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SUPERIOR COURT OF THE STATE OF CALIFORNIA

9

COUNTY OF SAN DIEGO

10

11 MARY RICKEY,
individually and on behalf of all others
12 similarly situated,

13 Plaintiff,

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vs.

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16 BALLER, INC.,
a Delaware corporation;
17 and DOES 1-50, inclusive,

18 Defendants.

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CASE NO. 37-2022-00044840-CU-BT-CTL

CLASS ACTION

SECOND AMENDED CLASS ACTION
COMPLAINT FOR :

(1) FALSE ADVERTISING

[Bus. & Prof. Code, § 17500 & § 17535];

(2) FALSE ADVERTISING – BASED ON
VIOLATION OF THE CALIFORNIA
AUTOMATIC RENEWAL LAW

[Bus. & Prof. Code, § 17600 et seq. & § 17535];
and

(3) UNFAIR COMPETITION

[Bus. & Prof. Code, § 17200 et seq.]

[IMAGED FILE]

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INTRODUCTION

1. Defendant Baller, Inc. (“Baller” or “Defendant”) provides live video, replays, recorded video downloads, and other recorded video material of certain youth and collegiate athletic events, for which Baller offers and sells subscriptions to the general public. Baller offers its goods and services under trade name “BallerTV,” and conducts business through the website www.ballertv.com.

2. In this complaint, Plaintiff alleges that Baller violates California law by (without limitation) falsely advertising the pricing of its subscriptions; enrolling consumers in automatic renewal subscriptions without first providing the clear and conspicuous disclosures mandated by California law; charging consumers for automatic renewal subscriptions without first obtaining the consumer’s affirmative consent to an agreement that contains clear and conspicuous disclosure of required automatic renewal offer terms; and failing to provide consumers with an acknowledgment mandated by California law. This conduct violates several California consumer protection statutes, including but not limited to Business and Professions Code § 17500 (false advertising); the California Automatic Renewal Law (Bus. & Prof. Code, § 17600 et seq.) (“ARL”), which is part of the False Advertising Law; and the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) (“UCL”).

3. This action seeks restitution for Plaintiff and other affected California consumers. Plaintiff also seeks a public injunction for the benefit of the general public.

THE PARTIES

4. Plaintiff Mary Rickey (“Plaintiff”) is an individual residing in San Diego County, California.

5. Baller, Inc. is a corporation organized under the laws of Delaware and maintains its principal place of business in Pasadena, California. Baller does business in San Diego County, including the advertising, promotion, and sale of subscriptions and video material.

6. Plaintiff does not know the names of the defendants sued as DOES 1 through 50 but will amend this complaint when that information becomes known. Plaintiff alleges on information and belief that each of the DOE defendants is affiliated in some respect with the named defendant

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

5 **VENUE**

6 7. Venue is proper in this judicial district because Baller does business in this judicial
7 district and a material part of the conduct at issue occurred in this judicial district.

8 **BALLER’S SUBSCRIPTION OFFERS**

9 8. Through the website www.ballertv.com, Baller presents consumers with subscription
10 options. Relevant to Plaintiff’s transaction, Baller offered a “Gold” plan offered at \$19.99 per
11 month; a “Silver” plan offered at \$12.99 per month; and a “Bronze” plan offered at \$7.99 per month.
12 The plans vary in terms of the number of live events and the number of downloads that can be
13 accessed or made per month, the number of allowable simultaneous viewers, and a few other details.
14 After selecting a plan, the consumer can enter credit or debit card information to complete the
15 purchase.

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1 9. The pertinent portion of the BallerTV website order page is shown below, a true and
2 correct copy of which is attached hereto as Exhibit 1.

The screenshot displays three membership tiers for BallerTV. The Silver tier is selected, indicated by a blue checkmark and a blue border. Each tier lists its price per month and a set of features, some with green checkmarks and others with red X marks. The Silver tier is billed \$155.88 every 12 months.

Plan	Price	Key Features
Bronze (The Basic)	\$7.99 per month	1 live event per month, 1 game download per month, Unlimited HD replays, No simultaneous viewers, No Event Viewership Stats, No Recruiting View Report. Billed \$95.88 every 12 months.
Silver (The Super Fan)	\$12.99 per month	3 live events per month, 3 game downloads per month, Unlimited HD replays, Up to 3 simultaneous viewers, Event Viewership Stats, No Recruiting View Report. Billed \$155.88 every 12 months.
Gold (The Recruit)	\$19.99 per month	Unlimited live events per month, 5 game downloads per month, Unlimited HD replays, Up to 5 simultaneous viewers, Event Viewership Stats, Recruiting View Report. Billed \$239.88 every 12 months.

15 All plans include unlimited HD replays and game highlights for all games on BallerTV

The screenshot shows a payment information form on a blue background. It includes fields for card number and MM/YY CVC, a 'Subscribe Now - Silver' button, and a disclaimer: 'Upon clicking Subscribe you will be charged for a BallerTV membership. At the end of your membership, your subscription will automatically renew and your payment method on file will be charged \$155.88 each billing period. You may pause or cancel your subscription at any time by self-service via your Account Settings or by contacting support@ballertv.com'.

1 **SUMMARY OF APPLICABLE LAW**

2 **False Advertising (Bus. & Prof. Code, § 17500)**

3 10. California’s False Advertising Law (“FAL”) makes it unlawful, in connection with
4 any effort to induce the public to enter into any obligation relating to property or services, to
5 disseminate any statement that is known to be untrue or misleading, or that through the exercise of
6 reasonable care should be known to be untrue or misleading. (Bus. & Prof. Code, § 17500.) The
7 prohibition of false advertising encompasses not only statements that are literally false, but also
8 statements that, although true, are either actually misleading or that have the capacity, likelihood,
9 or tendency to deceive or confuse the consuming public.

10 11. Violation of Section 17500 gives rise to restitution and injunctive relief pursuant to
11 Business and Professions Code § 17535. These remedies are cumulative to each other and to the
12 remedies available under all other laws of California. (Bus. & Prof. Code, § 17534.5.)

13 **Automatic Renewal Law (Bus. & Prof. Code, § 17600 et seq.)**

14 12. In 2009, the California Legislature passed Senate Bill 340, which took effect on
15 December 1, 2010 as Article 9 of Chapter 1 of the False Advertising Law. (Bus. & Prof. Code,
16 § 17600 *et seq.* (the California Automatic Renewal Law or “ARL”).) SB 340 was introduced
17 because:

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

25 (See Exhibit 2 at p. 5.)

26 13. The Assembly Committee on Judiciary provided the following background for the
27 legislation:

28 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.

1 (See Exhibit 3 at p. 9.)

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

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

22 b. Charge the consumer’s credit or debit card or the consumer’s account with a
23 third party for an automatic renewal or continuous service without first obtaining the consumer’s
24 affirmative consent to the agreement containing the automatic renewal offer terms or continuous
25 service offer terms, including the terms of an automatic renewal offer or continuous service offer
26 that is made at a promotional or discounted price for a limited period of time. (Bus. & Prof. Code,
27 § 17602(a)(2).)

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1 c. Fail to provide an acknowledgment that includes the automatic renewal or
2 continuous service offer terms, cancellation policy, and information regarding how to cancel in a
3 manner that is capable of being retained by the consumer. (Bus. & Prof. Code, § 17602(a)(3).)
4 Section 17602(b) requires that the acknowledgment specified in § 17602(a)(3) include a toll-free
5 telephone number, electronic mail address, or another “cost-effective, timely, and easy-to-use”
6 mechanism for cancellation.

7 15. As a species of false advertising, violation of the ARL gives rise to restitution and
8 injunctive relief pursuant to Business and Professions Code § 17535. If a business sends any goods,
9 wares, merchandise, or products to a consumer under an automatic renewal or continuous service
10 agreement without first obtaining the consumer’s affirmative consent to an agreement containing
11 clear and conspicuous disclosure of all automatic renewal offer terms, such material is deemed to
12 be an “unconditional gift” to the consumer. (Bus. & Prof. Code, § 17603.)

13 **Unfair Competition Law**

14 16. The Unfair Competition Law (“UCL”) defines unfair competition as including any
15 unlawful, unfair, or fraudulent business act or practice; any unfair, deceptive, untrue, or misleading
16 advertising; and any act of false advertising. (Bus. & Prof. Code, § 17200.)

17 17. Violation of the UCL gives rise to restitution and injunctive relief. (Bus. & Prof.
18 Code, § 17203.) The remedies of the UCL are cumulative to each other and to the remedies available
19 under all other laws of California. (Bus. & Prof. Code, § 17205.)

20 **FACTS GIVING RISE TO THIS ACTION**

21 18. In April 2022, Plaintiff’s two sons were members of a collegiate club volleyball team
22 scheduled to play in an out-of-town tournament. When Plaintiff learned that the games could be
23 viewed through BallerTV, she was interested in the possibility of watching the games remotely.
24 Plaintiff reviewed the options on the BallerTV website and decided to purchase a plan offered at
25 \$12.99 per month. To purchase that subscription, Plaintiff entered her debit card information on the
26 BallerTV webpage. When Plaintiff purchased that subscription, Plaintiff believed she would be
27 charged \$12.99, for one month.

1 19. After submitting her purchase, Plaintiff received an email stating that BallerTV had
2 posted a charge to Plaintiff’s debit card in the amount of \$155.88 for an “annual” membership. A
3 true and correct copy of that email is attached hereto as Exhibit 4.

4 20. Less than one hour after receiving that email, Plaintiff contacted BallerTV by email
5 to dispute the \$155.88 charge and request a refund. (Baller does not provide any telephone support,
6 and instead requires that all customer support communications with the company be conducted
7 through email.) In response, a BallerTV representative apologized for the “confusion on our
8 pricing.” Instead of a refund, however, the BallerTV representative offered Plaintiff “a free Custom
9 Highlight Reel (a \$99 value!).” Plaintiff responded that she wanted the charges reversed. To that
10 request, a BallerTV representative responded by asking whether Plaintiff would “be interested in
11 staying with us if we grant a complementary extension of your subscription for three months?” In
12 response, Plaintiff reiterated her request for cancellation and a refund.

13 21. In a follow-up email to Baller, Plaintiff explained that she was asking for a full refund
14 and for her account to be closed because the BallerTV sign-up process is misleading. Plaintiff
15 explained: “[I]t clearly states \$12.99 per month on your website (in far larger font than the \$155 or
16 whatever) during the sign-up process and that cancellation is available at any time.”

17 22. In response, a BallerTV representative explained that “[a]t the bottom of each plan
18 offering (the Bronze, Silver [sic] Gold cards), you will see the final billing amount. *I can see how*
19 *this might be missed*, but we do clearly state this final billing amount int [sic] total. We hope that
20 each user will read the text on each plan before entering their credit card information.” (Emphasis
21 added.) The BallerTV representative then asserted that “[t]he best and last option we can provide to
22 you for you to be able to have a refund at least is to process a downgrade of your current subscription,
23 Silver annual to Bronze Quarterly. This would represent a refund of \$110.91.”

24 23. Plaintiff responded that the offer was “not acceptable.” Plaintiff reiterated that on the
25 website screen, “[t]he font is huge for the monthly, and that is what is visible on sign up. The yearly
26 charge is in a light color and smaller font, and that is not even noticeable and wasn’t until you
27 mentioned it. The layout is very, well, I’d say deceptive almost.” Plaintiff reiterated her request for
28 a full refund.

1 24. In response to Plaintiff’s repeated request for a refund, a BallerTV representative
2 stated that under the BallerTV terms of use, a full refund could not be processed if an order is
3 received and a video has been viewed in whole or in part, and, instead, the “the best thing we can
4 do right now is to downgrade your account” from Silver Annual to Silver Quarterly, which would
5 represent a partial refund of \$110.91.

6 25. Plaintiff responded by asking where the terms of use appear on the screen during the
7 sign-up process, and reiterating her request for a full refund.

8 26. A BallerTV representative responded with a statement that “the most we can do is
9 downgrade your subscription to the lowest price plan that we offer which is bronze quarterly for a
10 partial refund of \$110.91,” further stating that “[t]he subscription is good for three months with 1
11 live event ticket and 1 download credit per 30 days.”

12 27. In response, Plaintiff reiterated her request for a full refund.

13 28. A few hours later, on April 16, 2022, Plaintiff sent an email to BallerTV Support
14 proposing that Baller charge her \$12.99 (i.e., the charge for one month) and refund the remainder.

15 29. A BallerTV representative responded that “the most we can offer you is a downgrade
16 to Bronze Quarterly for a partial refund of \$110.91 and then we will apply a 20% off after we process
17 the downgrade.”

18 30. In response, Plaintiff requested a refund of \$142, which would “get the amount paid
19 close to \$12.99.”

20 31. The BallerTV representative remained steadfast that there could be no prorated
21 refund for future months.

22 32. Believing that there was no other option to get at least some of her money back,
23 Plaintiff responded that she would proceed with the \$110 partial refund and 20% discount. On April
24 20, 2022, Baller credited back to Plaintiff’s debit card a total of \$119.90 in two transactions, one for
25 \$110.91 and the other for \$8.09. Thus, even though Plaintiff viewed only a few hours of a single
26 volleyball tournament in mid-April 2022, for which she expected to be charged \$12.99, Plaintiff
27 ended up being charged \$35.98.

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1 33. Thereafter, on July 19, 2022, Baller posted an additional charge to Plaintiff’s debit
2 card in the amount of \$44.97, which Plaintiff did not authorize. Based on similarity to published
3 complaints made by other consumers, Plaintiff is informed and believes and thereon alleges that
4 Baller posted that charge for a purported renewal of a quarterly subscription. Plaintiff received no
5 value from that purported renewal.

6 34. On October 19, 2022, Baller posted yet another charge to Plaintiff’s debit card in the
7 amount of \$44.97, which Plaintiff did not authorize. Based on similarity to published complaints
8 made by other consumers, Plaintiff is informed and believes and thereon alleges that Baller posted
9 that charge for a purported renewal of a quarterly subscription. Plaintiff received no value from that
10 purported renewal.

11 35. If Plaintiff had known that upon submission of her subscription order Baller was
12 going to charge her \$155.88, rather than \$12.99, Plaintiff would not have purchased the BallerTV
13 subscription and would not have paid any money to Baller.

14 36. If Plaintiff had known that Baller was going to enroll her in an annual subscription
15 for which Baller’s cancellation policy precludes a refund of future months, Plaintiff would not have
16 purchased the BallerTV subscription and would not have paid any money to Baller.

17 37. If Plaintiff had known that Baller was going to enroll her in a program under which
18 Baller would automatically charge Plaintiff for a subsequent term and post associated charges to
19 Plaintiff’s debit card, Plaintiff would not have purchased a BallerTV subscription and would not
20 have paid any money to Baller.

21 **COMPLAINTS BY OTHER CONSUMERS**

22 38. Plaintiff is not the only consumer to be duped in connection with Baller’s pricing and
23 automatic renewal charges. Customer reviews of Baller posted on the Better Business Bureau
24 (“BBB”) website illustrate that Baller’s business practices have adversely affected many consumers.
25 On the BBB website alone, there are hundreds of consumer complaints that mirror Plaintiff’s
26 experience. Consumer complaints about Baller on the BBB website include those set forth below:

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1 **Clay E. (July 26, 2022).** Complete ripoff, borderline fraud. If you asked your
2 grandmother to video a basketball game for you and the quality wasn't so good and
3 she didn't exactly follow the ball and sometimes only recorded the action on one end
4 and didn't notice that her videos only showed one of the baskets, you would be
5 disappointed. But if you were charged \$179.88 by a company posing as a
6 professional streaming service, you would feel ripped off. In addition, as is
7 mentioned in other reviews, it appears you are paying a reasonable monthly fee, but
in reality you are being charged an annual subscription. THEN, after canceling the
service and receiving a partial refund, 3 months later, I discovered a \$59.97 fee
charged to my account and the account was not canceled and is still active, though
there has been no activity. They claim that we requested a downgrade rather than a
cancellation. FRAUD.

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

9 **Billing/Collection Issues (July 25, 2022).** March 2022: Like so many others, I
10 assumed I was paying ** per month, and could cancel after this one tournament =
11 two games. It is the only tournament I will watch all year. Like the others, I was
12 charged **** I have emailed Baller tv, and they send out boilerplate responses and
13 have not resolved the matter. Two additional points: 1. The fact that Baller TV has
14 NOT changed the pricing info on their website implies that this is INTENTIONAL.
15 If they wanted to make it clear to prospective customers that they only charge
16 annually, THEY COULD MAKE IT CLEAR. But...they would of course lose
customers who don't want to pay **** So they create boilerplate answers for those
of us who get tricked and hope that most of their victims are too busy to resist. 2. The
video quality was appalling. I haven't seen resolution this bad in decades. And at
times the play would move on and the video would be in the wrong place, as if the
operator wasn't paying attention.

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

18 **Linda C. (July 23, 2022).** On 2/13/2021 I signed up Baller TV to watch my
19 granddaughter's club volley ball game. I checked the box for a single event for \$7.99.
20 I received an immediate email confirming a one year subscription and Visa charge
21 for \$95.88. I contacted Baller regarding the mistake. I received a response that the
22 shortest subscription was quarterly and was then credited \$50.91 (Visa) on
23 2/26/2021. I have contacted Baller numerous times and cancelled my subscription a
24 total of 4 times. It is now 1 1/2 years later and my Visa is still being charged \$44.97
25 quarterly. I have asked for a total of \$224.85 to be credited to my Visa for fraudulent
26 charges. Their Chat Line always malfunctions and dismisses me when I ask for a
credit for unauthorized charges. Miraculously 5 days ago the Chat Line dismissed
me again and a cancellation notice appeared on my email. They still owe me \$224.85
for all charges after 2/26/2021. I have lodged a complaint with my B of A Premium
Rewards card. As a footnote: the streaming was irregular, footage kept stopping,
camera problems, etc. Very disappointing company. Not many scruples for working
around young people.

27 A true and correct printout of that complaint is attached as Exhibit 7.
28

1 **Tina P. (July 15, 2022).** Super setup! The membership states \$12.99 but your
2 AUTOMATICALLY charged \$156 for the yearly subscription!!??? You are not able
3 to get a refund of your money, nor are you able to talk to an actual customer service
representative to resolve the issue. The biggest scam of 2022

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

5 **Problems with Product/Service (July 12, 2022).** I'm seeking a refund for a
6 misleading subscription. I was not aware that I would be billed for a yearly
7 subscription (\$124.70), when a monthly price (\$10.39) was displayed. I canceled
8 subscription 24 hrs (July 7-8, 2022) after I subscribed, when I noticed the the yearly
9 price charged to my credit card and not the monthly price that I thought. I only
10 watched 2 full games and the 3rd had poor connection at the venue and couldn't be
streamed. I fully acknowledge using the services, but my intent was to not use the
services beyond this month, because I have no need for the service once my teams
season is over in at the end of July. I feel the price advertisements are very misleading
and is definitely a display of predatory business practices by BallerTV.

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

12 **Billing/Collection Issues (July 7, 2022).** BALLERTV subscription webpage is very
13 misleading. I saw same complaints from so many other customers, but I don't think
14 they were trying to fix the issue. I just wanted to watch one game, and I was willing
15 to pay \$6.39 per month for that - as the big bold font says, but I got charged for yearly
16 subscription \$76.70. I just chatted with customer support and was told that the best
17 they could do for me is downgrading from yearly to quarterly, charge me \$35.98
instead. But this is unfair, their webpage is very misleading, I don't think it meets
accessibility standard. Business should gain money from their products and services,
not by cheating customers. I feel very disappointed and want to have my \$70 back!

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

19 **Billing/Collection Issues (June 29, 2022).** The initial cost for full access was *****
20 and I was billed a year long subscription at ***** After I filled out my card
21 information I was not informed on the site that it was for a year nor that I would be
22 charged at that full amount stated above. Just showing at ***** signing up. Due to
23 false advertising I was scammed into signing up. I wasn't able to watch a full game
24 due difficulties on their site. I emailed them to cancel subscription the same day few
hours after I was made aware. Once the card information was entered I was redirected
to Ballerstv site immediately without verification of the charge. Nor what name was
on the card given.I would like a full refund.

25 A true and correct printout of that complaint is attached as Exhibit 11.

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1 **CLASS ACTION ALLEGATIONS**

2 39. Plaintiff brings this lawsuit as a class action under Code of Civil Procedure § 382 on
3 behalf of the following Class: “All individuals who, while residing in California and between
4 February 14, 2019 and June 6, 2023, inclusive, purchased a subscription through the website
5 www.BallerTV.com, limited to individuals who did not receive a full refund. Excluded from the
6 Class are all employees of Defendant, all employees of Plaintiff’s counsel, and the judicial officers
7 to whom this case is assigned.”

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

11 41. Common Questions of Fact or Law. There are questions of fact or law that are
12 common to the members of the Class which predominate over individual issues. Common questions
13 regarding the Class include, without limitation: (1) whether Defendants’ advertisement of
14 subscription plans on a “per month” basis is false, misleading, or has the capacity, likelihood, or
15 tendency to deceive or confuse the consuming public under the reasonable consumer standard in
16 view of Baller’s business practice of imposing at inception a charge that is a multiple of the
17 advertised monthly rate; (2) whether Defendants present all statutorily-mandated automatic renewal
18 offer terms in a manner that is clear and conspicuous within the meaning of California law and in
19 visual proximity to a request for consent to the offer; (3) whether, before charging a credit card,
20 debit card, or third-party payment account for an automatic renewal subscription, Defendants obtain
21 customers’ affirmative consent to an agreement containing clear and conspicuous disclosure of all
22 automatic renewal offer terms; (4) whether Defendants provide California consumers with an
23 acknowledgment that includes clear and conspicuous disclosure of all automatic renewal offer
24 terms, the cancellation policy, and information regarding how to cancel; (5) Defendants’ record-
25 keeping practices; and (6) the appropriate remedies for Defendants’ conduct.

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

1 43. Typicality and Adequacy. Plaintiff’s claims are typical of the claims of the other
2 Class members. Plaintiff alleges that Defendants enrolled Plaintiff and other Class members in
3 automatic renewal or continuous service subscriptions without disclosing all automatic renewal
4 offer terms required by law, and without presenting such automatic renewal terms in the requisite
5 clear and conspicuous manner; charged Plaintiff’s and Class members’ credit cards, debit cards, or
6 third-party payment accounts without first obtaining affirmative consent to an agreement containing
7 clear and conspicuous disclosure of all automatic renewal offer terms; failed to provide the
8 acknowledgment required by law; and failed to provide the requisite online and cost-effective,
9 timely, and easy-to-use mechanisms for cancellation as required by law. Plaintiff has no interest
10 adverse to the other Class members. Plaintiff will fairly and adequately protect the interests of the
11 Class members.

12 44. Superiority. A class action is superior to other methods for resolving this
13 controversy. Because the amount of restitution to which each class member may be entitled is low
14 in comparison to the expense and burden of individual litigation, it would be impracticable for class
15 members to redress the wrongs done to them without a class action forum. Furthermore, on
16 information and belief, class members do not know that their legal rights have been violated. Class
17 certification would also conserve judicial resources and avoid the possibility of inconsistent
18 judgments. Prosecution of separate actions by individual class members would create a risk of
19 inconsistent or varying adjudications with respect to individual class members, which would
20 establish incompatible standards of conduct for Defendants.

21 **FIRST CAUSE OF ACTION**

22 False Advertising

23 (Bus. & Prof. Code, § 17500 & § 17535)

24 45. Plaintiff incorporates the previous allegations as though fully set forth herein.

25 46. Defendants’ “per month” pricing representations as alleged herein were and are false,
26 misleading, and/or have the capacity, likelihood, or tendency to deceive or confuse the consuming
27 public, in violation of § 17500. Defendants knew, or should have known, that representing the
28 subscription pricing for BallerTV as a set dollar amount “per month” was false, misleading, and/or

1 had (and continues to have) the capacity, likelihood, or tendency to deceive or confuse the
2 consuming public when, in fact, Baller’s regular business practice was and is to charge at inception
3 a lump sum that is a multiple of the stated per-month amount.

4 47. Defendants made the representations alleged herein with the intent to induce Plaintiff
5 and Class members to purchase subscriptions to BallerTV.

6 48. Plaintiff purchased a subscription to BallerTV in reliance on the truth of Defendants’
7 representations concerning the price on a “per month” basis.

8 49. If Plaintiff had known that Baller would charge her an upfront lump sum of \$155.88,
9 rather than \$12.99, Plaintiff would not have purchased a subscription to BallerTV and would not
10 have paid any money to Baller.

11 50. Plaintiff has suffered injury in fact and lost money as a result of Defendants’ violation
12 of Business and Professions Code § 17500.

13 51. Pursuant to Business and Professions Code § 17535, Plaintiff and all Class members
14 are entitled to restitution of amounts that Defendants charged to Plaintiff and Class members during
15 the limitations period preceding the filing of the initial Complaint in this action and continuing until
16 Defendants’ statutory violations cease.

17 52. Pursuant to Business and Professions Code § 17535, for the benefit of the general
18 public of the State of California, Plaintiff seeks a public injunction prohibiting Defendants from
19 continuing their unlawful practices as alleged herein.

20 **SECOND CAUSE OF ACTION**

21 False Advertising – Based on Violation of the California Automatic Renewal Law

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

23 53. Plaintiff incorporates the allegations of paragraphs 1-44 as though set forth herein.

24 54. During the applicable statute of limitations period, Defendants have enrolled Plaintiff
25 and other California consumers in automatic renewal subscriptions and have violated the ARL by,
26 among other things, (a) failing to present automatic renewal offer terms in a clear and conspicuous
27 manner before a subscription is fulfilled and in visual proximity to a request for consent to the offer;
28 (b) charging the consumer’s credit card, debit card, or third-party payment account for an automatic

1 renewal without first obtaining the consumer’s affirmative consent to an agreement containing clear
2 and conspicuous disclosure of all automatic renewal offer terms; and (c) failing to provide an
3 acknowledgment that includes clear and conspicuous disclosure of all automatic renewal offer
4 terms, the cancellation policy, and information regarding how to cancel, all in violation of Business
5 and Professions Code § 17602(a)(1)-(a)(3).

6 55. On information and belief, Baller purports to justify its automatic renewal practices
7 based on the following sentences, which appear beneath the “Subscribe Now” button on Baller’s
8 website purchase screen (Exhibit 1), in small and faint grey type set against a white background:

9 Upon clicking Subscribe you will be charged for a BallerTV membership. At the end of your
10 membership, your subscription will automatically renew and your payment method on file
11 will be charged \$155.88 each billing period.

You may pause or cancel your subscription at any time by self-service via your Account
Settings or by contacting support@ballertv.com

12 Those sentences fail to include all of the “automatic renewal offer terms” required by Business and
13 Professions Code § 17601(b), and they also fail to provide any disclosure in a “clear and
14 conspicuous” manner, within the meaning of Business and Professions Code § 17601(c).

15 56. Plaintiff has suffered injury in fact and lost money as a result of Defendants’
16 violations of the ARL.

17 57. Pursuant to Business and Professions Code § 17535, Plaintiff and all Class members
18 are entitled to restitution of all amounts that Defendants charged to Plaintiff’s and Class members’
19 credit cards, debit cards, or third-party payment accounts for BallerTV subscriptions during the
20 limitations period preceding the filing of the initial Complaint in this action and continuing until
21 Defendants’ statutory violations cease.

22 58. Pursuant to Business and Professions Code § 17535, for the benefit of the general
23 public of the State of California, Plaintiff seeks a public injunction prohibiting Defendants from
24 continuing their unlawful practices as alleged herein.

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1 **THIRD CAUSE OF ACTION**

2 Violation of the California Unfair Competition Law

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

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

5 60. 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 of false advertising under § 17500. (Bus. & Prof. Code, § 17200.)

8 61. In the course of conducting business in California within the applicable limitations
9 period, Defendants committed unlawful, unfair, and/or fraudulent business practices, and engaged
10 in unfair, deceptive, untrue, or misleading advertising, by, inter alia and without limitation:
11 (a) failing to present automatic renewal offer terms in a clear and conspicuous manner before a
12 subscription or purchasing agreement is fulfilled and in visual proximity to a request for consent to
13 the offer, in violation of § 17602(a)(1); (b) charging the consumer’s credit card, debit card, or third-
14 party payment account in connection with an automatic renewal or continuous service without first
15 obtaining the consumer’s affirmative consent to an agreement containing clear and conspicuous
16 disclosure of all automatic renewal offer terms, in violation of § 17602(a)(2); (c) failing to provide
17 an acknowledgment that includes clear and conspicuous disclosure of all required automatic renewal
18 offer terms, the cancellation policy, and information regarding how to cancel, in violation of
19 § 17602(a)(3); and (d) failing to provide an online and cost-effective, timely, and easy-to-use
20 mechanism for cancellation, in violation of § 17602(c) and (d). Plaintiff reserves the right to identify
21 other acts or omissions that constitute unlawful, unfair, or fraudulent business acts or practices,
22 unfair, deceptive, untrue or misleading advertising, and/or other prohibited acts.

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

27 63. There were reasonably available alternatives to further Defendants’ legitimate
28 business interests, other than the conduct described herein.


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On All Causes of Action:

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

Dated: September 18, 2024

DOSTART HANNINK LLP



ZACH F. DOSTART
Attorneys for Plaintiff

1018367.1






















Exhibit 1

Parents ♥ BallerTV





Showing our best plans for Parents ▾

Quarterly

Yearly (Save 50%)

 Bronze	 Silver	 Gold
The Basic	The Super Fan	The Recruit
\$7.99 per month	\$12.99 per month	\$19.99 per month
<ul style="list-style-type: none">  1 live event per month  1 game download per month  Unlimited HD replays  No simultaneous viewers  No Event Viewership Stats  No Recruiting View Report 	<ul style="list-style-type: none">  3 live events per month  3 game downloads per month  Unlimited HD replays  Up to 3 simultaneous viewers  Event Viewership Stats Learn More  No Recruiting View Report 	<div data-bbox="1249 592 1512 641" style="border: 1px solid #007bff; border-radius: 10px; padding: 2px; display: inline-block; margin-bottom: 5px;">  Unlimited live events per month </div> <ul style="list-style-type: none">  5 game downloads per month  Unlimited HD replays  Up to 5 simultaneous viewers  Event Viewership Stats Learn More  Recruiting View Report Learn More
Billed \$95.88 every 12 months	Billed \$155.88 every 12 months	Billed \$239.88 every 12 months

All plans include unlimited HD replays and game highlights for all games on BallerTV

Payment Info





Have a Promo Code?

Subscribe Now - Silver

Upon clicking Subscribe you will be charged for a BallerTV membership. At the end of your membership, your subscription will automatically renew and your payment method on file will be charged \$155.88 each billing period.

You may pause or cancel your subscription at any time by self-service via your Account Settings or by contacting support@ballertv.com

Exhibit 2

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

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

SUBJECT

Advertising: Automatic Renewal Purchases

DESCRIPTION

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

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

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

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

BACKGROUND

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

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



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

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

CHANGES TO EXISTING LAW

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

Existing law, the FAA, includes the following:

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

COMMENT

1. Stated need for the bill

The author writes:

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

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



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

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

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

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

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

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

3. Remedies available under the bill

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



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

4. Key terms defined

This bill would define the following key terms:

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

5. Recording of telephone automatic renewal offers

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



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

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

6. Author's amendments

On page 3, line 17, insert:

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

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

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

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

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

On page 4, line 5, insert:

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

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

Opposition: None Known

HISTORY

Source: Author

Related Pending Legislation: None Known

Prior Legislation: None Known



Exhibit 3

Date of Hearing: June 30, 2009

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

PROPOSED CONSENT (As Proposed to be Amended)

SENATE VOTE: 37-0

SUBJECT: AUTOMATIC RENEWAL AND CONTINUOUS SERVICE OFFERS

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

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

SYNOPSIS

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

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

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

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

EXISTING LAW:

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

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

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

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

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

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

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



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

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

- On page 4 after line 9 insert:

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

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

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

REGISTERED SUPPORT/OPPOSITION:

Support:

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

Opposition:

None on file

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



Exhibit 4

Subject: FW: You've Unlocked Unlimited Access to BallerTV

----- Forwarded message -----

From: **BallerTV** <members@ballertv.com>

Date: Fri, Apr 15, 2022 at 5:25 PM

Subject: You've Unlocked Unlimited Access to BallerTV

To:



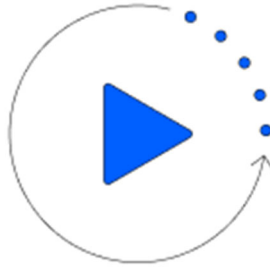
Your Premium BallerTV Membership

Here's what you'll get with premium access.



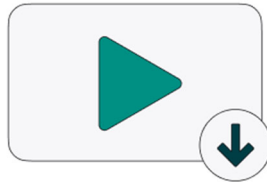
Unlimited Livestreams

Watch thousands of new games
every weekend.



Unlimited HD Replays

Relive all the action or catch what you missed.



Free Download Credits Included*

Save and share with friends and family. * 50% off additional downloads

Got Questions? Reach Out to BallerTV Support

Contact Support via Chat →

support@baller.tv

Your BallerTV Membership:

Order Number: dlBehc

Membership Type: \$156 Annual

Amount Charged: \$155.88

Payment Info: Visa - 1718

Next Billing Date: April 16, 2023

This plan will auto-renew unless you cancel. Cancel anytime.

BallerTV

766 E Colorado Blvd #200, Pasadena, CA 91101, Pasadena, CA 91101

Exhibit 5

Clay E



07/26/2022

Complete ripoff, borderline fraud. If you asked your grandmother to video a basketball game for you and the quality wasn't so good and she didn't exactly follow the ball and sometimes only recorded the action on one end and didn't notice that her videos only showed one of the baskets, you would be disappointed. But if you were charged \$179.88 by a company posing as a professional streaming service, you would feel ripped off. In addition, as is mentioned in other reviews, it appears you are paying a reasonable monthly fee, but in reality you are being charged an annual subscription. THEN, after canceling the service and receiving a partial refund, 3 months later, I discovered a \$59.97 fee charged to my account and the account was not canceled and is still active, though there has been no activity. They claim that we requested a downgrade rather than a cancellation. FRAUD

Exhibit 6

Complaint Type: Billing/Collection Issues Status: Resolved

07/25/2022

March 2022: Like so many others, I assumed I was paying ** per month, and could cancel after this one tournament = two games. It is the only tournament I will watch all year. Like the others, I was charged **** I have emailed Baller tv, and they send out boilerplate responses and have not resolved the matter. Two additional points: 1. The fact that Baller TV has NOT changed the pricing info on their website implies that this is INTENTIONAL. If they wanted to make it clear to prospective customers that they only charge annually, THEY COULD MAKE IT CLEAR. But...they would of course lose customers who don't want to pay **** So they create boilerplate answers for those of us who get tricked and hope that most of their victims are too busy to resist. 2. The video quality was appalling. I haven't seen resolution this bad in decades. And at times the play would move on and the video would be in the wrong place, as if the operator wasn't paying attention.

Desired Outcome
Billing adjustment

Baller, Inc. Response

08/05/2022

Pricing is made clear before purchase at *****. At this time, we only offer annual and quarterly subscription pricing. Pursuant to our Refund Policy, we could not process a full refund on your subscription purchase as there was premium account usage on the account. However, it appears that our customer support team processed a full refund for your purchase on July 18th, 2022. Your subscription has also been canceled so you will not be billed again. Here is your refund receipt for confirmation:

***** We deeply apologize for any inconvenience that this may have caused, and hope to provide you with a much better quality of service soon! If you ever have any further questions or concerns, please don't hesitate to reach back out to our support team!

Exhibit 7

Linda C



07/23/2022

On 2/13/2021 I signed up Baller TV to watch my granddaughter's club volley ball game. I checked the box for a single event for \$7.99. I received an immediate email confirming a one year subscription and Visa charge for \$95.88. I contacted Baller regarding the mistake. I received a response that the shortest subscription was quarterly and was then credited \$50.91 (Visa) on 2/26/2021. I have contacted Baller numerous times and cancelled my subscription a total of 4 times. It is now 1 1/2 years later and my Visa is still being charged \$44.97 quarterly. I have asked for a total of \$224.85 to be credited to my Visa for fraudulent charges. Their Chat Line always malfunctions and dismisses me when I ask for a credit for unauthorized charges. Miraculously 5 days ago the Chat Line dismissed me again and a cancellation notice appeared on my email. They still owe me \$224.85 for all charges after 2/26/2021. I have lodged a complaint with my B of A Premium Rewards card. As a footnote: the streaming was irregular, footage kept stopping, camera problems, etc. Very disappointing company. Not many scruples for working around young people.

Exhibit 8

Tina P



07/15/2022

Super setup! The membership states \$12.99 but your AUTOMATICALLY charged \$156 for the yearly subscription!!??? You are not able to get a refund of your money, nor are you able to talk to an actual customer service representative to resolve the issue. The biggest scam of 2022

Exhibit 9

Complaint Type: Problems with Product/Service Status: Resolved

07/12/2022

I'm seeking a refund for a misleading subscription. I was not aware that I would be billed for a yearly subscription (\$124.70), when a monthly price (\$10.39) was displayed. I canceled subscription 24 hrs (July 7-8, 2022) after I subscribed, when I noticed the the yearly price charged to my credit card and not the monthly price that I thought. I only watched 2 full games and the 3rd had poor connection at the venue and couldn't be streamed. I fully acknowledge using the services, but my intent was to not use the services beyond this month, because I have no need for the service once my teams season is over in at the end of July. I feel the price advertisements are very misleading and is definitely a display of predatory business practices by BallerTV.

Desired Outcome

Refund; Modification/discontinuance of an advertised claim

Baller, Inc. Response

07/22/2022

Pricing is made clear before purchase at ***** At this time, we only offer annual and quarterly subscription pricing. Pursuant to our Refund Policy, we could not process a full refund on your subscription purchase as there was premium account usage on the account. As a courtesy, we have processed a full refund for your subscription purchase, as well as canceled your subscription to ensure you're not billed again. Here is your refund receipt for confirmation:

***** If you ever have any further questions or concerns, please don't hesitate to reach back out to our support team!

Exhibit 10

Complaint Type: Billing/Collection Issues Status: Resolved

07/07/2022

BALLERTV subscription webpage is very misleading. I saw same complaints from so many other customers, but I don't think they were trying to fix the issue. I just wanted to watch one game, and I was willing to pay \$6.39 per month for that - as the big bold font says, but I got charged for yearly subscription \$76.70. I just chatted with customer support and was told that the best they could do for me is downgrading from yearly to quarterly, charge me \$35.98 instead. But this is unfair, their webpage is very misleading, I don't think it meets accessibility standard. Business should gain money from their products and services, not by cheating customers. I feel very disappointed and want to have my \$70 back!

Desired Outcome

Billing adjustment

Baller, Inc. Response

07/22/2022

Pricing is made clear before purchase ***** At this time, we only offer annual and quarterly subscription pricing. Pursuant to our Refund Policy, we could not process a full refund on your subscription purchase as there was premium account usage on the account. We also deeply apologize for what seems like a less than satisfactory viewing experience. We've taken full note of your feedback to better improve our quality of service going forward. As a courtesy, we have processed a full refund for your subscription purchase, as well as canceled your subscription to ensure you're not billed again. Here is your refund receipt for confirmation:

***** If you ever have any further questions or concerns, please don't hesitate to reach back out to our support team!

Exhibit 11

Complaint Type: Billing/Collection Issues Status: Answered

06/29/2022

The initial cost for full access was ***** and I was billed a year long subscription at ***** After I filled out my card information I was not informed on the site that it was for a year nor that I would be charged at that full amount stated above. Just showing at ***** signing up. Due to false advertising I was scammed into signing up. I wasn't able to watch a full game due difficulties on their site. I emailed them to cancel subscription the same day few hours after I was made aware. Once the card information was entered I was redirected to Ballerstv site immediately without verification of the charge. Nor what name was on the card given.I would like a full refund.

Desired Outcome

Modification/discontinuance of an advertised claim

Baller, Inc. Response

07/22/2022

Pricing is made clear before purchase at *****. At this time, we only offer annual and quarterly subscription pricing. Pursuant to our Refund Policy, we could not process a full refund on your subscription purchase as there was premium account usage on the account. We also deeply apologize for what seems like a less than satisfactory viewing experience. We've taken full note of your feedback to better improve our quality of service going forward. As a courtesy, we have processed a full refund for your subscription purchase, as well as canceled your subscription to ensure you're not billed again. Here is your refund receipt for confirmation:

***** If you ever have any further questions or concerns, please don't hesitate to reach back out to our support team!

1 **PROOF OF SERVICE**

2 **Rickey v. Baller, Inc., Case No. 37-2022-00044840-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 18, 2024, I served a true copy of the following document described as

8 **SECOND AMENDED CLASS ACTION COMPLAINT**

9 on the interested parties in this action as follows:

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Counsel for Defendant

19 Counsel for Defendant

20 **BY E-MAIL:** I caused a copy of the document to be sent from e-mail address
21 cklobucar@sdlaw.com to the persons at the e-mail addresses listed above. I did not receive, within
22 a reasonable time after the transmission, any electronic message or other indication that the
23 transmission was unsuccessful.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing
25 is true and correct. Executed on September 18, 2024, at San Diego, California.

26
27 *Catherine Klobucar*
28 _____
Catherine S. Klobucar