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** Motion for pro hac vice admission forthcoming*

[NAMES AND ADDRESSES OF ADDITIONAL
COUNSEL APPEAR ON SIGNATURE PAGE]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

KATHERINE CHABOLLA,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiff,

v.

CLASSPASS INC.,

Defendant.

Civil Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Katherine Chabolla (“Plaintiff”), by her undersigned attorneys, Bramson, Plutzik,
2 Mahler & Birkhaeuser, LLP, and Wittels McInturff Palikovic, brings this consumer protection action
3 in her individual capacity and on behalf of a class of consumers defined below against Defendant
4 ClassPass Inc. (“ClassPass”), and hereby alleges the following, with knowledge as to her own acts
5 and upon information and belief as to all other matters alleged:

6 INTRODUCTION

7 1. This is a proposed class action lawsuit against fitness marketplace ClassPass for
8 engaging in illegal “automatic renewal” practices with respect to its subscription plans. To protect
9 Californians from deceptive autorenewal practices, California enacted its Automatic Renewal Law,
10 BUS. & PROF. CODE §§ 17600–06 (the “ARL”). The ARL requires companies that offer
11 automatically renewing purchases to provide “clear and conspicuous” disclosures about the
12 autorenewal plan, obtain consumers’ “affirmative consent” to autorenewal, and provide a “cost-
13 effective, timely, and easy-to-use mechanism” for cancelling the subscription.

14 2. ClassPass is one of the nation’s biggest health club aggregators, with over 30,000
15 partner studios worldwide.¹ In exchange for subscription fees, ClassPass allows consumers to access
16 fitness classes at partner studios across a spectrum of activities. Although ClassPass’s revenue
17 plummeted by as much as 95% during the first year of COVID-19 pandemic, by the fall of 2021 the
18 company’s CEO claimed that “pent-up demand for in-person fitness classes” had brought ClassPass
19 back to pre-pandemic numbers.² At that time ClassPass was valued at over \$1 billion.³

20 3. Yet much of ClassPass’s revenue comes from its aggressive and deceptive marketing
21 of free or low-cost trial periods that then convert into automatically renewing monthly subscriptions
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23
24 ¹ Sara Ashley O’Brien, CNN, *Fitness startup ClassPass is now a unicorn*, Jan. 8, 2020,
<https://www.cnn.com/2020/01/08/tech/classpass-valuation-unicorn/index.html> (last visited Jan. 30,
25 2023).

26 ² Abigail Gentrup, FRONT OFFICE SPORTS, *Mindbody Acquires ClassPass, Raises \$500M*, Oct. 14,
2021, <https://frontofficesports.com/mindbody-acquires-classpass-raises-500m/> (last visited Jan. 30,
27 2023).

28 ³ Jordan Crook, TECHCRUNCH, *Mindbody acquires ClassPass in all-stock deal and secures \$500
million investment*, Oct. 13, 2021, [https://techcrunch.com/2021/10/13/mindbody-acquires-
classpass-in-all-stock-deal-and-secures-500-million-investment/](https://techcrunch.com/2021/10/13/mindbody-acquires-classpass-in-all-stock-deal-and-secures-500-million-investment/) (last visited Jan. 30, 2023).

1 and saddle unsuspecting consumers with hundreds of dollars in unauthorized charges. To make
2 matters worse, at the beginning the COVID-19 lockdowns ClassPass “paused” consumers’
3 subscriptions and refrained from collecting monthly membership fees while in-person fitness and
4 recreational activities were discouraged. But when in-person activities began resuming and
5 ClassPass’s partner studios began reopening more than a year later, ClassPass quietly “unpaused”
6 consumers’ subscriptions and used the credit card and other payment information it had previously
7 collected from consumers to begin extracting unauthorized subscription fees. Additionally,
8 ClassPass made it difficult for consumers to cancel their unwanted subscriptions and stop the
9 accompanying unauthorized charges. ClassPass’s cancellation process violates the ARL because it
10 is not cost-effective, timely, and easy-to-use. Instead, consumers are required to navigate a multi-
11 step, confusing process that obstructs and delays consumers’ ability to turn off recurring billing.
12 Further, the ARL mandates that online sellers provide one of two online cancellation methods
13 described in the statute. ClassPass offers neither.

14 4. Yet that is not all. ClassPass’s initial enrollment process is deceptive and further
15 violates the ARL. The enrollment process fails to make the ARL-mandated clear and conspicuous
16 disclosures regarding ClassPass’s automatic renewal terms, does not obtain consumers’ affirmative
17 consent to automatic renewal, and overshadows any (insufficient) automatic renewal disclosures
18 with prominent misleading and deceptive features that grab consumers’ attention.

19 5. Under the ARL ClassPass is also required to send consumers an acknowledgement
20 that includes the cancellation policy and explains how to cancel the recurring charges. ClassPass’s
21 acknowledgement email following enrollment fails these requirements as well. Specifically, the
22 email fails to disclose that consumers must cancel the trial by 12:00 PM Eastern (9:00 AM Pacific)
23 on the day *before* the last day of the trial and fails explain how to cancel.

24 6. Only through a class action can consumers remedy ClassPass’s unlawful practices.
25 Because the monetary damages suffered by each customer are small compared to the much higher
26 cost a single customer would incur in trying to challenge ClassPass’s improper conduct, it makes no
27 financial sense for an individual customer to bring his or her own lawsuit. Furthermore, many
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1 customers do not realize they are victims of ClassPass’s unlawful acts and continue to be charged to
2 this day. With this class action, Plaintiff and the Class seek to level the playing field, enjoin
3 ClassPass’s unfair business practices, and recover the charges ClassPass has imposed on Plaintiff
4 and the Class in violation of the law.

5 **JURISDICTION AND VENUE**

6 7. This Court has jurisdiction over the claims asserted in this action pursuant to the Class
7 Action Fairness Act of 2005, 28 U.S.C. §1332(d), because the aggregate claims of the Class exceed
8 the sum or value of \$5,000,000, the Class has more than 100 members, and diversity of citizenship
9 exists between at least one member of the Class and Defendant.

10 8. This Court may exercise supplemental jurisdiction over Plaintiff’s state law claims
11 under 28 U.S.C. §1367 because all of the claims arise from a common nucleus of operative facts and
12 are such that Plaintiff ordinarily would expect to try them in one judicial proceeding.

13 9. This Court has personal jurisdiction over Defendant under 18 U.S.C. § 1965. The
14 Court also has personal jurisdiction over Defendant because ClassPass has sufficient contacts in this
15 jurisdiction.

16 10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a). Substantial acts in
17 furtherance of the alleged improper conduct occurred within this District, as ClassPass does business
18 in this District, maintains an office in this District, and Plaintiff resided in this District when she
19 became a ClassPass customer and when ClassPass “unpaused” her account.

20 **PARTIES**

21 22 11. Plaintiff Katherine Chabolla is a citizen of Colorado and lives in Boulder, Colorado.
23 When Plaintiff enrolled in ClassPass, she was a citizen of California and lived in San Francisco,
24 California until July 2021. She became a customer of ClassPass in January 2020 and moved to
25 Boulder in July 2021.

26 12. Plaintiff is a consumer who was victimized by ClassPass’s unlawful auto-enrollment
27 practices, suffered injury in fact and lost money because of ClassPass’s violations of California’s
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1 consumer protection statutes and thus has standing to pursue public injunctive and other relief to
2 protect California consumers from ClassPass’s continuing violations.

3 13. Defendant ClassPass Inc. is a fitness and wellness company whose headquarters is
4 located at 275 7th Ave, New York, NY 10001. ClassPass does business throughout California,
5 including in this District, and maintains an office in this District located at 33 New Montgomery St.,
6 San Francisco, CA 94105.

7 **FACTUAL ALLEGATIONS**

8 **A. ClassPass’s Trial-Period Enrollment Process Violates the ARL**

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10 14. On or around January 30, 2020, Plaintiff visited ClassPass’s website to view
11 Defendants’ offerings.

12 15. Plaintiff chose to enroll in a month-long ClassPass trial, costing \$39.00, and began
13 Defendant’s enrollment process.

14 16. Plaintiff completed the ClassPass trial-period enrollment process and authorized
15 Defendant to charge \$39.00 to her credit card for the trial.

16 17. Upon information and belief, the payment screen for the trial-period enrollment
17 process Plaintiff used in January 2020 was materially similar to ClassPass’s current payment page
18 copied below:
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5 of 5

What's your payment info for future reference?

Don't worry, during your trial we won't charge you unless you miss or cancel a booking last-minute or purchase add-ons. You can cancel your trial at any time.

1 month free

20 free credits

\$0

Save your billing information

Why do you need my billing info?

Name on card

Card number

Exp date

CVC

MM / YY

Postal code

Powered by stripe

VISA



I have a gift code

By clicking the button below, you agree to the Terms, and your free 1 month 20-credit trial will begin. If you don't cancel before the trial ends, you'll automatically be charged for a full-priced monthly credit plan (currently \$89 + any tax for 43 credits per month), until you cancel or change your plan. Cancel anytime in Settings to avoid renewal. Fees apply for reservations missed or cancelled late. No refunds. New members only. Inventory varies per location and may be limited during trial. Privacy Notice applies.

Start your free trial

Apple Pay

1 18. ClassPass’s payment page violates the ARL in several respects.

2 19. First, the terms and conditions of ClassPass’s automatic renewal offer are not
3 presented to consumers in a “clear and conspicuous” manner, as defined in the ARL. The terms and
4 conditions are not in larger type than the surrounding font, are colored gray rather than a more
5 conspicuous color, and although a portion of the terms are somewhat bolded, the combination of the
6 font size and color do not make even this bolded snippet stand out, let alone the other automatic
7 renewal offer terms on the payment page. *See* BUS. & PROF. CODE § 17601(c). Nor are the automatic
8 renewal terms set off by symbols or other marks. *Id.*

9 20. Moreover, any supposed “disclosures” on the ClassPass payment page are far
10 overshadowed by the page’s other deceptive components. The very first text consumers see on the
11 page is the large, bold, black text asking for consumers’ payment information merely “**for future**
12 **reference**” and then further deceptively claiming that this supposed “reference” is in case “you miss
13 or cancel a booking last-minute or purchase add ons.” This language at the very top of ClassPass’s
14 payment page does not disclose that the “future reference” is going to be used to extract monthly
15 subscription fees if the consumer fails to navigate ClassPass’ cancellation process. Worse, the top
16 of the page reassures consumers by telling them “Don’t worry, during your trial we won’t charge
17 you[.]” The “don’t worry” statement is made in darker, larger, and more readable text than the
18 deficient autorenewal disclosures. ClassPass’s “for future reference” and “don’t worry” statements
19 substantially distract from the minimal and inconspicuous “disclosures” regarding ClassPass’s
20 automatic renewal offer terms elsewhere on the payment page.

21 21. Second, the ClassPass payment screen fails to include a clear and conspicuous
22 disclosure of the cancellation policy that applies to the offer, instead stating only that consumers can
23 “[c]ancel anytime in Settings to avoid renewal.” *See* BUS. & PROF. CODE § 17601(b)(2). ClassPass’
24 incomplete and inconspicuous disclosure fails to describe the “cancellation policy that applies to the
25 offer” as required by the ARL, including that (i) consumers must actually cancel by 12:00 PM
26 Eastern on the day *before* the last day of the trial to avoid charges, and (ii) that if consumers cancel
27 during their trial, they will lose the credits they paid for, they will not be able to schedule any new
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1 classes, and they will have any upcoming reservations cancelled—even if those classes were
2 scheduled to occur during the trial period.

3 22. Third, the ClassPass acceptance page fails to obtain consumers’ affirmative consent
4 to the automatic renewal terms. BUS. & PROF. CODE § 17602(a)(2). The ClassPass page contains no
5 mechanism for affirmatively consenting to the automatic renewal terms. For example, there is no
6 checkbox that consumers must click to indicate that they accept those terms.

7 23. After Plaintiff enrolled in ClassPass’s trial, ClassPass sent Plaintiff an email on
8 January 30, 2022 with the subject line “Your ClassPass membership is now active!” This email does
9 not meet the requirements the ARL imposes after purchase of an automatically renewing product or
10 service. BUS. & PROF. CODE § 17602(a)(3).

11 24. The relevant portions of the acknowledgement email sent to Plaintiff are shown
12 below:

classpass

Welcome to ClassPass!

Your membership is now active

Confirmation #11210774

Billed to Katie Chabolla

Credit card [REDACTED]

Special offer 45-credit plan

45-credit plan \$39.00

Total Charged \$39.00

After your offer period, you will auto-renew to the 45 Credits at \$79 + applicable tax per month.

Offer terms: Trial begins at moment of purchase and ends one month later. During trial, cancellation is effective immediately; classes cannot be taken or reserved after cancel request. After trial, your membership will automatically renew to the \$79 per month plan plus applicable tax until you cancel. Class cancellation fees apply. You can change your auto-enrollment plan or cancel at any time. Exact number of classes per month depends on credit value of the classes you choose.

Month-to-month

Your membership will automatically renew according to the offer terms above until you cancel - which you can do in your account on our website.

25. The acknowledgement email violates the ARL because it does not include “information regarding how to cancel in a manner that is capable of being retained by the consumer.”

1 BUS. & PROF. CODE § 17602(a)(3). Instead, it merely states that Plaintiff could “cancel at any time”
2 via her account on ClassPass’s website.

3 26. Moreover, the ClassPass acknowledgement email fails to describe a “cost-effective,
4 timely, and easy-to-use mechanism for cancellation.” BUS. & PROF. CODE § 17602(c).

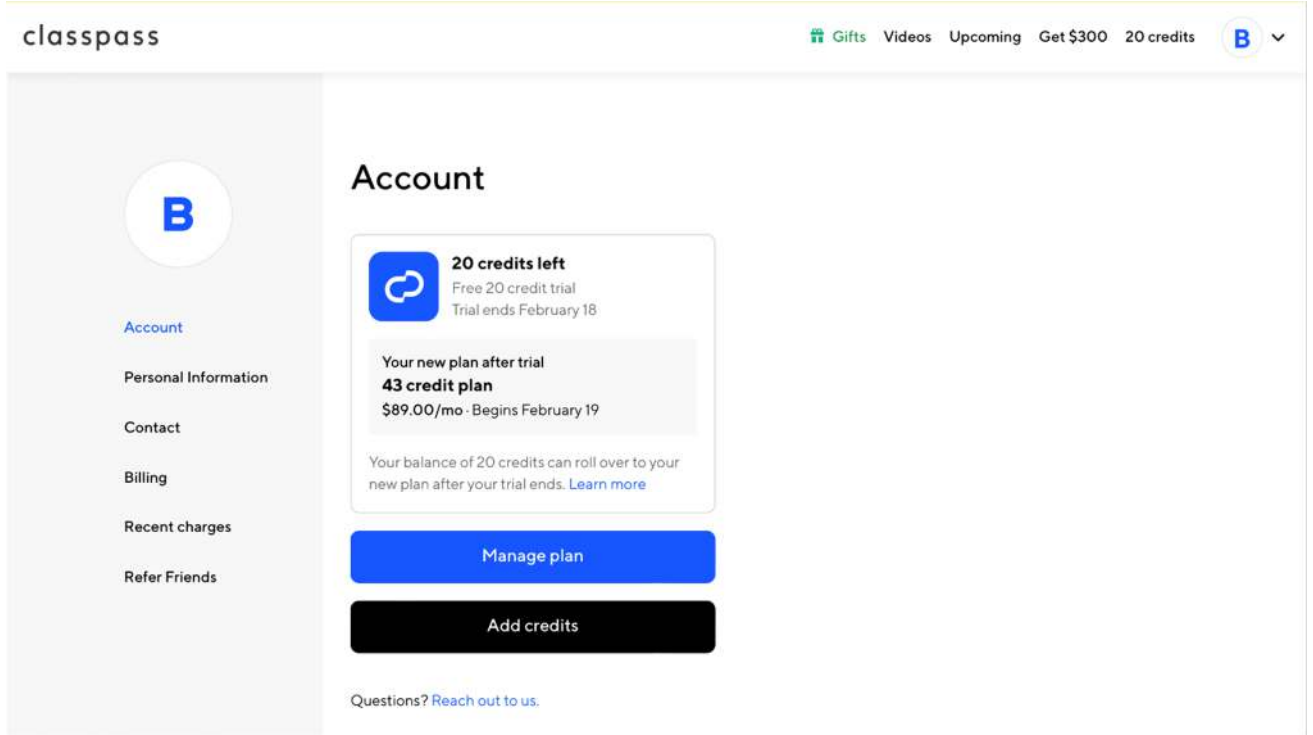
5 27. The acknowledgment email also disclosed, for the first time after Plaintiff had already
6 paid, that if Plaintiff canceled her account during the *paid* trial, she would lose all credits, *i.e.*, not
7 receive any of the services she paid for. The email did not, however, advise that consumers must
8 cancel by 12:00 PM Eastern on the day *before* the last day of the trial.

9 **B. ClassPass’s Cancellation Process Violates the ARL**

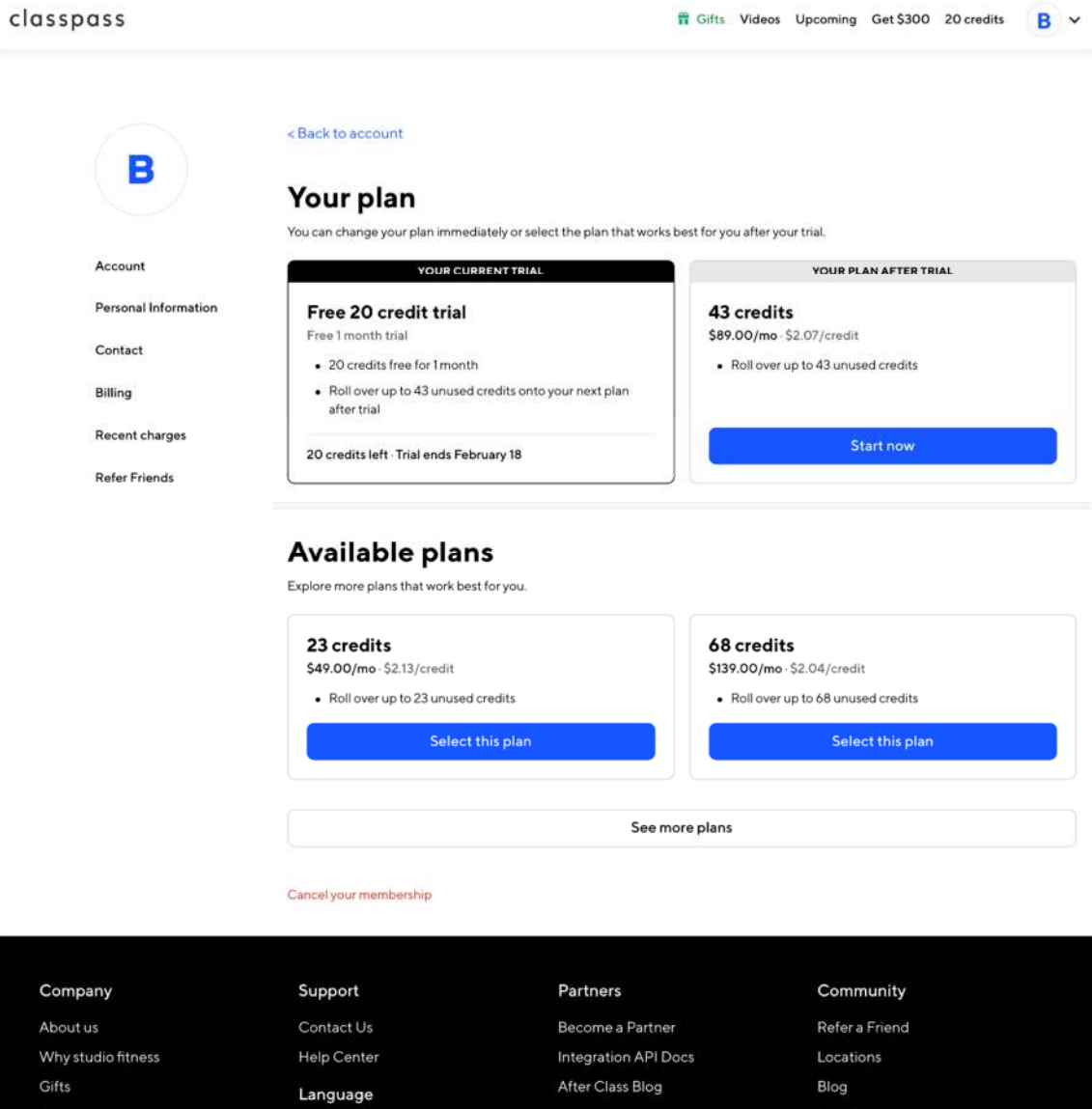
10 28. ClassPass’s cancellation process is neither timely nor easy-to-use. BUS. & PROF.
11 CODE § 17602(c). Furthermore, it requires consumers to engage in further steps that obstruct and/or
12 delay the consumer’s ability to terminate the automatic renewal immediately. BUS. & PROF. CODE §
13 17602(d)(1). ClassPass also does not offer either of the cancellation methods required by the ARL
14 for offers of automatic renewal services made online; cancellation is not provided by either a
15 “prominently located direct link or button” in customers’ account profile, or an “immediately
16 accessible termination email formatted and provided by [ClassPass] that a consumer can send to
17 [ClassPass] without additional information.” BUS. & PROF. CODE § 17602(d)(1)(A)–(B). Nor does
18 ClassPass offer a toll-free telephone number or email address consumers can contact to cancel. BUS.
19 & PROF. CODE § 17602(c).

20 29. Instead, canceling a ClassPass subscription requires consumers to take multiple,
21 confusing steps that hinder cancellations. The consumer must first log into their customer account
22 and navigate to their account page. After this, the remaining steps are misleading, confusing, and
23 violate the ARL.

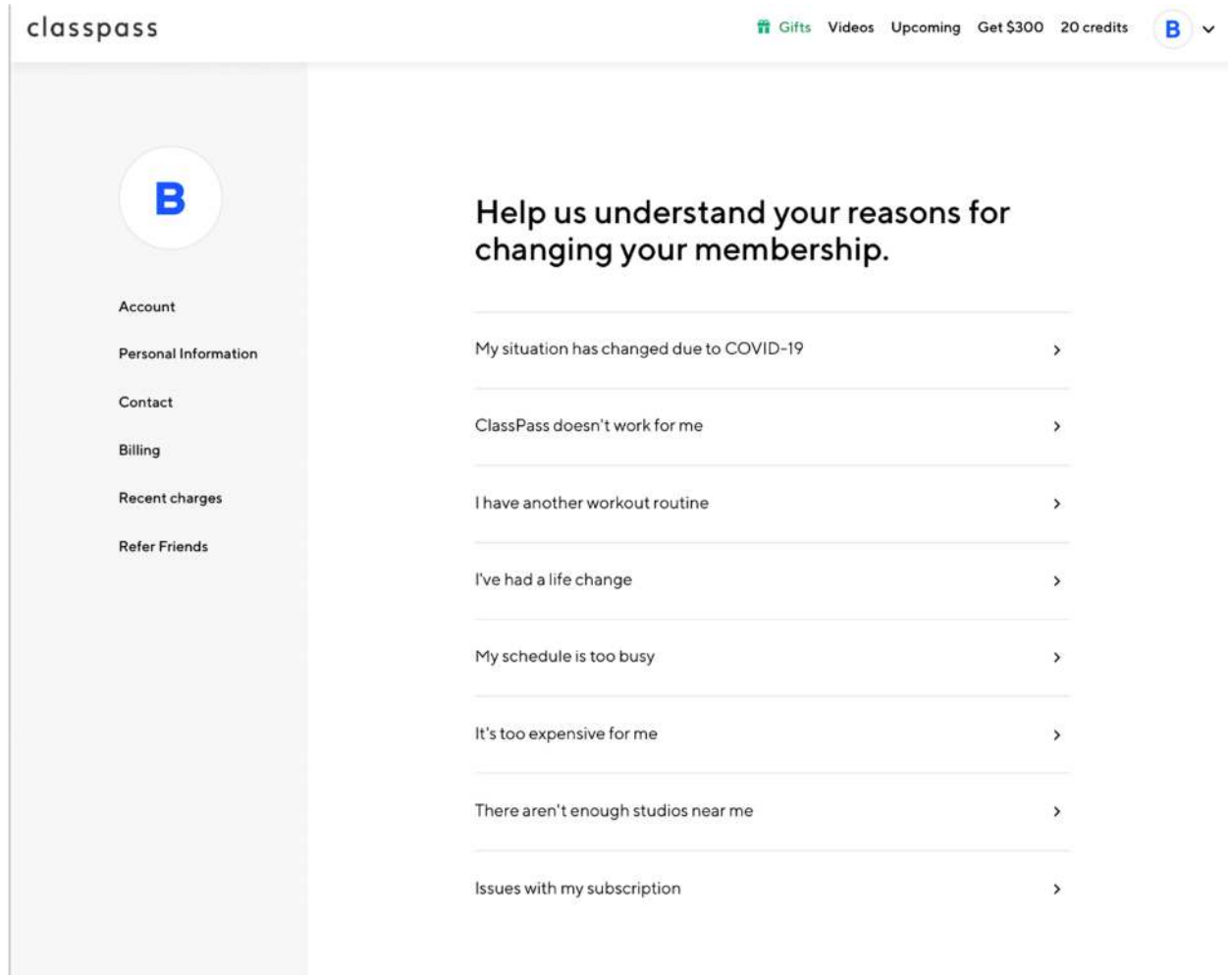
24 30. Once consumers access their account page, there is no “prominently located direct
25 link or button” to cancel. Instead, consumers must figure out that they need to click on the button
26 labeled “Manage plan,” as seen below:
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31. Clicking on the “Manage plan” button brings consumers to a landing page that prominently features options to skip their trial and begin paying full price immediately, or to switch to different ClassPass subscriptions. These options are all available via bright blue buttons that draw the eye and are nearly impossible to miss. The cancellation option, conversely, is hidden at the bottom of the page. The text is tiny and light red, which is much less prominent than the options to continue with a ClassPass subscription, does not draw the eye, and is designed to be overlooked. This page is shown in the below screenshot:

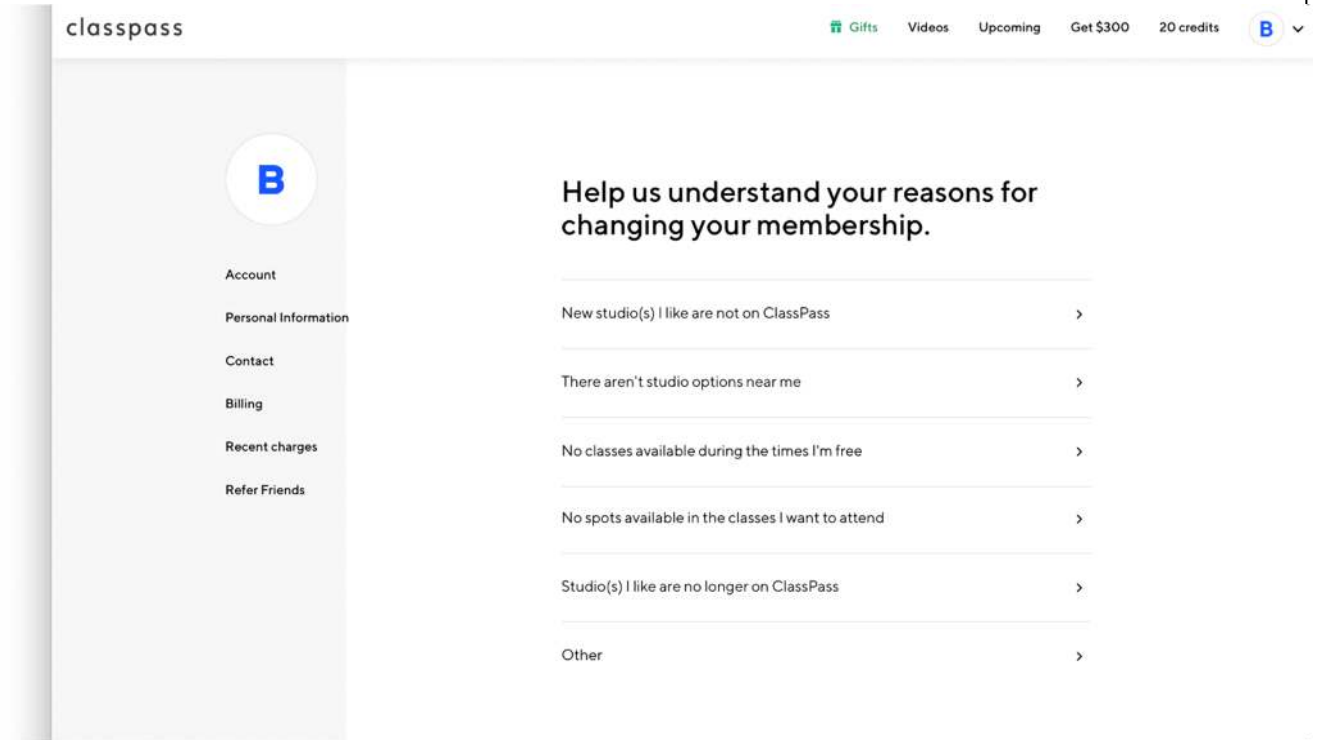


32. For those consumers who find the hidden cancellation link, they are brought to yet another page—one that does not clearly explain to consumers that further steps are still needed complete cancellation, and instead suggests that the consumer has cancelled by offering a survey that asks “your reasons for changing your membership” as shown below:



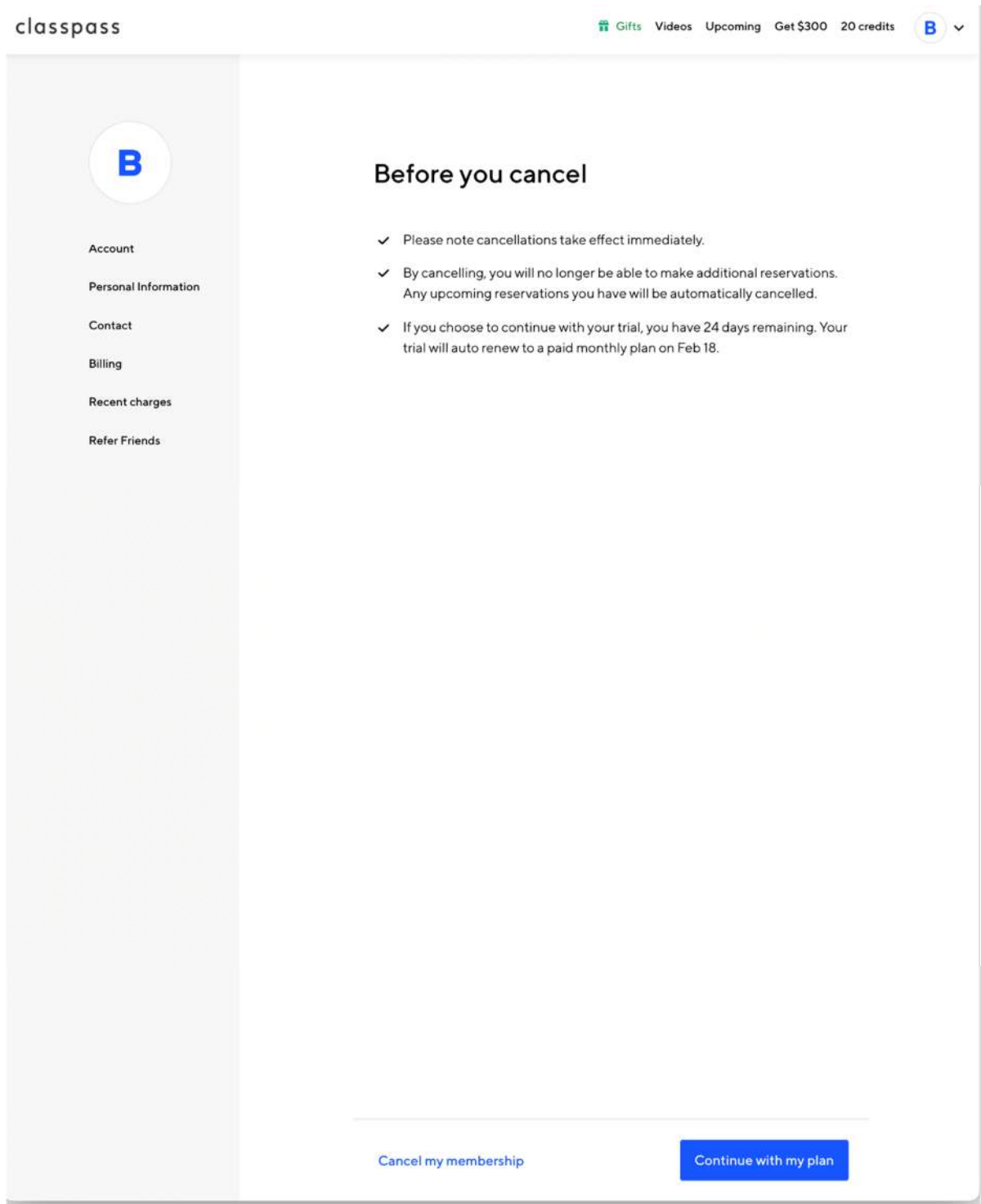
33. For the consumers that understand that cancelling requires them to click on one of the survey options, the cancellation process is still incomplete. Consumers are instead taken to yet another unclear survey page that does not indicate either way whether the subscription has been canceled. For example, consumers who click the option reading “ClassPass doesn’t work for me” are taken to the following page:

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34. After selecting yet another option, consumers are taken to yet another misleading page, deliberately designed to obstruct cancellation. This page features a prominent bright blue button that leads consumers to believe it is the correct choice, but that button instead is the option to “Continue with my plan.” The “Cancel my membership” button is de-emphasized and can be easily missed, as shown below:

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35. The cancellation process shown above is not timely, cost-effective, and easy-to-use, and therefore violates the ARL. BUS. & PROF. CODE § 17602(c).

1 **c. ClassPass Violated the ARL When it “Unpaused” Consumers’ Accounts During**
2 **the COVID-19 Pandemic**


3 36. In March 2020, due to the COVID-19 pandemic, the government mandated that
4 among other businesses, ClassPass partner studios throughout the state of California had to close to
5 the general public.

6 37. On March 17, 2020, Plaintiff received an email from ClassPass with the subject line
7 “Membership changes regarding COVID-19,” informing her that ClassPass would suspend billing
8 on her subscription sometime in “the next few days.”

9 38. On July 1, 2020, Plaintiff received an email from ClassPass with the subject line
10 “Information about your ClassPass account.” This email notified Plaintiff that her account was
11 “currently paused,” would “**remain paused**,” and ClassPass would “**not resume billing without**
12 **notifying you ahead of time.**” (Emphases in original). The email further gave consumers the option
13 of resuming their subscriptions by logging into their account and manually reactivating.

14 39. Over a year after her account was paused, on May 13, 2021, Plaintiff received an
15 email from ClassPass with the subject line “Important details about your ClassPass membership.”
16 This email, shown below, violated the ARL in multiple ways:

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Businesses near you like Kume Spa - 19th, Baptiste Yoga San Francisco, and Crunch Gym have officially reopened and we're excited to help you get back to your routine. Expect smaller class sizes and increased sanitation measures, but the same great workout and self care you deserve.

Now that local restrictions have lifted and fitness and wellness reservations are available for booking in your area:

Your membership will unpause on **May 20, 2021**, and your **45-credit plan for \$79.00/mo.** will resume and begin auto-renewing monthly. Plus, to restart strong, book your first 2 reservations through June 3rd and get 50% off each (up to 10 credits off).*

Some important updates:

- Updated rollover policy** – Rather than capping rollover to 10 credits/mo., **you can now roll over up to the total number of credits in your upcoming plan.** For example, on your 45-credit plan, you can roll over up to 45 unused credits into your next month. All unused credits in your account currently will roll over into your first paid month. Learn more about how the new rollover policy works [here](#).
- Safety & cleanliness details** – From smaller class sizes to mask policies and ventilation systems, [safety details](#) can now be accessed directly from a business's page.
- More ways to use your credits** – Use credits to book in-person or outdoor classes, or for services like massages, facials, manicures and more. You can also book at-home experiences like virtual personal training, nutrition sessions and digital workouts from 5,000+ global partners.
- Easily adjust your plan** – Flexibility is key. Add more credits, change your plan or cancel anytime.

You can [unpause your account early](#) if you're ready to go or [make changes to your upcoming plan](#). Pauses or plan changes need to be made by **May 19, 2021** to take effect.

Thank you for being a valued member of our ClassPass community. We're here if you have any questions or concerns.

40. The top of the email contained a flashing graphic featuring a rotating carousel of

1 images (here, in a static screenshot, an image of a man rock-climbing) and the next two paragraphs
2 did not pertain to ClassPass subscriptions at all. It was not until the email’s third paragraph that
3 ClassPass mentions that the automatically renewing subscription would “unpause” after a 1+ year
4 hiatus and ClassPass would “begin auto-renewing monthly” in just one week, on May 20, 2021.

5 41. Unilaterally restarting an automatically renewing subscription after over a year of no
6 payments without requiring any action by the consumer whatsoever is a “material change in the terms
7 of the automatic renewal,” under the ARL which requires “clear and conspicuous notice of the
8 material change” and the furnishing of “information regarding how to cancel in a manner that is
9 capable of being retained by the consumer.” BUS. & PROF. CODE § 17602(e).

10 42. By burying the “unpause” language in the May 13, 2021 email, ClassPass did not
11 provide “clear and conspicuous notice” about Defendant’s resuming charges after a year-plus hiatus.

12 43. Moreover, ClassPass can access detailed information about consumers’ response to
13 mass emails like its “unpause” email. This information includes the number of emails sent that are
14 opened by consumers, as well as whether any given consumer opened an email. In the aggregate,
15 the open rate can be used to determine whether bulk email campaigns like the “unpause” email are
16 generally received and read by consumers, are received but not read, or whether such emails are
17 overwhelmingly caught by spam or promotions filters that inhibit delivery. Upon information and
18 belief, ClassPass had access to such data (and potentially more sophisticated data) regarding the
19 results of its “unpause” email that could shed light on whether consumers received, read, or
20 understood the true import of ClassPass’s “unpause” email.

21 44. The “unpause” email also did not provide any information on how to cancel other
22 than saying consumers could “cancel anytime.”

23 45. The “unpause” email further stated that consumers could unpause their account early
24 or “make changes to your upcoming plan,” and ClassPass required any changes to be made by May
25 19, 2021. In other words, after over a year of not charging consumers for automatically renewing
26 accounts, ClassPass gave consumers 6 days to make changes in a deceptive email that did not
27 mention cancellation other than in passing.
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1 46. ClassPass’s May 2021 “unpause” email was a material change to Plaintiff’s
2 subscription and violated the ARL. BUS. & PROF. CODE § 17602(e).

3 **D. ClassPass’s Numerous ARL Violations Injured Plaintiff**

4 47. Plaintiff was injured by ClassPass’s ARL violations in its enrollment process email
5 because had she known the truth of the ClassPass trial cancellation policy, namely, that she would
6 lose her paid credits for canceling the trial before it became a full-fledged automatically renewing
7 subscription, she would not have enrolled in the trial plan.

8 48. Plaintiff was further injured by ClassPass’s ARL violations in its email
9 acknowledgement and cancellation process because had she known the truth of ClassPass’s
10 misleading and intentionally difficult cancellation process, she would not have enrolled in a
11 ClassPass subscription.

12 49. Plaintiff was further injured by ClassPass’s ARL violations in its cancellation process
13 because she tried to cancel her subscription but was unable, leading to additional unintended charges.

14 50. Plaintiff was injured by Defendant’s ARL violations in its “unpause” email because
15 she was re-entered into an automatically renewing subscription without her knowledge or consent,
16 and was charged over \$1,000 before she realized that she was being charged by ClassPass each
17 month.

18 51. When Plaintiff contacted ClassPass customer service, she was given the runaround
19 by various ClassPass employees and eventually was refused a refund for most of the unwanted and
20 unauthorized charges.

21 52. Plaintiff intends to purchase services in the future for herself and her family from
22 online health and wellness companies, including ClassPass, as long as she can gain some confidence
23 in ClassPass’s representations about its services and automatic enrollment, renewal, and cancellation
24 practices. Moreover, ClassPass still has Plaintiff’s payment information and could use it to process
25 further unauthorized payments.
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CLASS ALLEGATIONS

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53. As alleged throughout this Complaint, the Class claims all derive directly from a single course of conduct by ClassPass. ClassPass has engaged in uniform and standardized conduct toward the Class and this case is about the responsibility of ClassPass, at law and in equity, for its knowledge and conduct in deceiving its customers. Defendant’s conduct did not meaningfully differ among individual Class Members in its degree of care or candor, its actions or inactions, or in its false and misleading statements or omissions. The objective facts on these subjects are the same for all Class Members.

54. Plaintiff sues on her own behalf and on behalf of a Class for monetary and equitable relief under Rules 23(a), (b)(2), (b)(3), and (c)(4) of the Federal Rules of Civil Procedure.

55. The Class is preliminarily defined as follows:

All California consumers who have been charged by ClassPass for an auto-renewing subscription for any product or service in connection with a purchase made via the ClassPass website from January 30, 2019 to the date of judgment.

56. Excluded from the Class are: Defendant; any parent, subsidiary, or affiliate of Defendant; any entity in which Defendant has or had a controlling interest, or which Defendant otherwise controls or controlled; and any officer, director, employee, legal representative, predecessor, successor, or assignee of Defendant. Also excluded are federal, state and local government entities; and any judge, justice, or judicial officer presiding over this action and the members of their immediate families and judicial staff.

57. Plaintiff reserves the right, as might be necessary or appropriate, to modify or amend the definition of the Class and/or add Subclasses, when Plaintiff files her motion for class certification.

58. Plaintiff does not know the exact size of the Class since such information is in the exclusive control of ClassPass. Plaintiff believes, however, that the Class encompasses at least tens of thousands of consumers whose identities can be readily ascertained from ClassPass records.

1 Accordingly, the members of the Class are so numerous that joinder of all such persons is
2 impracticable.

3 59. The Class is ascertainable because its members can be readily identified using data
4 and information kept by ClassPass in the usual course of business and within its control. Plaintiff
5 anticipates providing appropriate notice to each Class Member in compliance with all applicable
6 federal rules.

7 60. Plaintiff is an adequate class representative. Plaintiff's claims are typical of the claims
8 of the Class and do not conflict with the interests of any other members of the Class. Plaintiff and
9 the other members of the Class were subject to the same or similar conduct engineered by ClassPass.
10 Further, Plaintiff and members of the Class sustained substantially the same injuries and damages
11 arising out of Defendant's conduct.

12 61. Plaintiff will fairly and adequately protect the interests of all Class Members. Plaintiff
13 has retained competent and experienced class action attorneys to represent her interests and those of
14 the Class.

15 62. Questions of law and fact are common to the Class and predominate over any
16 questions affecting only individual Class Members, and a class action will generate common answers
17 to the questions below, which are apt to drive the resolution of this action:

- 18
- 19 a. whether Defendant's conduct violates the applicable California consumer
20 protection statutes;
 - 21 b. whether Class Members have been injured by Defendant's conduct;
 - 22 c. whether, and to what extent, equitable relief should be imposed on ClassPass to
23 prevent it from continuing its unlawful practices; and
 - 24 d. the extent of class-wide injury and the measure of damages for those
25 injuries.

26 63. A class action is superior to all other available methods for resolving this controversy
27 because (1) the prosecution of separate actions by Class Members will create a risk of adjudications
28 with respect to individual Class Members that will, as a practical matter, be dispositive of the interests

1 of the other Class Members not parties to this action, or substantially impair or impede their ability
2 to protect their interests; (2) the prosecution of separate actions by Class Members will create a risk
3 of inconsistent or varying adjudications with respect to individual Class Members, which will
4 establish incompatible standards for Defendant’s conduct; (3) ClassPass has acted or refused to act
5 on grounds generally applicable to all Class Members; and (4) questions of law and fact common to
6 the Class predominate over any questions affecting only individual Class Members.

7
8 64. Further, the following issues are also appropriately resolved on a class-wide basis
9 under Federal Rule of Civil Procedure 23(c)(4):

- 10 a. whether Defendant’s conduct violates the applicable California consumer
11 protection statutes;
- 12 b. whether Class Members have been injured by Defendant’s conduct;
- 13 c. whether, and to what extent, equitable relief should be imposed on ClassPass to
14 prevent it from continuing its unlawful practices; and
- 15 d. the extent of class-wide injury and the measure of damages for those
16 injuries.

17 65. Accordingly, this action satisfies the requirements set forth under Rules 23(a), (b)(2),
18 (b)(3), and (c)(4) of the Federal Rule of Civil Procedure.

19 **CAUSES OF ACTION**

20 **COUNT 1**

21 **CALIFORNIA AUTOMATIC RENEWAL LAW**

22 66. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

23 67. Plaintiff brings this claim on her own behalf and on behalf of each Class member.

24 68. The California Automatic Renewal Law, BUS. & PROF. CODE §§ 17600 *et seq.*,
25 became effective on December 1, 2010.

26 69. BUS. & PROF. CODE §§ 17600 *et seq.*, declares unlawful “the practice of ongoing
27 charging of consumer credit or debit cards or third-party payment accounts without the consumers’
28

1 explicit consent for ongoing shipments of a product or ongoing deliveries of service.” To ensure that
2 result, the law requires certain clear and conspicuous disclosures be made to any California consumer
3 being offered a product or service which will automatically renew at some point in the future.
4 ClassPass’s conduct as alleged in this Complaint was unlawful because it failed to comply with the
5 requirements of BUS. & PROF. CODE § 17602. ClassPass’s failures to comply include at least the
6 following independent violations:

- 7
- 8 a. ClassPass failed to present the terms of its automatic renewal or continuous service
9 offer in a clear and conspicuous manner before fulfilling the subscription and in visual
10 proximity to the request for consent to the offer, as required by BUS. & PROF. CODE §
11 17602(a)(1);
 - 12 b. ClassPass charged Plaintiff’s and the Class’s credit or debit cards, or the consumer’s
13 account with a third party, for an automatic renewal or continuous service without
14 first obtaining the consumer’s affirmative consent to the agreement containing the
15 automatic renewal offer terms or continuous offer terms, as required by BUS. & PROF.
16 CODE § 17602(a)(2);
 - 17 c. ClassPass failed to provide an acknowledgment that includes its cancellation policy
18 and information regarding how to cancel as required by BUS. & PROF. CODE §
19 17602(a)(3);
 - 20 d. ClassPass failed to provide a “cost-effective, timely, and easy-to-use mechanism for
21 cancellation,” as required by BUS. & PROF. CODE § 17602(c);
 - 22 e. ClassPass required consumers to engage in steps to cancel that obstruct or delay the
23 consumer’s ability to terminate the automatic renewal or continuous service
24 immediately, in violation of BUS. & PROF. CODE § 17602(d);
 - 25 f. ClassPass failed to offer either of the cancellation methods required under BUS. &
26 PROF. CODE § 17602(d)(1)(A)–(B);
 - 27 g. ClassPass failed to provide clear and conspicuous notice of its material change to its
28 existing automatic renewal or continuous service terms, as required by BUS. & PROF.
CODE § 17602(e); and
 - h. To the extent ClassPass provided any notice of its material change to its existing
automatic renewal or continuous service terms, ClassPass failed to provide
information regarding how to cancel, as required by BUS. & PROF. CODE § 17602(e).

COUNT 3

CALIFORNIA UNFAIR COMPETITION LAW–UNFAIR BUSINESS PRACTICES

78. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

79. Plaintiff brings this claim on her own behalf and on behalf of the Class.

80. BUS. & PROF. CODE §§ 17200 *et seq.* (the “Unfair Competition Law” or “UCL”) prohibits acts of “unfair competition,” including any unlawful, fraudulent or unfair business acts or practices as well as any acts contrary to the requirements of BUS. & PROF. Code § 17500.

81. The courts have adopted differing tests for determining whether a business act or practice is “unfair” under the UCL. ClassPass’s practices as alleged above were and are “unfair” and therefore violative of the UCL, under any and all of these tests. ClassPass’s practices have resulted in substantial injury to consumers that was not outweighed by any countervailing benefits to consumers or to competition and was not reasonably avoidable by the consumers themselves. Alternatively, ClassPass’s practices offended an established public policy and/or were immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers. Alternatively, ClassPass’s practices were contrary to a public policy “tethered” to a specific constitutional, statutory or regulatory provision.

82. As a result of ClassPass’s unlawful, unfair, and fraudulent business practices, Plaintiff suffered an injury in fact and lost money or property.

83. Pursuant to BUS. & PROF CODE §17203, Plaintiff and the Class are entitled to an order: (1) requiring ClassPass to make restitution to Plaintiff and the Class; (2) enjoining ClassPass from charging Plaintiff’s and Class members’ credit cards, debit cards, and/or third party payment accounts until such time as ClassPass obtains the consumer’s affirmative consent to an agreement that contains clear and conspicuous disclosures of all automatic renewal or continuous service offer terms and meets all other legal requirements; (3) enjoining ClassPass from making automatic renewal or continuous service offers in the State of California that do not comply with California Automatic Renewal Law; and (4) enjoining ClassPass from “unpausing” Class member’s accounts and using their credit cards, debit cards, and/or third party payment accounts to process charges until such time

1 as ClassPass obtains the consumer’s affirmative consent to such “unpausing” that contains clear and
2 conspicuous disclosures of all material terms and meets all other legal requirements.

3 **COUNT 4**

4 **CALIFORNIA UNFAIR COMPETITION LAW–FRAUDULENT PRACTICES AND**
5 **FALSE ADVERTISING**

6 84. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

7 85. Plaintiff brings this claim on her own behalf and on behalf of the Class.

8 86. BUS. & PROF. CODE § § 17200, *et seq.* (the “Unfair Competition Law” or “UCL”) prohibits acts of “unfair competition,” including any unlawful, fraudulent or unfair business acts or
9 practices as well as any acts contrary to the requirements of BUS. & PROF. CODE § 17500.
10

11 87. ClassPass’s acts, omissions, nondisclosures, and misleading statements as alleged herein were and are false, misleading, and/or likely to deceive the consuming public, and thus
12 constituted fraudulent business practices in violation of the UCL. Moreover, those acts, omissions,
13 nondisclosures, and misleading statements were contrary to the provisions of the False Advertising
14 Law, BUS. & PROF. CODE § 17500 and constitute violations of the UCL for that reason as well.
15

16 88. As a result of ClassPass’s unlawful and unfair business practices, Plaintiff suffered
17 an injury in fact and lost money or property.

18 89. Pursuant to BUS. & PROF. CODE §17203, Plaintiff and the Class are entitled to an
19 order: (1) requiring ClassPass to make restitution to Plaintiff and the Class; (2) enjoining ClassPass
20 from charging Plaintiff’s and Class members’ credit cards, debit cards, and/or third party payment
21 accounts until such time as Best Buy obtains the consumer’s affirmative consent to an agreement
22 that contains clear and conspicuous disclosures of all automatic renewal or continuous service offer
23 terms and meets all other legal requirements; and (3) enjoining ClassPass from making automatic
24 renewal or continuous service offers in the State of California that do not comply with California
25 Automatic Renewal Law.
26
27
28

COUNT 5

CALIFORNIA CONSUMERS LEGAL REMEDIES ACT

90. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

91. Plaintiff brings this claim on her own behalf and on behalf of the Class.

92. The California Consumers Legal Remedies Act (the “CLRA”), CIV. CODE § 1770(a)(14), prohibits certain specified unlawful acts and practices if utilized in connection with any transaction involving the sale or lease of goods or services to a consumer.

93. ClassPass violated CIV. CODE § 1770, subdivisions (a)(5), (a)(9), (a)(14) and (a)(16) by, inter alia, representing that ClassPass’s goods and services have certain characteristics that they do not have; advertising goods and services with the intent not to sell them as advertised; representing that a transaction confers or involves rights, remedies, or obligations that it does not have or involve, or that are prohibited by law; and representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.

94. Plaintiff and the Class members are “consumers” within the meaning of CIV. CODE § 1761(d) in that Plaintiff and the Class members were charged by ClassPass in connection with transactions involving goods or services sought or acquired for personal, family, or household purposes.

95. ClassPass’s auto-renewing subscriptions constitute “services” within the meaning of CIV. CODE § 1761(b). ClassPass platform enables consumers to reserve, schedule, purchase, access and attend fitness and recreational classes offered and operated by fitness studios, gyms, trainers, venues or other third parties. ClassPass acknowledges in its Terms of Use that it provides “our services” to consumers. ClassPass’s Terms of Use also repeatedly acknowledge that ClassPass provides “services” directly to consumers.

96. Plaintiff has standing to pursue these claims because she suffered injury in fact and a loss of money and/or property as a result of the wrongful conduct alleged herein.

1 Dated: January 30, 2023

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15 *Counsel for Plaintiff and the Proposed Class*

16 * *Motion for pro hac vice admission forthcoming*

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

Table with columns for PTF and DEF for Citizen of This State, Citizen of Another State, and Citizen or Subject of a Foreign Country.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE

SIGNATURE OF ATTORNEY OF RECORD

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: