Remedies for Consumers with

Health Club Services Contracts

By John R. Dorocak*

I. Introduction

Some types of businesses, unfairly or not, frequently have a reputation of engaging in sharp business practices such as, for example, the hard sell. One such business is likely gym or health club facilities, at least judging from the scrutiny by some legislatures ostensibly seeking to protect consumers.[1] Prominent states such as Texas and California are among the states that have enacted consumer protection legislation in the area of health club facilities. It may be instructive to consumers, facilities operators, legislators, and others to examine statutes such as the Texas Health Spa Act and California's Health Studio Services Contracts law (or Health Studio Act) in the context of a hypothetical consumer complaint.

Consider the following.[2] The parent, mother or father, decides on the extension of a health club services contract for her son or daughter for tae kwon do or karate, or similar lessons. The proprietor of the studio explains that the current contract is running out and the extension would be for three years. The extension continues lessons, which originally began at the child's public elementary school, as an after-school activity, and then continued at the studio under a program in which the local schools introduce the students to the studio and the discipline. The schools do not have any official or continuing role in the program. Rather, the program is one of several, which are conducted by third-party vendors and about which the schools inform the parents. The proprietor originally offered a one-year contract, at a time when the initial introductory, low-priced, on-campus lessons ended and he first moved the lessons to his studio. For the three-year renewal contract, the proprietor states that the particular discount is a one-time discount, which will only be available if the parent agrees to the extension at the present time.

Once the child has completed one additional year under the three-year contract at the health club, the child is moving on to other sports and the parents would like to end the participation at the club. The club has not moved nor has the student. The proprietor of the club explains that the contract was for a three-year period and has two more years remaining. What remedies might the parents have under state laws such as those of Texas and California regarding terminating the health club services contract?

This article will first consider contractual remedies under laws such as the Texas Health Spa Act and the California Health Studio Act. Secondly, the article will consider, at least briefly, whether theoretically consumers in the hypothetical situation posited herein need to be protected from themselves. Thirdly, the article will consider practically what the consumer party to a health club services contract might be able to do to extricate himself from the contract.

Under Texas law, a violation of the Texas Health Spa Act is a deceptive practice under the Texas Deceptive Trade Practices Act (DTPA).

II. Statutory Provisions and Remedies in Health Club Services Contracts Laws in States such as Texas and California

The Texas Occupations Code at Chapter 702, Section 702.001 *et seq.*, and the California Civil Code at Title 2.5, Section 1812.80 *et seq.*, concern contracts for health club services.[3] The Texas legislature to protect the public and to foster competition, and the California legislature for the public welfare to safeguard the public, declared that the legislation on health club service contracts was necessary.[4] The Texas statute defines a health spa as "a business that offers for sale, or sells, memberships that provide members instruction in or the use of facilities for a physical exercise program."[5] The California statute defines a contract for health studio services, and thereby a health studio, rather broadly, as "a contract for instruction, training or assistance in physical culture, bodybuilding, exercising, reducing, figure development, or any other physical skill, ..."[6] Both states appear to use a broad definition of health clubs covered by the legislation.[7]

The Texas statute requires that a health spa contract be in writing and delivered to the purchaser.[8] The California statute requires that the health studio services contract be in writing and that a copy of the written contract "be physically given to or delivered by email to the customer at the time he or she signs the contract."[9] Texas law provides that a contract which does not comply with Chapter 720 Health Spas is void.[10] California law similarly provides that a contract which does not comply with the law shall be "void and unenforceable as contrary to public policy."[11] The Texas law also provides that the buyer of a health spa membership may not waive provisions of Chapter 702 and that a contract may not require a note or a series of notes if the negotiation of such notes will cut off any defense or rights as to third parties that the purchaser that the purchaser had against the seller.[12] The California law further provides that any waiver by the buyer shall be void and unenforceable and that a right of action or defense arising out of a contract for health studio services, which right or defense the buyer has against the seller, is not cut off by assignment, unless the assignee gives notice to the buyer and receives no notice within thirty (30) days of a claim or defense which the buyer may have.[13]

The Texas Occupations Code provides that the buyer has the right to cancel the contract by the end of the third business day.[14] The California Civil Code provides that the buyer has the right to cancel the contract by the end of the fifth business day after the date of the agreement.[15] Texas law limits the contract to five (5) years if financed or three (3) years if not financed.[16] Under California law, the period of the contract cannot exceed three (3) years.[17]

Under Texas law, a violation of the Texas Health Spa Act is a deceptive practice under the Texas Deceptive Trade Practices Act (DTPA).[18] Professor Richard Alderman has written, "Because these statutes tie them to the DTPA, they are generally referred to as 'tie-in statutes.'"[19] Apparently under California law, the Deceptive Practices Act and the Health Studio Services Act function separately.[20] California's Health Studio Services Act does provide that its remedies are not exclusive.[21] Professor Alderman indicates that a consumer injured under the Texas Health Spa Act could collect actual damages through the DTPA, including possibly trebled damages if the violation was "knowingly." Significantly, mental anguish damages may also be trebled because the term actual damages encompass damages beyond the economic damages generally awarded under the DTPA.[22]

It appears that in both Texas and California, the measure of damages recoverable in litigation under the Texas Health Spa Act and the California Health Studio Act is generally reduced for benefit received.[23] In the hypothetical posited herein, the remedy sought is release from the obligation to make future payments for services to be rendered in the future.

The provisions of the Texas and California laws appear similar to statutes in other states. What then if the consumer party to the contract wishes to cancel the contract before the at least three (3) year has run? Theoretically, should state statutes protect consumers from themselves and practically how might the party in the posited scenario extricate himself or herself from the contract?

III. Theoretically, Are State Statutes Intended to Protect Consumers From Themselves with regard to Health Club Services Contracts?

Given the facts of the posited hypothetical and a state statute such as that of Texas or California, there is likely little the buyer, who is party to the health club contract, can do to extricate himself or herself from that contract. Although the Texas Health Spa Act does not apply to "establishments that exclusively teach dance or aerobic exercise",[24] the karate or tae kwon do instruction in the hypothetical would appear to

be within the broad language of both statutes. In addition, although the Texas Health Spa Act does not apply to "an activity conducted or sanctioned by a school" and the California Health Services Act does not apply to "contracts for instruction at schools operating pursuant to the provisions of the Education Code",[25] it does not appear likely that those exclusions apply in the hypothetical. Admittedly, the language of each statute raises a question as to whether either statue would apply, because of the school exclusions. Possibly, California's exclusionary language is broader, but, in the absence of additional guidance, the broad statutory purposes set forth at the outset of each statute might indicate that the respective legislatures meant only to exempt instruction which was part the educational curriculum at a school of a general education.

Under the Texas statute, there is a three (3) day cooling off period, and under the California statute, there is a five (5) day cooling off period, during which the signee of the contract can rescind the contract. However, once that period passes the contract can be for at least a three (3) year period. As long as the contract is in writing and is furnished to the health studio member, that member appears to have little recourse to consumer protection in an area in which the states and the federal government have recognized that the consumer may need protection given the number of statutory pronouncements.

The question then arises whether government should seek to protect individuals from their own bad decisions, assuming, in the hypothetical, that the party decided the decision was a poor one in that the three-year term was too long. Recently, much has been written about libertarian paternalism or asymmetric paternalism or nudging citizens by a government seeking a course of action by its citizens.[26] Colin Camerer and his fellow authors have advocated for an "asymmetric paternalism". The authors explain, "A regulation is asymmetrically paternalistic if it creates large benefits for those who make errors, while imposing little or no harm on those who are fully rationale."[27] Professor William English has explained that there is the close relationship and overlap of libertarian paternalism, asymmetric paternalism, and nudging.[28] What these new notions of paternalism may raise for the hypothetical and the health studio services contract law is how far a governmental regulation might extend in protecting consumers from themselves. Professor English has said there are two virtues and two ethical concerns in his view in the nudging paternalism. He sees as virtues that the cognitive costs also enter the cost benefit analysis and that new options are open.[29] He sees as ethical concerns that the nudging can be overly manipulative and extend the scope of governmental powers.[30]

Professor English also praises Professor Richard Thaler's New York Times' article asserting that nudges should be transparent and never misleading, easy as possible to opt out of, and improving the welfare of those being nudged.[31]

This at least newly described paternalism is not of course without critics. Professor Joshua D. Wright has criticized the seemingly increasing calls for paternalistic governmental intervention as follows.

> Nevertheless, some scholars have been less sanguine about the support that behavioral economics lends to the case for paternalism, arguing that a more complete analysis of the long-run costs and benefits of paternalistic regulations suggest a much more limited role for government intervention. They have emphasized the costs of paternalistic proposals, for example, paternalistic regulations may lessen the incentive to engage in learning and development of rational behavior or exacerbate irrational behavior by introducing moral hazard.[32]

Professor Heidi M. Hurd has apparently criticized libertarian paternalism as an attempt to make utilitarianism palatable to libertarians.[33] Professor English points out that proposals for paternalistic intervention or nudging need to be judged on a case-by-case basis because the question of nudging in the abstract is "not particularly interesting", there is "no choice but to nudge", there is "no neutral way of presenting information", and "what we really care about is evaluating particular proposals".[34] In light of Professor English's comments, it may be instructive to examine the hypothetical and some of the standard legal protections regarding health studio services contracts, and to consider whether the consumer protections might be extended further, albeit, in something of a paternalistic fashion.

IV. Practically, Can State Statutes Extend Consumer Protections with regard to Health Club Services Contracts?

Consumers' frequent purchases of extended warrantees are used as at least anecdotal evidence that consumers do frequently make decisions that are contrary to their best interests.[35] Apparently, the behavior is so recognized that even the Simpsons' animated television show has commented on it.[36] As Professor Camerer and his co-authors comment, "The fact that they [extended warrantees] are enormously profitable to retailers implies they are costly to buyers."[37]

Even when paternalistic government intervention has been attempted to protect consumers even from themselves, it is questionable whether such protections are effective. A cooling off period for canceling a contract, often within three to five days, is a long-established consumer protection which may be illusory at best, given studies of how frequently consumers exercise the right granted by the cooling off period.[38] If paternalistic government interventions can likely be so ineffective, the question naturally arises why attempt further intervention? The same cited study, by Professor Sovern, may suggest an underlying rationale, that consumer protection may function, per the estimation of this author, as a conservative type of regulation akin to antitrust law, seeking to keep markets open for scrupulous sellers.[39]

Given that a time-honored consumer protection device such as a cooling off period has little benefit or cost apparently

according to several studies,[40] the question may be what additional consumer protections could be advanced by an admittedly somewhat paternalistic government, although such protections might have limited benefit and, it is hoped, also limited cost.

The rationales for cooling off periods might help illuminate what other consumer protections could be advanced to protect consumers such as in the hypothetical originally suggested in this article. Cooling off periods were supported, at least originally, to protect consumers from the "hard sell" or the high pressure sales pitch of door-to-door salesmen whom the consumer want to just get off her porch or out of her living room.[41] There are at least two other rationales for cooling off periods among the rationales offered. First, "Cooling-off periods can in fact be seen as an indirect mechanism for information revelation."[42] Secondly, "the right to rescind was also aimed at so-called impulse sales which the consumer later regrets."[43]

Returning to the posited hypothetical on the health club contract which the parent entered into for three years and now would like to end after one year, clearly the three rationales for the cooling-off period might well apply. As mentioned at the outset of this article, various state legislatures have concluded that the high pressure, hard sell, or sharp business practices are often used in the health club services contract sales.[44] In addition, the cooling-off period as the time for gathering additional information and rescinding a contract out of buyer remorse would presumably apply to health club services contracts and the hypothetical suggested.

However, in the hypothetical, it is sometime later that the parent concludes that the term of the contract is just too long and does not meet the current needs of the child. What consumer protections might be added in the health club services contract area to assist specifically the parent in the hypothetical? Certainly other remedies, in addition to the cooling-off period and the right of rescission, such as a required independent affirmation of the contract apart from the seller, or even mandatory counseling by a third-party, might be of assistance to some consumer parties to health club services contracts, but do not seem particularly apropos to the hypothetical. A more direct remedy for future potential health service contract buyers similar to the hypothetical buyer would be a limitation on the term of the contract, to say, one year, or possibly even six months. Such a direct limitation appears to raise the question of just how far can a government go in paternalistically protecting citizens without possibly violating the rights of others.

When the federal cooling-off rule was first proposed by the Federal Trade Commission (FTC), there was heavy criticism by sellers, even in testimony to Congress, that such a period with right rescission would "undermine the foundation of the law of contracts" and be "probably unconstitutional"[45] Although in an isolated situation, the arguments concerning the law of contracts and the constitutional basis thereof might be appealing, particularly to this author, by the time the FTC asked for comments on the cooling-off period rule forty years later in 2009, there was little industry criticism and opposition.[46] Professor Sovern suggests, in his comprehensive article on the cooling off period, that the decline in industry opposition to the cooling-off period rule resulted because "opponents' fears about the costs of the cooling-off rules were considerably overstated."[47] Sovern also suggests that changing times, the prevalence of the personal computer with less cumbersome forms, and a lack of seller's history with pre cooling-off and rescission rules also might have contributed to the decline in opposition to those rules.[48]

Possibly the most direct government protectionist intervention for the hypothetical and the health club services industry would be an outright limit on contracts. However, government has already even specifically with regard to this industry limited terms of contracts. At one time, the industry had life-time contracts, some of which might have been even beneficial to consumers.[49] Most statutes, such as those of Texas and California, now generally limit the contracts to a specified period, such as three years.[50]

However, as the various state legislatures have determined, contracts for health club services did not arise in a pristine isolated instance where classical contract law alone should apply. What additional consumer protections might be proposed and are there any limits to such protections even in the age of libertarian paternalism or asymmetric paternalism or nudging? One extension of a consumer right, which would appear to be consistent with current rights and not necessarily burdensome, would be to require an oral notice, as well as a written notice, of a cooling-off period and rescission rights. Professor Sovern, in his study, found, "Comparison of rescission rights for those who provided both oral and written notice with those who provided only written notices shows that those who also told consumers about the right to rescind experienced a higher rescission rate at a statistically significant level."[51] Sovern continues, "It thus appears that oral notice has an impact on whether people rescind their contracts, those who are given only written notices are much less likely to cancel."[52]

One extension of a consumer right, which would appear to be consistent with current rights and not necessarily burdensome, would be to require an oral notice.

Professor Sovern concludes as follows regarding oral disclosures of cooling-off rules:

> If lawmakers retain cooling-off rules, they should consider adding oral disclosure requirements to the cooling-off period laws that do not already include them. Indeed, lawmakers should consider adding oral disclosure requirements to the general consumer protection arsenal. Of course, just because oral notice is effective in the limited context of cooling-off periods does not mean that it will help consumers in other contexts, but further study could clarify its impact.[53]

Sovern summarizes some state statutes which require both oral and written notice, including Cal. Civ. Code sect. 1689.7, which concerns home solicitation contracts or offers for the purchase of personal emergency response units.[54]

Another way to expand consumer rights might be to augment the cooling-off period length of time and permissible action by the buyer. Although Professor Sovern points out that cooling-off period rights are not exercised frequently and that sellers often refuse to deliver goods before cooling off periods expire, he does point out that European law provides for a two-week right of withdrawal.[55] Another possible extended consumer right during the cooling-off period would be, as mentioned previously, for the law to specify that consumers are not under any obligation as to transactions, unless they give written notice of affirmation to the seller.[56] As Professor Sovern indicates, the National Consumer Law Center in its draft National Consumer Act in 1970 provided for such a written affirmation requirement for transactions conducted outside the seller's place of business.[57]

To expand consumer protection and allow for more meaningful, possibly longer, cooling-off periods, an affirmative and independent affirmation of various transactions could be required.

Finally, independent counseling of consumers could be mandated, possibly during an extended cooling-off period. Such mandatory counseling apparently does take place in the situation of first-time home buyers utilizing loans.[58] Of course, any such mandatory counseling would likely invite an entire industry to arise with government support to some extent and thus raise the question of again how paternalistic can or should government be. It might be possible to utilize already existing consumer agencies, with a slight fee (.01%?) to be paid by consumers to agencies such as a Consumer Credit Counseling Service (CCCS).[59]

For the litigious and adventuresome buyer party to a health club services contract, it is possible that a class action might be certified against a health club. In a case under Connecticut law, the court held that a class action was not moot when the defendant health club offered to pay triple damages. The equitable claim for injunctive relief, seeking to compel an amendment to the health club services contract and to prevent collections from renewing members, could not be dismissed.[60]

V. Conclusion

Returning to the hypothetical suggested at the beginning of this article, none of even the extended consumer rights would aid our hypothetical buyer/parent other than the possibility of restricting the contract to a one-year period. However, the unscrupulous seller might run afoul of some of even the currently existing consumer protections. Recall that many of the health club services contract state statutes require that a written contract be given to the buyer, as does Tex. Occ. Code[61] and Cal. Civ. Code.[62] Those Texas Code sections require the "contract…must be…in writing…and [there] must be deliver[ed] to a purchaser a complete copy of the contract, accompanied by a written receipt.'[63] That California Code section requires, "A copy of the written contract shall be physically given to or delivered by email to the customer at the time he or she signs the contract."[64]

In addition, laws such as Tex. Occ. Code and Cal. Civ. Code prohibit waiver of provisions of the health club services contract law: "A person…may not waive a provision of this chapter…"[65] and "Any waiver of the buyer of the provisions of this title shall be deemed contrary to public policy and shall be void an unenforceable."[66] The Texas and California Statutes also provide that contracts not complying with the health studio services contract law are void: " A purported waiver of this chapter is void"[67] and "Any contract for health studio services which does not comply with the applicable provisions of this title shall be void and unenforceable as contrary to public policy."[68]

Thus, even envisioning expansion of consumer rights in a more paternalistic governmental situation, the protection for the buyer from an unscrupulous seller may come from that unscrupulous seller's own activities. In the hypothetical suggested in this article, presumably the contract for health club services would be void, even within the first of three years, under the Texas Occupations Code or California Civil Code, if the seller had not furnished the required written copy of the contract. Of course, it could be argued that not supplying a written contract was an essential violation of the health club services contract law, because the written contract is essential to the consumer being informed of the contract and various rights under it.[69] Furthermore, the buyer's right, to assert that a contract is void for failure to supply a written contract at the time of contracting, survives some attempts to cut off such rights. Texas Occupations Code 702.310[70] California Civil Code section 1812.87 prohibit notes from cutting off a buyer's right of action or defense against the seller. California Civil Code Section 1812.88 prohibits an assignment of the contract from cutting off the buyer's rights unless the assignee gives notice of the assignment to the buyer and, within thirty (30) days of mailing of that notice, the buyer provides no written notice to the assignee of facts giving rise to a claim or defense.[71]

Therefore, as to the hypothetical buyer, the unscrupulous seller's own action, such as failure to supply a written contract, might void the health club services contract. Extending the length of the cooling off period and right of rescission, requiring written and oral notice of the cooling off period and right of rescission, limiting the period for the contract, requiring independent affirmation of the contract, and requiring mandatory counseling might also assist the consumer buyers involved with the health club service contracts.

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1 See, e.g., Ala. Code §§ 8-23-1 to 8-23-13 (1975); Ariz. Rev. Stat. Ann. §§ 44-1791 to 44-1796; Cal. Civil Code §§ 1812.81 to 1812.92; Colo. Rev. Stat. § 6-1-704; Conn. Gen. Stat. § 21a-216 to 21a-227; Fla. Stat. §§ 501.012 to 501.019; Ga. Code Ann. § 10-1-393.2; Haw. Rev. Stat. ch. 486N-1 to 486N-11; 815 Ill. Rev. Stat. §§ 645.1 to 645.14; Iowa Code § 552.1 to 552.22; Md. Com. Law Code Ann. § 14-12B-01 to 14-12B-08; Mass. Gen L. ch. 93, sec. 81; N.H. Rev. Stat. Ann. § 358-I:1 to 358-I:10; N.J. Rev Stat § 56:8-42 (2013); N.Y. Gen. Bus. Law § 620-631; N.C. Gen. Stat. § 66-118 to 66-126;73 Ohio Rev. Code Ann. § 1345.41 to 1345.50; Pa. Cons. Stat. §§ 2161 to 2177; R.I. Gen. Laws §§ 5-50-1 to 5-50-12; S.C. Code Ann. §§ 44-79-10 to 44-

79-120; Tenn. Code Ann. §§ 47-18-301 to 47-18-322; Texas Occ. Code Ann. §§ 702.001 to 702.558; Utah Code Ann. §§ 13-23-1 to 13-23-7; Va. Code Ann. § 59.1-294. Wash. Rev. Code §§ 19.142.005 to 19.142.901; Wis. Stat. § 100.177.

The Federal Trade Commission advises, "Contact your state Attorney General or local consumer protection office to find out whether state laws regulate health club memberships, and whether the office has gotten any complaints about the business." https://www.consumer.ftc.gov/articles/0232-joining-gym (last checked 12192019).

2 Any similarity between the hypothetical facts and real, historical, or fictional persons (living or dead), places, things, or events is purely coincidental.

3 Tex. Occ. Code § 702.001 *et seq.;* Cal. Civ. Code § 1812.80 *et seq.*

4 *Id.*

5 Tex. Occ. Code § 702.003(4).

6 Cal. Civ. Code § 1812.81.

7 Aaron D. Werner, *Compliance with Health and Fitness State Laws: Background, Best Practices and Key Takeaways for Health and Fitness Club Owners*, Natl. L. Rev., available at https://www.natlawreview.com/article/compliance-health-and-fitness-state-laws-background-best-practices-and-key-takeaways (last checked 04/20/2020).

8 Tex. Occ. Code §§ 702.301(a)(1)(A) and 702.302(b)

9 Cal. Civ. Code § 1812.82.

10 Tex. Occ. Code §§ 702.311(1)

11 Cal. Civ. Code §§ 1812.91.

12 Tex. Occ. Code §§ 702.401 and 702.310.

13 Cal. Civ. Code §§ 1812.93 and 1812.88.

14 Tex. Occ. Code § 702.307.

15 Cal. Civ. Code § 1812.85 (20 days, if the amount of the contract is $1,500 up to $2,000; 30 days, $2001 – $2,500; 45 days $2,501 and above).

16 Tex. Occ. Code § 702.303.

17 Cal. Civ. Code § 1812.84.

18 Tex. Occ. Code § 702.403. Richard M. Alderman, *Texas Deceptive Trade Practice Act Remedies,* 15 J. Consumer & Com. L. 2, 5 (Fall 2011).

19 *Id.*

20 *Compare* Cal. Civ. Code § 1770 and Cal Civ. Code § 1812.80 ff.

21 Cal. Civ. Code § 1812.90.

22 Alderman, supra note 18, at 5.

23 *See* Wendt v. 24 Hour Fitness USA Inc., 821 F.3d 547, 551 (5th Cir. 2016) (applying Texas law and finding no standing because no economic injury, "Texas law permits a plaintiff to recover the purchase price he paid under a void contract only if the defendant fails to give the plaintiff all or part of what he paid for it or the statute that renders the contract void explicitly provides that the plaintiff is not liable to pay for any past services rendered by the defendant.") and Cal. Civ. Code sec. 1812.94 (providing the seller has 30 days after the execution of the contract by the buyer to correct noncompliance) and Cal. Civ. Code sec. 1812.85(b)(5) (providing "All moneys paid pursuant to a contract for health studio services shall be refunded within 10 days after receipt of the notice of cancellation, except that payment shall be made for any health studio services received prior to cancellation."). See also notes 60 and 69 infra.

24 Tex. Occ. Code § 702.003(4).

25 Tex. Occ. Code § 702.003(4) and Cal. Civ. Code §1812.81.

26 *See,* e.g. Colin Camerer, et al., *Regulation for Conservatives: Behavioral Economics in the Case for ""Asymmetric Paternalism"",* 151 U. Pa. L. Rev. 1211 (2003): William English, *Symposium: The Ethics of Nudging-Evaluating Libertarian Paternalism: Two Cheers for Nudging*, 14 Geo. J. L. & Pub. Pol'y 829 (2016); Joshua D. Wright, *Behavioral Law and Economics, Paternalism and Consumer Contracts: An Empirical Perspective,* 2 N.Y.U. J. L. & Liberty 470 (2007).

27 Camerer, et al., *supra* note 26 at 1212.

28 English, *supra* note 26, at nn. 1, 10, and 19 and accompanying text, citing, inter alia, Richard H. Thaler, *The Power of Nudges for Good and Bad,* N.Y. Times (Oct. 31, 2015) https://www.nytimes.com/2015/11/01/upshot/the-power-of-nudges-for-good-and-bad.html.

29 *Id*. at 831.

30 *Id* at 840.

31 *Id*. at 837 and n. 19.

32 Wright, *supra* note 26, at 472-473 (footnotes omitted).

33 Heidi M. Hurd, *Symposium: The Ethics of Nudging – Evaluating Libertarian Paternalism: Fudging Nudging: Why 'Libertarian Paternalism' Is the Contradiction it Claims It's Not*, 14 Geo. J. L. & Pub. Pol'y 703 (2016).

34 English, *supra* note 26, at 830.

35 Camerer, et al., supra note 26, at 144 and accompanying text.

36 *Id.* at n. 144 citing The Simpsons: HOMR (Fox Television Broadcast, Dec. 24, 2000).

37 *Id.* at 1253-1254.

38 Jeff Sovern, *Written Notice of Cooling-Off Periods, A Forty-Year National Experiment in Illusory Consumer Protection and the Relative Effectiveness of Oral and Written Disclosures,* 75 U. Pitt. L. Rev. 333-386 (2014).

39 *Id.* at 343-344 and nn. 22-24 and accompanying text.

40 *Id*. at 380-381

> It is not much of an exaggeration to say that the study suggests that cooling-off periods have little impact. Ironically, in light of the overheated rhetoric accompanying their creation, cooling-off periods appear to have virtually no benefits or costs.

See note 41, *infra.*

41 *Id*. at n. 13 and accompanying text.

42 *Id*. at n. 22 and accompanying text quoting Sven Hoeppner, *The Unintended Consequence of Doorstep Consumer Protection : Surprise, Reciprocation, and Consistency,* (May 14, 2012), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2057605.

43 *Id.* at 344.

44 See note 1 *supra.*

45 Sovern, *supra* note 38, at 374-375 and nn. 123-129 and accompanying text.

46 *Id.* at 376-377.

47 *Id.* at n. 138 and accompanying text. Professor Sovern sets forth findings from 5 surveys in his article, *supra* note 38 as follows: 1968 UCLA Survey, at n. 27; 1969 Yale Survey, at n. 39; 1981 PSRG Survey, at n. 41; 1981 Walker Survey, at n. 53; 2010 Sovern's own survey, at n. 67. Sovern in his survey, among others, contacted 100 gyms, of which 25 responded.

48 *Id*. at 379.

49 *See, e.g.,* La. Rev. Stat. Ann. §§ 51:1576-1582 and Jones v. Crescent City Health and Racquetball, 489 So. 2d 381 (La. Ct. App. 5th Cir 1986) cited in *Construction and Applicability of State Statutes Governing Health Club Membership Contracts or Fees,* 48 A.L.R. 6th 223 (2009). A lifetime contract not requiring additional payments, might, of course, be beneficial to the consumer.

50 Cal. Civ. Code § 1812.84.

51 Sovern, *supra* note 38 at 357.

52 *Id*. at 357-358.

53 *Id.* at 359-360 (footnotes omitted).

54 *Id.* at n. 75.

55 Id. at nn. 104-111 and accompanying text.
56 *Id.* at n. 33.
57 *Id.*
58 For discussion of home buyer assistance programs and education classes, *see,* e.g., Lynnette Khalfani-Cox, *Home Buyer Education Courses: A Secret Weapon for First-Time Buyers,* available at HSH.com/finance/mortgage/homebuyer-education-courses-secret-weapon-for-first-time-buyers.html (last checked 12/31/2019). Oren Bar-Gill, Seduction by Contract: Law, Economics, and Psychology in Consumer Markets (2012), cited in Benjamin J. Keele and Nick Sexton, *Keeping Up with New Legal Titles,* 105 Law. Libr. J. 231 (Spring 2013) explains that consumers are "imperfectly rational" and suggests more effective disclosure mandates and "sophisticated intermediaries" to aid consumers.
59 *See, e.g.,* http://www.credit.org/cccs/ last checked 12/31/2019.
60 Hennessey v. Connecticut Valley Fitness Centers, Inc., 30 Conn. L. Rptr. 499 (Conn. Super. Ct. 2001), cited in *Construction and Applicability of State Statutes Governing Health Club Membership Contracts or Fees*, 48 A.L.R. 6th 223 (2009). *See also*, McKean v. ABC Financial Services, Inc. Claim No. '18CV0923WQHRBB (U.S. Dis. Ct. S.D. Ca.) and Courtney Vinopal, *SoulCycle Riders May Get Refunds for Expired Classes Thanks to a Class-Action Settlement*, available at https://www.washingtonian.com/2017/07/18/soulcycle-class-action-settlement-soulcycle-riders-refund/ (last checked 12172019). Gascho v. Global Fitness Holdings, LLC, 822 F.3d 269, 94 Fed. R. Serv. 3d 1009 (6th Cir. 2016), cert. denied, 137 S. Ct. 1065, 197 L. Ed. 2d 176 (2017) and cert. denied, 137 S. Ct. 1065, 197 L. Ed. 2d 176 (2017) (settlement approved providing refunds to consumers and awarding 2.9 million in legal fees); Gascho v. Global Fitness Holdings, LLC, 863 F. Supp. 2d 677 (S.D. Ohio 2012); Robins v. Global Fitness Holdings, LLC, 838 F. Supp. 2d 631, R.I.C.O. Bus. Disp. Guide (CCH) P 12175 (N.D. Ohio 2012) cited in Oh. Consumer L. sec/ 4:62 Pleadings—Class action. *But see*, Baxter v. Salutary Sportsclubs, Inc., 122 Cal. App.4th 941, 19 Cal. Rptr. 3d 317 (2004) in which the court held that private attorney general fees not warranted where few members of the public would receive minimal benefit.
61 Tex, Occ. Code §§ 301 and 302.
62 Cal. Civ. Code § 1812.82.
63 Tex Occ. Code § 702.401.
64 *Id.*
65 Tex. Occ. Code § 702.401.
66 Cal. Civ. Code § 1812.93.
67 Tex. Occ. Code § 702.41.
68 Cal. Civ. Code §1812.91.
69 See, Staples v. Arthur Murray, Inc., 253 Cal. App. 2d 507 (2d Dis. 1967), a case under the former California Dance Act in which the court reinstated a claim, which had been dismissed on demurrer because plaintiffs alleged they were not given copies of contracts. The case likely supports that a technical violation of the Health Studio Act would also allow at least some statutory remedies even absent damages because of offsetting benefit received. See note 23 supra and accompanying text.
70 Tex. Occ. Code § 702.310.
71 Cal. Civ. Code §§1812.87 and 1812.88.