
10 engaged in unfair, deceptive, untrue, or misleading advertising, by, inter alia and without limitation:
11 (a) failing to present the automatic renewal offer terms in a clear and conspicuous manner before a
12 subscription or purchasing agreement is fulfilled and in visual proximity, or in the case of an offer
13 conveyed by voice, in temporal proximity, to a request for consent to the offer, in violation of
14 § 17602(a)(1); (b) charging the consumer in connection with an automatic renewal or continuous
15 service without first obtaining the consumer's affirmative consent to an agreement containing clear
16 and conspicuous disclosures of automatic renewal offer terms or continuous service offer terms, in
17 violation of § 17602(a)(2); and (c) failing to provide an acknowledgment that includes clear and
18 conspicuous disclosure of all required automatic renewal offer terms, the cancellation policy, and
19 information regarding how to cancel, in violation of § 17602(a)(3). Plaintiff reserves the right to
20 identify other acts or omissions that constitute unlawful, unfair or fraudulent business acts or
21 practices, unfair, deceptive, untrue or misleading advertising, and/or other prohibited acts.

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

26 44. There were reasonably available alternatives to further Defendants' legitimate
27 business interests, other than the conduct described herein.

28

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

3 46. Plaintiff has suffered injury in fact and lost money as a result of Defendants' acts of
4 unfair competition.

5 47. Pursuant to § 17203, Plaintiff and the Class members are entitled to an order:
6 (1) requiring Defendants to make restitution of all amounts received in connection with the
7 unlawful, unfair, and/or fraudulent business practices alleged above; and (2) enjoining Defendants
8 from committing further violations of the UCL.

9 **PRAYER**

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

11 On the First Cause of Action:

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

14 On the Second Cause of Action:

- 15 3. For restitution;
16 4. For a public injunction for the benefit of the People of the State of California;

17 On All Causes of Action:

- 18 5. For an award of attorneys' fees pursuant to Code Civ. Proc. § 1021.5;
19 6. For costs of suit;
20 7. For pre-judgment interest; and
21 8. For such other relief that the Court deems just and proper.

22 Dated: September 20, 2022

DOSTART HANNINK LLP

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24 
25 ZACH F. DOSTART
Attorneys for Plaintiff

26 941161.3

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Exhibit 1

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

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

SUBJECT

Advertising: Automatic Renewal Purchases

DESCRIPTION

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

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

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

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

BACKGROUND

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

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

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

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

CHANGES TO EXISTING LAW

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

Existing law, the FAA, includes the following:

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

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

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

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

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



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 2

Date of Hearing: June 30, 2009

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

PROPOSED CONSENT (As Proposed to be Amended)

SENATE VOTE: 37-0

SUBJECT: AUTOMATIC RENEWAL AND CONTINUOUS SERVICE OFFERS

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

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

SYNOPSIS

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

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

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



- 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 3

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



08/08/2020

I purchase an item from Northstyle over a year ago and without my knowledge I was enrolled in the VIP club, and for at least the past 14 months my credit card (***** *) has been charged \$14.95 without my consent. I just checked my card charges and discovered these charges. I immediately canceled my VIP membership and then I wrote to Northstyle requesting a refund of the \$209.30 that was surreptitiously taken from me. I have yet to hear from them. ***** ** *****

Response

09/02/2020

I apologize for the delay in responding. We are issuing a full credit to your card. If we can be of any further assistance, please let us know. Sincerely, Customer Service

Exhibit 4

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



07/22/2020

I have been ripped off and robbed since May 2019 on a monthly basis. I was innocently mis-led and made to join a club I never wanted or asked for. The only way I knew was by revieweing my monthly credit card charges. I have been charged \$14.95 every single month by this evil company that is being run by crooks and criminals. Please escalate this matter to DOJ, FBI and ** State Attorney. PLEASE HELP. This company needs to be put out of business, they should not exist or do business in any state or any country PERIOD. Owners of this company should go to jail.

E

Response

07/22/2020

We have confirmed you successfully cancelled your VIP membership as of this morning, 7/22/2020. a refund of \$224.25 is in process. Please note these will post as 15 separate refunds of \$14.95.Thank you.



Customer Response

07/22/2020

[A default letter is provided here which indicates your acceptance of the business's response. If you wish, you may update it before sending it.] Better Business Bureau: I have reviewed the response submitted by the business and have determined that the response does satisfy my issues and/or concerns in reference to complaint #*****. I understand that by choosing to accept the business response that my complaint will be closed as resolved. Regards,
***** *****

Exhibit 5

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



05/28/2020

I am writing this letter to challenge some fraudulent charges to my debit card. On December 12, 2019, I ordered a Christmas gift from a company called PGI*Favorites/Catalog Favorites Potpourri Group Inc. *** ***** ** *****
 ***** ** ***** ***** I was subsequently informed that the item was backordered. It did not arrive until March 15, 2020. That was when they hit my account for \$28.56 - which I am not disputing. I am, however, disputing the \$14.95 charges on my account on January 14, 2020, February 12, 2020 and April 6, 2020. These unauthorized fraudulent charges totaled \$44.85. On April 12, 2020, I contacted the company at ***** to complain about the unauthorized fraudulent charges. In their response on April 23, 2020, they said "This charge is for a membership fee for our VIP program that you joined after your last order." "This program is free for Catalog Favorites customers for 30 days after the order. After the free trial, if you did not cancel, there is a membership fee of \$14.95 per month. If you are not satisfied with the program, please visit ***** to cancel. You can also call us at ***** to cancel your membership. I did not knowingly join a "VIP program" - I ordered a shirt. I cancelled this "membership" immediately using their online system and requested they refund these unauthorized charges. I have not heard from them since and the unauthorized charges have not been refunded to my account.

Response

06/04/2020

I am writing to confirm your monthly membership to our VIP program has been cancelled as of 4/23/2020. We have issued a refund for the 3 months you have paid for. You will see 3 credits of \$14.95. Thank you.



Customer Response

06/04/2020

[A default letter is provided here which indicates your acceptance of the business's response. If you wish, you may update it before sending it.] Better Business Bureau: I have reviewed the response submitted by the business and have determined that the response does satisfy my issues and/or concerns in reference to complaint #*****. I understand that by choosing to accept the business response that my complaint will be closed as resolved. Regards,
***** *****

Exhibit 6

Complaint Type: Problems with Product/Service **Status:** Answered



05/21/2020

On 7/22/2019 I made a purchase from PGI Northstyle online using my credit card. Unbeknownst to me, they have been charging this card \$14.95 monthly since August 19, 2019 for a VIP membership which I never signed up for. I did not notice this until 5/21/2020 and called the number listed on my credit card statement. I explained that I did not sign up for this and I honestly did not even know what this VIP membership entailed. I was curtly informed that I had to have intentionally signed up for this program as you have to check a box and sign your name attesting to the fact that you are intentionally signing up or this program. I never, ever sign up for these type of things and as I only order from this particular company maybe twice a year at the most, I would not have signed up for any such program as there would be no value in it for me. The gentleman whom I spoke with cancelled my membership so I will not incur any future charges but I have now been charged a total of \$163.83 for a membership I never signed up for. Incidentally, on 11/22/2019 my card was charged \$29.28 instead of \$14.95. Puzzling to say the least.

Response

06/16/2020

Your VIP membership has been cancelled as of 5/21/2020. We are refunding you for a total of \$149.50. The credit will be 10 refunds of the \$14.95 charge. Please allow 48-72 hours for the refunds to post to your credit card. Thank you.

Exhibit 7



Beth G.

04/09/2020

Have been charged \$14.95 per month after using a coupon on Catalog Favorites for a purchase. It was not clear that I was enrolling in a "VIP" purchasing club. Same complaint as another reviewer below. I will never do business with any of the Potpourri companies in the future. Am concerned that the company(ies) still have an A+ rating after so many complaints. Terrible business practice to dupe customers when promising free shipping.

Exhibit 8

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



01/28/2020

I recently discovered a charge that I have not signed up for. I have been charged 14.95 every month for almost a year. I would like my involuntary membership cancelled but am not sure where to go. I also want all of the illegitimate charges refunded.

Response

01/29/2020

We apologize for the inconvenience. We have cancelled your membership and refunded the amount in full back to your credit card. If we can be of any further assistance please let us know. Sincerely, Customer Service

Exhibit 9

Complaint Type: Problems with Product/Service **Status:** Resolved



12/27/2019

After purchasing one item from this catalog I was placed on the VIP membership without my knowledge or consent and subsequently charged 15.94 every month. The purchase was made in September 2019 and the "VIP" charges were made in Oct. and Nov. at which time I called them to get an explanation for the charges. They then removed me from the VIP membership which I never signed up for in the first place.

Response

01/03/2020

We apologize for any inconvenience. However, this order was placed on our website which requires several acknowledgements of accepting the program before you are enrolled. We have asked that all of your membership fee be reimbursed and you should see a credit within 72 business hours. Sincerely, Customer Service



Customer Response

01/04/2020

[A default letter is provided here which indicates your acceptance of the business's response. If you wish, you may update it before sending it.] Better Business Bureau: I have reviewed the response submitted by the business and have determined that the response does satisfy my issues and/or concerns in reference to complaint #*****. I understand that by choosing to accept the business response that my complaint will be closed as resolved. Regards,
***** *****

Exhibit 10

Complaint Type: Problems with Product/Service **Status:** Answered



12/15/2019

I have repeatedly told this company that I do NOT want to be enrolled in their VIP plan. This was done without my knowledge or permission! They bill me \$14.95 per month for this "privilege". I had the first charge reversed and they promised they would not charge my credit again but they did. This is outright fraud. I made a purchase with them some time ago and now that they have my credit card number they seem to feel they can charge whatever they want on it. I will have this second charge reversed as well and then I will close out the card. I am furious over the inconvenience and theft. Please do something to put a stop to this very egregious practice! Thank you!

R

Response

12/17/2019

Your membership was cancelled on 12/15 and you were refunded your \$14.95. you will need to cancel the card after the refund is posted or the refund will not show. If we can be of any further assistance please don't hesitate to let us know. Sincerely, Customer Service



Customer Response

12/17/2019

Better Business Bureau: I have reviewed the response submitted by the business and have determined that the response does not satisfy or resolve my issues and/or concerns in reference to complaint # ***** . Please add your rejection comments below; if you do not provide any details, your complaint will be closed as Answered. They made this same promise last month and again this month. I'll believe it when I actually see it. The credit card has already been shut down because they did not keep their promise last month to cancel my unwanted and unauthorized membership and refund the fee for last month. Tell them to send me a check in the amount of \$14.95 and then, and only then, will I consider the matter closed. Thank you for reading. [You must provide details of why you are not satisfied with this resolution. If you do not enter a reason for your rejection, your complaint will be closed as Answered.] See above. Regards, ***** *****

Exhibit 10
Page 20

Exhibit 11

Complaint Type: Advertising/Sales Issues **Status:** Answered



02/26/2019

I placed an order for clothing in May 2018 and ever since then this company has been charging me a stupid VIP club fee of \$14.95 each and every month ever since then. Evidently they have this silently included in their defaults when ordering, because this charge does not show up on the orders themselves. It only shows up as a separate charge each and every month of which I never asked for. I need a refund immediately of \$149.50 for each and every time they have charged my credit card.

Response

02/26/2019

We have credited you for the amount requested as a result of billing for the program you accepted on internet order ***** on May 16th of 2018. You should see the credit within 72 business hours on your account. If we can be of any further assistance please let us know. SincerelyCustomer Service

Exhibit 12

Verified Reviewer

Jul 12, 2020 melinda v

Potpourri - Being charged for 14.95 a month for VIP program

1.0 [Details](#)

Update by user Jul 12, 2020

I want VIP membership to end and to be reimbursed the money I did not authorize a total of \$44.85. I have proof in my bank statements but I will not be posting them.

I can provide exact dates monies where removed from my account.

May 14, 2020, June 11, 2020, and July 10, 2020. Thank you.

Original review posted by user Jul 12, 2020

I have been calling to cancel and I thought the charge was a one time charge not a recurring charge. Not able to get anyone on the phone to cancel. Keep getting the run around.

User's recommendation: Don't buy from Potpourri save yourself the headache.

Exhibit 13

Pyramid Collection - VIP membership Scam/ Huge Money Loss

May 14, 2020 99 views

Verified Reviewer

1 comment

1.0 Details

Livid consumer wondering how you took \$14.95 from my account starting 7/11/2018 until 4/8/2019?? The amount changed to \$16.07 for 9 months, then starting 1/2/2020 went back to \$14.95 up until this month, withdrawing the last transaction on May 1st.

Chase Visa just sent me an alert yesterday???! I couldn't get through to either number listed, no answer just hangs up. I did not ask to be a VIP member because I rarely shop on this site, I received NO information about this VIP membership, nor was I informed it was automatic if you ordered a sale item or received free shipping which is what other people are getting as a response?? I haven't even spent over \$353 from this company in total ever.

Extremely upset that you took it upon yourselves to take in total \$353.93 from my bank account. I want my money returned.

I'm not a VIP member nor do I want to be. I haven't even ordered from this company in 2+ years.

Product or Service Mentioned: [Pyramid Collection Vip Membership](#).

Monetary Loss: \$354.

Preferred solution: Full refund.

Pyramid Collection Pros: Some products.

Pyramid Collection Cons: Also cheated me out of money for vip program.

Exhibit 14

May 31, 2019 [Troy S](#) of Walnut, CA

Potpourri - Fraudulent Monthly Charges to Mom's Credit Card

1.0 [Details](#)

My mother is turning 82 in a few days. She bought something from Potpourri once, and now her credit card is charged 14.95 per month. This has been going on for several months. I just became aware of it today. I am trying to get Potpourri to cancel the charge but they have refused.

Exhibit 15

NorthStyle®

[New](#) [Dresses](#) [Tops](#) [Bottoms](#) [Sweaters](#) [Outerwear](#) [Sleepwear](#) [Swimwear](#) [Shoes & Accessories](#) [Jewelry](#) [Collections](#) [Petite](#) [Plus](#) [Sale](#)

YOUR SHOPPING CART



Silky Knit Tank Top
In Stock
NB771 MAG M
Magenta Medium

Item \$ Total

\$19.95 \$19.95 ✕

CART SUMMARY

Merchandise Total **\$19.95**

Applicable shipping and tax will be calculated during checkout.

[CHECKOUT](#)

SHOP WITH CONFIDENCE

SECURITY & SATISFACTION GUARANTEED



CONTINUE SHOPPING

Last Item Viewed:
Silky Knit Tank Top

Exhibit 16

New Customer

NO REGISTRATION REQUIRED

Continue as guest for fast & secure checkout. You will have the option to create an account during checkout.

CONTINUE

Returning Customer

Enter email and password to login with previously saved information.

email

password

LOGIN

Exhibit 17

YOUR SHOPPING CART



Silky Knit Tank Top
In Stock
NB771 MAG M
Magenta Medium

Item \$	Total
\$19.95	\$19.95

ORDER SUMMARY

Merchandise Total	\$19.95
Standard Shipping	\$6.99
Additional Shipping	\$0.00
International Surcharge	\$0.00
Total Shipping & Handling	\$6.99
Estimated Tax	\$0.00
ORDER TOTAL	\$26.94

Exhibit 18

NorthStyle[®]
VIP Exclusive Savings

Join VIP Today to CLAIM FREE SHIPPING & 10% CASH BACK on Every Order!

To claim your **10% cash back** and **free shipping** rebate on today's order, simply provide your email address below and click **START SAVING** to join **NorthStyle VIP** today!

**HURRY! THAT'S \$9 ON
TODAY'S ORDER**

- Paid for shipping? We'll pay you back!
- Earn Cash Back every time you shop NorthStyle
- PLUS get Cash Back at 1,000+ top retailers

Offer and Billing Details: To activate your NorthStyle VIP membership simply enter your email address below as your electronic signature and click the "Start Saving" button. You'll enjoy all of your VIP benefits free for 30 days. If you decide not to continue your NorthStyle VIP membership, simply call 855-888-8292 or log on to cancel during your review. Otherwise, we'll automatically extend your VIP membership and benefits for just \$14.95 per month, plus taxes, if any, charged to the same card you used today.

Email Address

START SAVING

Exhibit 19

NorthStyle[®]

VIP Exclusive Savings

Questions? Call us at **855-888-8292**

[How It Works](#)

[Benefits](#)

[FAQ](#)

[Contact](#)

Welcome to NorthStyle VIP

Thank you for joining! You will receive your NorthStyle VIP Welcome Email within 72 hours. This will contain your login credentials and instructions on how to claim your free shipping rebate and 10% cash back on today's order.

During your trial, you'll have FREE access to all of your VIP membership benefits:

- 10% cash back and free shipping rebates on every order at NorthStyle and 15 other Premier Retailers
- 5% cash back and up to \$10 per order in shipping rebates from \$1,000+ popular Marketplace Retailers
- Return shipping rebates of up to \$10 per order on Premier and Marketplace Retailers

We will send you a welcome email to the address you provided within 72 hours, at which point your trial begins. If

you decide not to continue with your membership, simply call us at 855-888-8292 to cancel during your review. Otherwise, as described earlier, we'll automatically extend your VIP membership and benefits, charged monthly to the same card you used with today's order at NorthStyle.

Welcome again, and start saving today at 1,000+ retailers!

A little about NorthStyle VIP

NorthStyle VIP offers exclusive savings on all your purchases from our Premier Retailers and 1,000+ other retailers in our Marketplace.

Whether you shop online, in-store, over the phone, or by mail, you'll save more money on your purchases from popular retailers you know and love.

Helpful Links

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Exhibit 20

From: NorthStyle VIP CustomerService@NorthStyleVIP.com
Subject: Your NorthStyle VIP Membership
Date: April 17, 2020 at 2:57 PM
To:



Important update about your NorthStyle VIP membership



YOUR VIP MEMBERSHIP HAS BEEN CANCELLED

Dear Laurie,

Thanks for trying NorthStyle VIP. As requested, your membership has been successfully cancelled, effective 4/19/2020.

We're sorry things didn't work out with us this time. If you change your mind in the future, your NorthStyle VIP benefits are just a click away:

- 10% cash back and free shipping rebates on every order from NorthStyle and 15 other Premier Brands like In The Company of Dogs, Catalog Favorites and Cuddledown.
- 5% cash back and shipping rebates of up to \$10 per order at 1,000+ Marketplace retailers.
- Return shipping rebates of up to \$10 per order on Premier and Marketplace retailers.

Click below to re-join NorthStyle VIP

RE-JOIN

If there's anything more we can do for you, please feel free to [contact us](#) at any time.

We hope to see you again soon!

Sincerely,

The NorthStyle VIP Customer Service Team
NorthStyle VIP

Member Id: 1305764

This email was sent to: lauriego@mac.com

NorthStyle VIP P.O. Box 290728 Wethersfield, CT 06129-0728

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1 **PROOF OF SERVICE**

2 **Gore v. Potpourri Group Inc., et al., Case No. 37-2020-00019745-CU-BT-CTL**

3 **STATE OF CALIFORNIA, COUNTY OF SAN DIEGO**

4 At the time of service, I was over 18 years of age and **not a party to this action**. I am
5 employed in the County of San Diego, State of California. My business address is 4225 Executive
6 Square, Suite 600, La Jolla, CA 92037-1484.

7 On September 20, 2022, I served a true copy of the following document described as

8 **SECOND AMENDED COMPLAINT**

9 on the interested parties in this action as follows:

10 Christine M. Reilly
creilly@manatt.com
11 Justin Jones Rodriguez
jjrodriguez@manatt.com
12 Madelaine Newcomb
mnewcomb@manatt.com
13 Luana Washington
lwashington@manatt.com
14 MANATT, PHELPS & PHILLIPS, LLP
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17 *Counsel for Defendant*
Potpourri Group Inc.

Counsel for Defendant
Clarus Commerce LLC

18 **BY E-MAIL:** Based on a court order or an agreement of the parties to accept service by e-
19 mail or electronic transmission, I caused the document to be sent from e-mail address
20 cklobucar@sdlaw.com to the persons at the e-mail addresses listed above. I did not receive, within
21 a reasonable time after the transmission, any electronic message or other indication that the
22 transmission was unsuccessful.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing
24 is true and correct. Executed on September 20, 2022, at San Diego, California.
25

26 *Catherine Klobucar*
27 Catherine S. Klobucar
28