

1 JAMES T. HANNINK (131747)  
jhannink@sdlaw.com  
2 ZACH P. DOSTART (255071)  
zdostart@sdlaw.com  
3 DOSTART HANNINK LLP  
4225 Executive Square, Suite 600  
4 La Jolla, California 92037-1484  
Tel: 858-623-4200  
5 Fax: 858-623-4299

6 Attorneys for Plaintiffs  
7

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

10

11 TONI ZIEROLD,  
12 BRIAN TRIMBLE, and  
13 KEN WITT,  
individually and on behalf of all others  
similarly situated,

14 Plaintiffs,

15 vs.  
16

17 THE BRADFORD EXCHANGE, LTD.,  
an Illinois corporation; HAMMACHER,  
18 SCHLEMMER & CO., INC., a New York  
corporation; and DOES 2-50, inclusive,

19 Defendants.  
20

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**10/13/2022** at 12:26:00 PM  
Clerk of the Superior Court  
By Vanessa Sezenol, Deputy Clerk

CASE NO. 37-2022-00009703-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) VIOLATION OF THE CALIFORNIA  
UNFAIR COMPETITION LAW  
[Bus. & Prof. Code, § 17200 et seq.]

21

22

23

24

25

26

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16

**INTRODUCTION**

17           1.       This class action complaint alleges that defendants The Bradford Exchange, Ltd.  
18 (“Bradford”) and Hammacher, Schlemmer & Co., Inc. (“Hammacher”) violate California law in  
19 connection with subscription membership programs operated under the names The Bradford  
20 Exchange Rewards and Hammacher Rewards, respectively. Among other things, under the guise of  
21 an offer for “FREE SHIPPING,” Bradford and Hammacher enroll consumers in automatic-renewal  
22 or continuous service membership subscriptions without providing the “clear and conspicuous”  
23 disclosures mandated by California law; post charges to consumers’ credit cards, debit cards, or  
24 third-party payment accounts for such membership subscriptions without first obtaining the  
25 consumers’ affirmative consent to an agreement containing the requisite clear and conspicuous  
26 disclosures; and fail to provide an acknowledgment that includes the required clear and conspicuous  
27 disclosures. This course of conduct constitutes false advertising, based on violation of the California  
28 Automatic Renewal Law (Bus. & Prof. Code, § 17600 et seq.), for which a remedy is provided by  
the general remedies provision of the False Advertising Law, Bus. & Prof. Code § 17535; and  
violates the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) (“UCL”).

**THE PARTIES**

17           2.       Plaintiff Toni Zierold (“Zierold”) is an individual residing in El Dorado County,  
18 California.

19           3.       Plaintiff Brian Trimble (“Trimble”) is an individual residing in Kern County,  
20 California.

21           4.       Plaintiff Ken Witt (“Witt”) is an individual residing in Orange County, California.

22           5.       Zierold, Trimble, and Witt are collectively referred to herein as “Plaintiffs.”

23           6.       Plaintiffs are informed and believe and thereon allege that The Bradford Exchange,  
24 Ltd. (“Bradford”) is an Illinois corporation that does business in San Diego County, and throughout  
25 California, including but not limited to the online marketing and sale of a variety of merchandise,  
26 including personalized gifts, checks, and collectibles.

27           7.       Hammacher, Schlemmer & Co., Inc. (“Hammacher”) is the true name of the entity  
28 previously sued herein under the fictitious name DOE 1. Plaintiffs are informed and believe and

1 thereon allege that Hammacher is a New York corporation that does business in San Diego County  
2 and throughout California, including the marketing of clothing, consumer electronics, home goods,  
3 and other merchandise.

4 8. Plaintiffs do not know the names of the defendants sued as DOES 2 through 50 but  
5 will amend this complaint when that information becomes known. Plaintiffs allege on information  
6 and belief that each of the DOE defendants is affiliated with one or more of the named defendants  
7 in some respect and is in some manner responsible for the wrongdoing alleged herein, either as a  
8 direct participant, or as the principal, agent, successor, alter ego, or co-conspirator of or with one or  
9 more of the other defendants. For ease of reference, Plaintiffs will refer to the named defendants  
10 and the DOE defendants collectively as “Defendants.”

11 9. Venue is proper in this judicial district because Defendants conduct business in San  
12 Diego County and because neither defendant has designated a principal office in California, such  
13 that venue is proper in any county designated by Plaintiffs.

14 **SUMMARY OF APPLICABLE LAW**

15 10. In 2009, the California Legislature passed Senate Bill 340, which took effect on  
16 December 1, 2010 as Article 9 of Chapter 1 of the False Advertising Law. (Bus. & Prof. Code,  
17 § 17600 et seq. (the California Automatic Renewal Law or “ARL”).) (Unless otherwise stated, all  
18 statutory references are to the Business & Professions Code.) SB 340 was introduced because:

19 It has become increasingly common for consumers to complain about unwanted  
20 charges on their credit cards for products or services that the consumer did not  
21 explicitly request or know they were agreeing to. Consumers report they believed  
22 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.

23 (See Exhibit 1 at p. 4.)

24 11. The Assembly Committee on Judiciary provided the following background for the  
25 legislation:

26 This non-controversial bill, which received a unanimous vote on the Senate floor,  
27 seeks to protect consumers from unwittingly consenting to “automatic renewals” of  
subscription orders or other “continuous service” offers. According to the author and  
28 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

1 renewal.

2 (See Exhibit 2 at p. 8.)

3 12. The ARL seeks to ensure that, before there can be a legally-binding automatic  
4 renewal or continuous service arrangement, there must first be clear and conspicuous disclosure of  
5 certain terms and conditions and affirmative consent by the consumer. To that end, § 17602(a)  
6 makes it unlawful for any business making an automatic renewal offer or a continuous service offer  
7 to a consumer in California to do any of the following:

8 a. Fail to present the automatic renewal offer terms or continuous service offer  
9 terms in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled  
10 and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the  
11 request for consent to the offer. For this purpose, “clear and conspicuous” means “in larger type  
12 than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same  
13 size, or set off from the surrounding text of the same size by symbols or other marks, in a manner  
14 that clearly calls attention to the language.” (§ 17601(c).) “In the case of an audio disclosure, ‘clear  
15 and conspicuous’ ... means in a volume and cadence sufficient to be readily audible and  
16 understandable.” (*Ibid.*) The statute defines “automatic renewal offer terms” to mean the “clear and  
17 conspicuous” disclosure of the following: (a) that the subscription or purchasing agreement will  
18 continue until the consumer cancels; (b) the description of the cancellation policy that applies to the  
19 offer; (c) the recurring charges that will be charged to the consumer’s credit or debit card or payment  
20 account with a third party as part of the automatic renewal plan or arrangement, and that the amount  
21 of the charge may change, if that is the case, and the amount to which the charge will change, if  
22 known; (d) the length of the automatic renewal term or that the service is continuous, unless the  
23 length of the term is chosen by the consumer; and (e) the minimum purchase obligation, if any.  
24 (§ 17601(b).)

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

1 that is made at a promotional or discounted price for a limited period of time. (§ 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).) Section 17602(b)  
5 requires that the acknowledgment specified in § 17602(a)(3) include a toll-free telephone number,  
6 electronic mail address, or another “cost-effective, timely, and easy-to-use” mechanism for  
7 cancellation.

8 13. Violation of the ARL constitutes false advertising and gives rise to restitution and  
9 injunctive relief under § 17535. Violation of the ARL also gives rise to restitution and injunctive  
10 relief under the UCL.

11 **FACTS GIVING RISE TO THIS ACTION**

12 14. Bradford markets and sells merchandise through the website  
13 <https://www.bradfordexchange.com/>. Hammacher markets and sells merchandise through the  
14 website <https://www.hammacher.com/home>. As part of their respective business activities, Bradford  
15 and Hammacher each operate a subscription membership program, known as The Bradford  
16 Exchange Rewards (“Bradford Rewards”) and Hammacher Rewards (collectively, the “Rewards”  
17 programs). When a consumer becomes enrolled in a Rewards program, the defendant operating that  
18 program posts recurring monthly charges to the consumer’s credit card, debit card, or third-party  
19 payment account. As alleged herein, the manner by which Defendants enroll consumers (including  
20 Plaintiffs) in a Rewards program, and charge for monthly membership fees, violates California law.

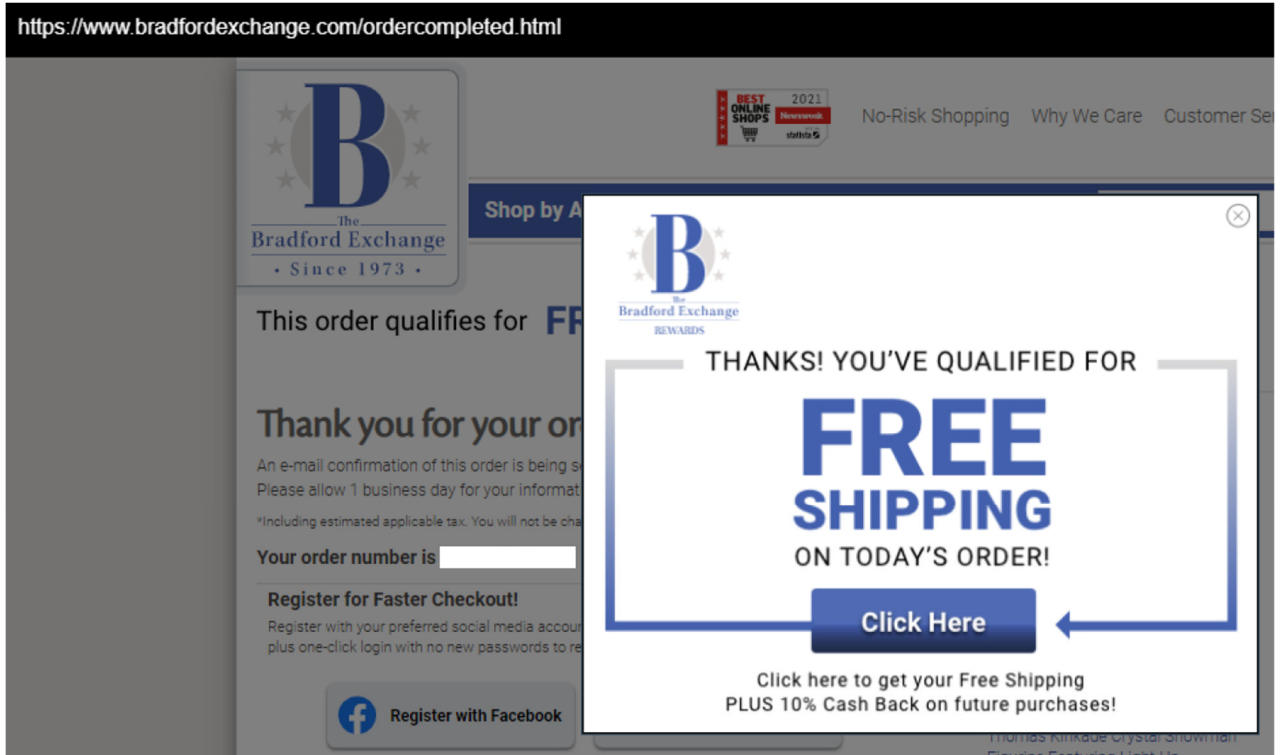
21 15. Consumers are able to purchase merchandise through Defendants’ websites. After  
22 selecting merchandise for purchase, a consumer proceeds through a checkout process that includes  
23 either logging in to an existing account or creating a new one, then entering billing name and  
24 address, a shipping preference, and payment details (such as credit card information). The checkout  
25 process itself does not mention a Rewards program or any associated fee.

26 ///

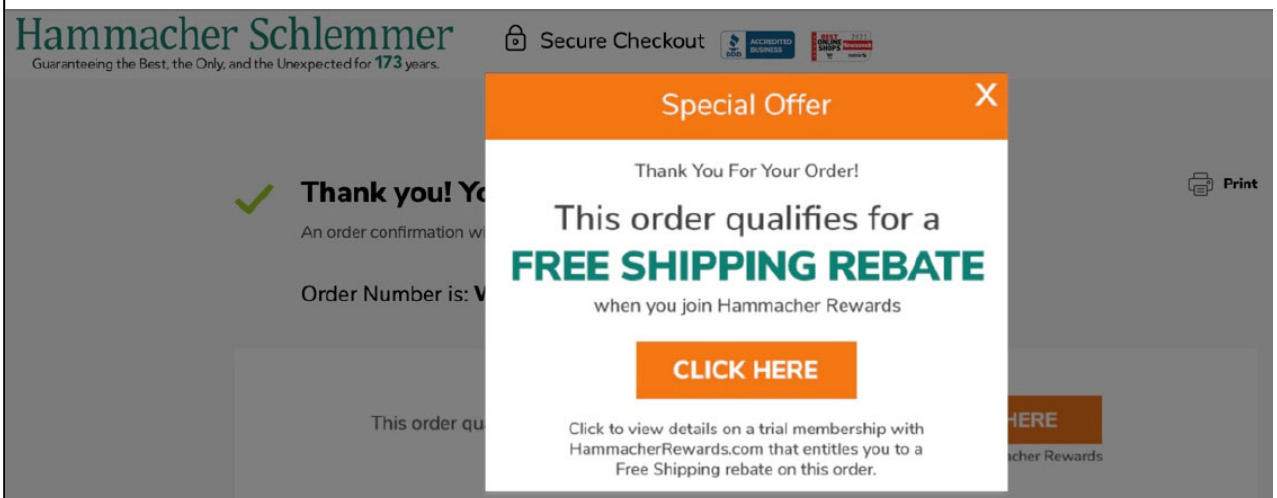
27 ///

28 ///

1           16.       For example, after the consumer submits an order through the Bradford website, the  
2 consumer is then presented with a pop-up box as shown in Exhibit 3, which is incorporated herein  
3 by reference and is set forth below.



17           17.       Similarly, after the consumer submits an order through the Hammacher website, the  
18 consumer is then presented with a pop-up box as shown in Exhibit 4, which is incorporated herein  
19 by reference and is set forth below.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

18. The pop-up box shown in Exhibit 3 states that the consumer has “QUALIFIED FOR FREE SHIPPING ON TODAY’S ORDER!”, and the pop-up box shown in Exhibit 4 states that the consumer’s order qualifies for a “FREE SHIPPING REBATE.” The pop-up boxes do not make any mention of subsequent charges.

19. If the consumer clicks on the “Click Here” button in Bradford the pop-up box (see Exhibit 3), the consumer is then presented with another screen as shown in Exhibit 5, which is incorporated herein by reference and is set forth below.



Thank you for shopping with us!

JOIN TODAY TO CLAIM  
YOUR **FREE SHIPPING!**  
HURRY, THAT'S \$9 BACK!



Plus, The Bradford Exchange Rewards  
Members Get Exclusive Savings  
See Details Below

**Automatic Renewal Offer and Billing Details:** Start enjoying all of your The Bradford Exchange Rewards benefits for 30 days now. After your trial, your membership will automatically renew for just \$14.95 a month plus taxes, if any, charged to the same card that you used today for your The Bradford Exchange purchase, until you cancel. If you decide not to continue your The Bradford Exchange Rewards membership, simply sign into your account at [BradfordExchangeRewards.com](http://BradfordExchangeRewards.com) or call 877-518-2644.

**CLAIM YOUR FREE SHIPPING**  
Join The Bradford Exchange Rewards

Enter Your Email

By entering my information above and clicking the Join button below, I agree to join The Bradford Exchange Rewards, subject to the [Automatic Renewal Offer and Billing Details](#) to the left and [Program Terms](#). I would also like to Claim my Free Shipping!

**CLICK HERE TO JOIN**

### AS A REWARDS MEMBER, YOU'LL GET EXCLUSIVE SAVINGS ON EVERY PURCHASE!

Access these benefits with a free 30-day trial, and then just \$14.95/month after



SAVE

#### 10% Cash Back

Get 10% cash back on EVERY purchase from The Bradford Exchange and our Family of Brands.



SAVE

#### 5% Cash back

Get 5% cash back on purchases made at over 1,000 retailers in our Marketplace.



SAVE

#### Shipping Rebates

Claim Shipping Rebates on purchases from our Family of Brands and Marketplace retailers.



SAVE

#### Return Shipping Rebates

Claim Return Shipping Rebates on purchases from our Family of Brands and Marketplace retailers.

Your Savings Can Add up Fast! How Much will You Save?



### Satisfaction Guarantee

No long-term commitment. Cancel anytime at [BradfordExchangeRewards.com](http://BradfordExchangeRewards.com) or by calling 877-518-2644. Our award-winning customer service team provides 24/7 support, designed to fit your schedule.

#### A Little About The Bradford Exchange Rewards

The Bradford Exchange Rewards gives you exclusive savings when you shop at our Family of Brands or any of the 1,000+ retailers in our Marketplace. As a member, you receive everyday benefits like cash back, shipping rebates, and return shipping rebates on the purchases you make year-round!

#### HELPFUL LINKS

[Contact Us](#)  
[FAQ](#)  
[Privacy Policy](#)  
[Program Terms](#)

#### NAVIGATE

[How It Works](#)  
[Sign In](#)



1           20.     If the consumer clicks on the “Click Here” button in Hammacher the pop-up box (see  
2 Exhibit 4), the consumer is then presented with another screen as shown in Exhibit 6, which is  
3 incorporated herein by reference and is set forth below.

## Hammacher Schlemmer REWARDS

Thank You For Your Order

**GET YOUR FREE SHIPPING REBATE ON TODAY'S ORDER!**

**HURRY, THAT'S \$17 BACK!**



Members get Exclusive Savings by joining Hammacher Schlemmer Rewards

See Automatic Renewal Offer and Billing Details below

**Automatic Renewal Offer and Billing Details:** Start enjoying all of your Hammacher Schlemmer Rewards benefits for 30 days now. After your trial, your membership will automatically renew for just \$14.95 a month, charged to the same card ending in [redacted] that you used today for your Hammacher Schlemmer purchase, until you cancel. If you decide not to continue your Hammacher Schlemmer Rewards membership, simply call 800-203-1405 or sign into your account at HammacherRewards.com.


**CLAIM YOUR FREE SHIPPING REBATE**  
Join Hammacher Rewards


Enter Your Email

By entering my information above and clicking the Join button below, I agree to join Hammacher Schlemmer Rewards, subject to the Automatic Renewal Offer and Billing Details to the left and [Program Terms](#). I would also like to Claim my Free Shipping Rebate!

**CLICK HERE TO JOIN**

### AS A REWARDS MEMBER, YOU'LL GET EXCLUSIVE SAVINGS ON EVERY PURCHASE!


  
SAVE  
**10% Cash Back**  
Get 10% cash back on EVERY purchase from Hammacher Schlemmer.

  
SAVE  
**5% Cash Back**  
Get 5% back on purchases made at over 1,000 retailers in our Marketplace.

  
SAVE  
**Shipping Rebates**  
Claim Shipping Rebates on purchases from Hammacher Schlemmer and Marketplace purchases.

  
SAVE  
**Return Shipping Rebates**  
Claim Return Shipping Rebates on purchases from Hammacher Schlemmer and Marketplace purchases.

Your Savings Can Add up Fast! How Much will You Save?

  
**Satisfaction Guarantee**  
No long-term commitment. Cancel anytime at HammacherRewards.com or by calling 800-203-1405. Our award-winning customer service team provides 24/7 support, designed to fit your schedule.

<p><b>About Hammacher Schlemmer Rewards</b></p> <p>Hammacher Schlemmer Rewards gives you exclusive savings when you shop at Hammacher Schlemmer or any of the 1,000+ retailers in our Marketplace. As a member, you receive everyday benefits like cash back, shipping rebates, and return shipping rebates on the purchases you make year-round!</p>	<p><b>HELPFUL LINKS</b></p> <p><a href="#">Contact Us</a> <a href="#">FAQ</a> <a href="#">Privacy Policy</a> <a href="#">Program Terms</a></p>	<p><b>NAVIGATE</b></p> <p><a href="#">How it Works</a> <a href="#">Sign In</a></p>
---	--	--

© 2021 Hammacher Schlemmer Rewards. All Rights Reserved.  
All third party trademarks and logos appearing on this site are the property of their respective owners and do not imply any affiliation with or endorsement by them.

1           21.     The Bradford screen shown in Exhibit 5 states in large and colorful type that the  
2 consumer can “JOIN TODAY TO CLAIM YOUR FREE SHIPPING! HURRY, THAT’S \$9  
3 BACK!” and invites the consumer to enter his or her email address to “CLAIM YOUR FREE  
4 SHIPPING.” The Hammacher screen shown in Exhibit 6 states in large and colorful type that the  
5 consumer can “GET YOUR FREE SHIPPING REBATE ON TODAY’S ORDER! HURRY,  
6 THAT’S \$[XX] BACK!” and invites the consumer to enter his or her email address to “CLAIM  
7 YOUR FREE SHIPPING REBATE.” The mention of a subsequent charge appears in the smallest  
8 type on the pages, in the paragraph entitled “Automatic Renewal Offer and Billing Details.” That statement  
9 does not qualify as a “clear and conspicuous” disclosure of automatic renewal offer terms as required  
10 by the ARL because, without limitation, the statement is set forth in a type that is not larger than the  
11 surrounding text, and it does not describe the cancellation policy that applies to the offer.

#### PLAINTIFFS’ TRANSACTIONS

##### Plaintiff Toni Zierold

14           22.     On or about November 5, 2020, Zierold made an online purchase through the  
15 Bradford website. Zierold paid for the purchase with her credit card.

16           23.     When Zierold made her purchase through the Bradford website in November 2020,  
17 she was not aware that upon entry of her email address in the box that advertised free shipping,  
18 Defendants would contend that she had given consent for Defendants to post subsequent monthly  
19 charges to her credit card.

20           24.     From December 2020 to September 2021, Defendants made a series of monthly  
21 charges to Zierold’s credit card in the amount of \$14.95 each, purportedly for a Rewards  
22 membership. Zierold did not authorize or consent to those charges. Zierold did not discover those  
23 charges until September 2021.

24           25.     If Zierold had known that Defendants were going to enroll her in an automatic  
25 renewal or continuous membership program that would result in subsequent charges, Zierold either  
26 would not have purchased merchandise from Bradford in the first place, or would have declined to  
27 enter her email address in the box that advertised free shipping, or would have taken other steps to  
28 avoid becoming enrolled in and/or charged for such a program, such that Zierold would not have

1 paid any money to Defendants for the Rewards program.

2       26. Zierold received no value in return for the Rewards membership charges that  
3 Defendants posted to her credit card.

4       **Plaintiff Brian Trimble**

5       27. On or about December 23, 2020, Trimble made an online purchase through the  
6 Bradford website. Trimble paid for the purchase with his credit card.

7       28. When Trimble made his purchase through the Bradford website in December 2020,  
8 he was not aware that upon entry of his email address in the box that advertised free shipping,  
9 Defendants would contend that he had given consent for Defendants to post subsequent monthly  
10 charges to his credit card.

11       29. From January 2021 to December 2021, Defendants made a series of monthly charges  
12 to Trimble's credit card in the amount of \$14.95 each, purportedly for a Rewards membership.  
13 Trimble did not authorize or consent to those charges. Trimble did not discover those charges until  
14 January 2022.

15       30. If Trimble had known that Defendants were going to enroll him in an automatic  
16 renewal or continuous membership program that would result in subsequent charges, Trimble either  
17 would not have purchased merchandise from Bradford in the first place, or would have declined to  
18 enter his email address in the box that advertised free shipping, or would have taken other steps to  
19 avoid becoming enrolled in and/or charged for such a program, such that Trimble would not have  
20 paid any money to Defendants for the Rewards program.

21       31. Trimble received no value in return for the Rewards membership charges that  
22 Defendants posted to his credit card.

23       **Plaintiff Ken Witt**

24       32. In June 2021, Witt made an online purchase through the Hammacher website. Witt  
25 paid for the purchase with his debit card.

26       33. When Witt made his purchase through the Hammacher website in June 2021, he was  
27 not aware that upon entry of his email address in the box that advertised free shipping, Defendants  
28 would contend that he had given consent for Defendants to post subsequent monthly charges to his

1 debit card.

2 34. From July 2021 to October 2021, Defendants made a series of monthly charges to  
3 Witt's debit card in the amount of \$14.95 each, purportedly for a Rewards membership. Witt did  
4 not authorize or consent to those charges. Witt did not discover those charges until October 2021.

5 35. If Witt had known that Defendants were going to enroll him in an automatic renewal  
6 or continuous membership program that would result in subsequent charges, Witt either would not  
7 have purchased merchandise from Hammacher in the first place, or would have declined to enter  
8 his email address in the box that advertised free shipping, or would have taken other steps to avoid  
9 becoming enrolled in and/or charged for such a program, such that Witt would not have paid any  
10 money to Defendants for the Rewards program.

11 36. Witt received no value in return for the Rewards membership charges that  
12 Defendants posted to his debit card.

13 **CLASS ACTION ALLEGATIONS**

14 37. Plaintiffs bring this lawsuit as a class action under Code of Civil Procedure § 382 on  
15 behalf of the following Class: "All California residents who, between March 14, 2018 and October  
16 7, 2022, were both (i) enrolled in either the Bradford Rewards program or the Hammacher Rewards  
17 program and (ii) charged at least one membership fee for such program. Excluded from the Class  
18 are all employees of Bradford and Hammacher, all employees of Plaintiffs' counsel, and the judicial  
19 officers to whom this case is assigned."

20 38. Ascertainability. The members of the Class may be ascertained by reviewing records  
21 in the possession of Defendants and/or third parties, including without limitation Defendants'  
22 customer, order, and billing records.

23 39. Common Questions of Fact or Law. There are questions of fact or law that are  
24 common to the members of the Class, which predominate over individual issues. Common questions  
25 regarding the Class include, without limitation: (1) whether Defendants present all statutorily-  
26 mandated automatic renewal or continuous service offer terms, within the meaning of § 17601(b);  
27 (2) whether Defendants present automatic renewal or continuous service offer terms in a manner  
28 that is "clear and conspicuous," within the meaning of § 17601(c); (3) whether Defendants obtain

1 consumers' affirmative consent to an agreement containing clear and conspicuous disclosure of  
2 automatic renewal or continuous service offer terms before charging a credit card, debit card, or  
3 third-party payment account; (4) whether Defendants provide consumers with an acknowledgment  
4 that includes clear and conspicuous disclosure of all statutorily-mandated automatic renewal or  
5 continuous service offer terms, the cancellation policy, and information regarding how to cancel;  
6 (5) Defendants' record-keeping practices; and (6) the appropriate remedies for Defendants' conduct.

7       40.     Numerosity. The Class is so numerous that joinder of all Class members would be  
8 impracticable. Plaintiffs are informed and believe and thereon allege that the Class consists of at  
9 least 100 members.

10       41.     Typicality and Adequacy. Plaintiffs' claims are typical of the claims of the Class  
11 members. Plaintiffs allege that Defendants enrolled Plaintiffs and Class members in an automatic  
12 renewal membership program without disclosing all terms required by law, and without presenting  
13 such terms in the requisite "clear and conspicuous" manner; charged Class members' credit cards,  
14 debit cards, or third-party accounts without first obtaining Class members' affirmative consent to  
15 an agreement containing clear and conspicuous disclosure of automatic renewal offer terms; and  
16 failed to provide the requisite acknowledgment. Plaintiffs have no interests that are adverse to those  
17 of the other Class members. Plaintiffs will fairly and adequately protect the interests of the Class  
18 members.

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

26  
27  
28

1 **FIRST CAUSE OF ACTION**

2 False Advertising (Based on Violation of the California Automatic Renewal Law)

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

4 43. Plaintiffs incorporate the previous allegations as though set forth herein.

5 44. During the applicable statute of limitations period, Defendants enrolled consumers,  
6 including Plaintiffs and Class members, in automatic renewal and/or continuous service  
7 membership programs and have (a) failed to present the automatic renewal or continuous service  
8 offer terms in a clear and conspicuous manner before the membership agreement is fulfilled and in  
9 visual proximity to the request for consent to the offer, in violation of § 17602(a)(1); (b) charged  
10 the consumer’s credit or debit card or the consumer’s third-party payment account for an automatic  
11 renewal or continuous service without first obtaining the consumer’s affirmative consent to an  
12 agreement containing clear and conspicuous disclosure of all automatic renewal or continuous  
13 service offer terms, in violation of § 17602(a)(2); and (c) failed to provide an acknowledgment that  
14 includes clear and conspicuous disclosure of automatic renewal or continuous service offer terms,  
15 the cancellation policy, and information regarding how to cancel, in violation of § 17602(a)(3) and  
16 § 17602(b).

17 45. Plaintiffs have suffered injury in fact and lost money as a result of Defendants’  
18 violations alleged herein.

19 46. Pursuant to § 17535, Plaintiffs and Class members are entitled to restitution of all  
20 amounts that Defendants charged for a Rewards program during the four years preceding the filing  
21 of the initial Complaint in this action and continuing until Defendants’ statutory violations cease.

22 47. Pursuant to § 17535, for the benefit of the general public of the State of California,  
23 Plaintiffs seek a public injunction enjoining Defendants from making Rewards program offers to  
24 California consumers that do not comply with California law, and from posting charges for Rewards  
25 program membership fees without first complying with California law. Plaintiffs reserve the right  
26 to seek other prohibitory or mandatory aspects of injunctive relief.

27  
28

1 **SECOND CAUSE OF ACTION**

2 Unfair Competition

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

4 48. Plaintiffs incorporate the previous allegations as though fully set forth herein.

5 49. 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  
7 advertising; and any act prohibited by Chapter 1 of Part 3 of Division 7 of the Business and  
8 Professions Code. (§ 17200.)

9 50. During the applicable statute of limitations, Defendants committed acts of unfair  
10 competition by, inter alia and without limitation: (a) failing to present automatic renewal and/or  
11 continuous service offer terms in a clear and conspicuous manner before a subscription is fulfilled,  
12 in violation of § 17602(a)(1); (b) charging the consumer's credit card, debit card, or third-party  
13 payment account for an automatic renewal or continuous service without first obtaining the  
14 consumer's affirmative consent to an agreement containing clear and conspicuous disclosure of  
15 automatic renewal or continuous service offer terms, in violation of § 17602(a)(2); and (c) failing  
16 to provide an acknowledgment that included clear and conspicuous disclosure of automatic renewal  
17 or continuous service offer terms, cancellation policy, and information regarding how to cancel, in  
18 violation of § 17602(a)(3). Plaintiffs reserve the right to allege other business practices that  
19 constitute unfair competition.

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

24 52. There were reasonably available alternatives to further Defendants' legitimate  
25 business interests, other than the conduct described herein.

26 53. Plaintiffs have suffered injury in fact and lost money as a result of Defendants' acts  
27 of unfair competition.

28

1 54. Pursuant to § 17203, Plaintiffs and the Class members are entitled to restitution of  
2 all amounts that Defendants charged for the Rewards program during the four years preceding the  
3 filing of the initial Complaint in this action and continuing until Defendants' statutory violations  
4 cease.

5 55. Pursuant to § 17203, for the benefit of the general public of the State of California,  
6 Plaintiffs seek a public injunction enjoining Defendants from making Rewards program offers to  
7 California consumers that do not comply with California law, and from posting charges for Rewards  
8 program membership fees without first complying with California law. Plaintiffs reserve the right  
9 to seek other prohibitory or mandatory aspects of injunctive relief.

10 **PRAYER**

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

12 On the First Cause of Action:

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

15 On the Second Cause of Action:

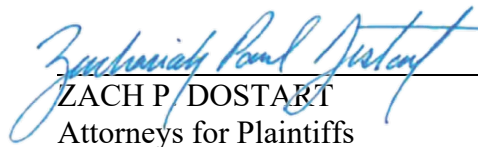
- 16 3. For restitution;  
17 4. For a public injunction for the benefit of the People of the State of California;

18 On All Causes of Action:

- 19 5. For reasonable attorneys' fees, pursuant to Code of Civil Procedure § 1021.5;  
20 6. For costs of suit;  
21 7. For pre-judgment interest; and  
22 8. For such other relief as the Court may deem just and proper.

23 Dated: October 13, 2022

DOSTART HANNINK LLP

24  
25   
26 ZACH P. DOSTART  
Attorneys for Plaintiffs

27 987399.2

28



# 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



No-Risk Shopping Why We Care Customer S

Shop by A



THANKS! YOU'VE QUALIFIED FOR

**FREE SHIPPING**

ON TODAY'S ORDER!

[Click Here](#)

Click here to get your Free Shipping PLUS 10% Cash Back on future purchases!

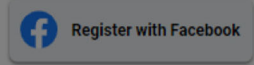
This order qualifies for FF

Thank you for your or

An e-mail confirmation of this order is being s  
Please allow 1 business day for your informat  
\*Including estimated applicable tax. You will not be che

Your order number is

**Register for Faster Checkout!**  
Register with your preferred social media account  
plus one-click login with no new passwords to re



# Exhibit 4





**Thank you! You**

An order confirmation will be emailed to you.

Order Number is: V

This order qu

Special Offer



Thank You For Your Order!

This order qualifies for a  
**FREE SHIPPING REBATE**

when you join Hammacher Rewards

**CLICK HERE**

Click to view details on a trial membership with HammacherRewards.com that entitles you to a Free Shipping rebate on this order.

Print

**HERE**

cher Rewards

[Order Details](#) ^


# Exhibit 5



Thank you for shopping with us!

**JOIN TODAY TO CLAIM YOUR FREE SHIPPING!**  
**HURRY, THAT'S \$9 BACK!**

Plus, The Bradford Exchange Rewards Members Get Exclusive Savings  
 See Details Below



**Automatic Renewal Offer and Billing Details:** Start enjoying all of your The Bradford Exchange Rewards benefits for 30 days now. After your trial, your membership will automatically renew for just \$14.95 a month plus taxes, if any, charged to the same card that you used today for your The Bradford Exchange purchase, until you cancel. If you decide not to continue your The Bradford Exchange Rewards membership, simply sign into your account at [BradfordExchangeRewards.com](http://BradfordExchangeRewards.com) or call 877-518-2644.

**CLAIM YOUR FREE SHIPPING**  
 Join The Bradford Exchange Rewards


Enter Your Email


By entering my information above and clicking the Join button below, I agree to join The Bradford Exchange Rewards, subject to the [Automatic Renewal Offer and Billing Details](#) to the left and [Program Terms](#). I would also like to Claim my Free Shipping!


**CLICK HERE TO JOIN**


**AS A REWARDS MEMBER, YOU'LL GET EXCLUSIVE SAVINGS ON EVERY PURCHASE!**

Access these benefits with a free 30-day trial, and then just \$14.95/month after


  
 SAVE  
**10% Cash Back**  
 Get 10% cash back on EVERY purchase from The Bradford Exchange and our Family of Brands.

  
 SAVE  
**5% Cash back**  
 Get 5% cash back on purchases made at over 1,000 retailers in our Marketplace.

  
 SAVE  
**Shipping Rebates**  
 Claim Shipping Rebates on purchases from our Family of Brands and Marketplace retailers.

  
 SAVE  
**Return Shipping Rebates**  
 Claim Return Shipping Rebates on purchases from our Family of Brands and Marketplace retailers.

Your Savings Can Add up Fast! How Much will You Save?

  
**Satisfaction Guarantee**  
 No long-term commitment. Cancel anytime at [BradfordExchangeRewards.com](http://BradfordExchangeRewards.com) or by calling 877-518-2644. Our award-winning customer service team provides 24/7 support, designed to fit your schedule.

<p><b>A Little About The Bradford Exchange Rewards</b></p> <p>The Bradford Exchange Rewards gives you exclusive savings when you shop at our Family of Brands or any of the 1,000+ retailers in our Marketplace. As a member, you receive everyday benefits like cash back, shipping rebates, and return shipping rebates on the purchases you make year-round!</p>	<p><b>HELPFUL LINKS</b></p> <ul style="list-style-type: none"> <li><a href="#">Contact Us</a></li> <li><a href="#">FAQ</a></li> <li><a href="#">Privacy Policy</a></li> <li><a href="#">Program Terms</a></li> </ul>	<p><b>NAVIGATE</b></p> <ul style="list-style-type: none"> <li><a href="#">How It Works</a></li> <li><a href="#">Sign In</a></li> </ul>
---	--	--

# Exhibit 6

Thank You For Your Order

**GET YOUR FREE SHIPPING REBATE ON TODAY'S ORDER!**

**HURRY, THAT'S \$17 BACK!**



Members get Exclusive Savings by joining Hammacher Schlemmer Rewards

See Automatic Renewal Offer and Billing Details below

**Automatic Renewal Offer and Billing Details:** Start enjoying all of your Hammacher Schlemmer Rewards benefits for 30 days now. After your trial, **your membership will automatically renew for just \$14.95 a month**, charged to the same card ending in [REDACTED] that you used today for your Hammacher Schlemmer purchase, until you cancel. If you decide not to continue your Hammacher Schlemmer Rewards membership, simply call 800-203-1405 or sign into your account at HammacherRewards.com.





**CLAIM YOUR FREE SHIPPING REBATE**  
 Join Hammacher Rewards

Enter Your Email


By entering my information above and clicking the Join button below, I agree to join Hammacher Schlemmer Rewards, subject to the Automatic Renewal Offer and Billing Details to the left and [Program Terms](#). I would also like to Claim my Free Shipping Rebate!

**CLICK HERE TO JOIN**

**AS A REWARDS MEMBER, YOU'LL GET EXCLUSIVE SAVINGS ON EVERY PURCHASE!**

 <p>SAVE</p> <p><b>10% Cash Back</b></p> <p>Get 10% cash back on EVERY purchase from Hammacher Schlemmer.</p>	 <p>SAVE</p> <p><b>5% Cash Back</b></p> <p>Get 5% back on purchases made at over 1,000 retailers in our Marketplace.</p>
 <p>SAVE</p> <p><b>Shipping Rebates</b></p> <p>Claim Shipping Rebates on purchases from Hammacher Schlemmer and Marketplace purchases.</p>	 <p>SAVE</p> <p><b>Return Shipping Rebates</b></p> <p>Claim Return Shipping Rebates on purchases from Hammacher Schlemmer and Marketplace purchases.</p>

Your Savings Can Add up Fast! How Much will You Save?



**Satisfaction Guarantee**

No long-term commitment. Cancel anytime at HammacherRewards.com or by calling 800-203-1405. Our award-winning customer service team provides 24/7 support, designed to fit your schedule.

**About Hammacher Schlemmer Rewards**

Hammacher Schlemmer Rewards gives you exclusive savings when you shop at Hammacher Schlemmer or any of the 1,000+ retailers in our Marketplace. As a member, you receive everyday benefits like cash back, shipping rebates, and return shipping rebates on the purchases you make year-round!

**HELPFUL LINKS**

- Contact Us
- FAQ
- Privacy Policy
- Program Terms

**NAVIGATE**

- How It Works
- Sign In

1 **PROOF OF SERVICE**

2 *Zierold, et al. v. The Bradford Exchange, Ltd., et al.*  
3 **Case No. 37-2022-00009703-CU-BT-CTL**

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

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

8 On October 13, 2022, I served a true copy of the following document described as

9 **SECOND AMENDED COMPLAINT**

10 on the interested parties in this action as follows:

11 Christine M. Reilly  
12 creilly@manatt.com  
13 Justin Jones Rodriguez  
14 jjrodriguez@manatt.com  
15 Cody DeCamp  
16 cdecamp@manatt.com  
17 Luana Washington  
18 lwashington@manatt.com  
19 MANATT, PHELPS & PHILLIPS, LLP  
20 2049 Century Park East, Suite 1700  
21 Los Angeles, CA 90067  
22 Tel: (310) 312-4000  
23 Fax: (310) 312-4224

24 *Counsel for Defendants The Bradford Exchange, Ltd.*  
25 *and Hammacher, Schlemmer & Co., Inc.*

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

I declare under penalty of perjury under the laws of the State of California that the foregoing  
is true and correct. Executed on October 13, 2022, at San Diego, California.

27 *Catherine Klobucar*  
28 \_\_\_\_\_  
Catherine S. Klobucar