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March 22, 2017

The Honorable Robert Hertzberg
California State Senate
State Capitol, Room 4038
Sacramento, CA 95814

RE: SB 313 (Hertzberg) - Advertising: automatic renewal and continuous service offers - SPONSOR
As Introduced February 13, 2017

Dear Senator Hertzberg:

The Consumer Federation of California (CFC) is pleased to sponsor Senate Bill 313, your legislation to ensure that California residents who sign up for a free or introductory trial offer or gift do so as part of an opt-in process, and to make it easier for consumers to cancel any resulting automatic service renewal.

Specifically, SB 313 would simplify the process of cancelling a renewing subscription by requiring businesses offering a free gift or reduced price trial to secure a consumer's opt-in authorization for an automatic renewal offer, separate and apart from the authorization to accept the free or introductory gift or trial. The bill would also require businesses to notify consumers three days before receiving their first charge for an automatic renewal or continuous service plan, and would have to allow the consumer cancel the trial or offer as easily as they signed up for it, including through the internet.

Under current law, businesses are required to conspicuously post the terms of trial offers and automatic renewals on websites or communicate them directly to consumers, however, when consumers sign up for free gifts or introductory trial offers that come with an automatic service renewal, businesses are not required to get a separate, affirmative authorization for the charged service. Nor are business required to provide notice prior to actually charging consumers for a renewal. As a result, since some free trial offers can run for many months, consumers sometimes forget that the service eventually renews automatically with a charge and can be surprised to see it appear on a credit card bill or as a debit from a bank account.

Free trials offers for wrinkle creams¹, gym memberships², and baby products³, among others^{4 5}, have provoked customer complaints relating to surprise billing and undisclosed charges. This

¹ <http://dfw.cbslocal.com/2017/03/03/free-trial-of-beauty-cream-ends-up-being-nothing-close-to-free/>.

tactic is also referred to as negative option billing; using a consumer's credit or debit card to make an initial purchase that is then automatically charged for the price of the product unless the consumer cancels the product by the end of the free trial period. Negative option billing is a common method across industries; more so now than ever, given the prevalence of online commerce.

Businesses often use a free trial offer as a lure and rely on obscure "gotcha" clauses to hook a consumer to keep paying for an unwanted product or service. Though businesses make it easy for consumers to agree to free trials or reduced price introductory offers, the same convenience does not exist when it comes to cancellation. Consumers frequently encounter unnecessary and time consuming obstacles as they try to terminate the free trial. These hurdles include situations where consumers attempting to cancel are aggressively pressured by company representatives to remain in the contract, despite their desire to simply end the business relationship.

A business should rely on the quality and value of its product or service, and not depend on obstacles to cancellation, to retain a consumer's loyalty. SB 313 will enact common sense consumer protections that ensure fairness and transparency in contract renewals.

Thank you for your leadership on this vital issue.

Sincerely,



Richard Holober
Executive Director

² <https://consumerist.com/2012/09/14/beware-of-the-not-so-free-trial-at-golds-gym/>.

³ <http://gizmodo.com/jessica-albas-honest-company-makes-canceling-a-subscrip-1787398311>.

⁴ <http://www.consumerreports.org/cro/news/2014/12/free-trials-can-end-up-costing-you/index.htm>.

⁵ <http://www.consumerreports.org/cro/news/2015/07/think-twice-before-signing-on-for-a-free-trial/index.htm>.