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9  
10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**

12  
13 DONRICK SANDERSON, individually  
and on behalf of all others similarly  
14 situated,

15 *Plaintiff,*

16 v.

17 WHOOP, INC.,

18 *Defendant.*  
19  
20

Case No. 3:23-cv-05477-CRB

**SECOND AMENDED CLASS ACTION  
COMPLAINT**

**DEMAND FOR JURY TRIAL**

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1 **I. Introduction.**

2 1. In recent years, companies that sell goods or services online have sought to boost sales  
3 by enrolling their customers in automatically renewing subscriptions. Some companies fail to make  
4 clear to consumers that they are being signed up for automatic charges.

5 2. To protect Californians from these practices, California passed the Automatic  
6 Renewal Law (the ARL). The ARL requires companies who sign consumers up for automatically  
7 renewing purchases to provide “clear and conspicuous” disclosures about the autorenewal plan and  
8 obtain “affirmative consent” to enroll consumers.

9 3. Whoop sells wearable fitness tracking bands and associated fitness tracking. Whoop’s  
10 wearable fitness bands have sensors that track fitness data such as heart rate, workout data, and sleep.  
11 The data collected by the tracking bands is uploaded to and processed by Whoop’s backend servers  
12 and shown to users on a Whoop mobile phone app and website, which allows users to see weekly and  
13 monthly performance reports, and access coaching features.<sup>1</sup>

14 4. Whoop’s fitness bands and fitness tracking are sold bundled. Said differently, Whoop  
15 customers cannot just buy a standalone fitness band; they must buy a package consisting of the  
16 fitness band and a pre-defined period of data processing and analytics (together, the “Whoop  
17 Membership”). Two different Whoop Memberships are available: a “24-Month Membership”  
18 (consisting of a fitness tracking band and 24-months of data processing and analysis); an “Annual  
19 Membership” (consisting of a fitness tracking band and 12 months of data processing and analysis).  
20 The annual membership can be billed annually or monthly. Whoop also offers a “1 Month Free  
21 Trial.”

22 5. At the end of the membership period or trial period, Whoop automatically renews  
23 customers for an additional year of membership at the annual membership price.<sup>2</sup> But Whoop does  
24 not provide clear and conspicuous disclosures or obtain affirmative consent before enrolling  
25 consumers in any of these autorenewal plans. So, Whoop is violating California’s ARL.

26 \_\_\_\_\_  
27 <sup>1</sup> If subscription fees are not paid, the account becomes inactive, and the user is unable to  
28 upload new data from the Whoop device, rendering the device unusable.

<https://www.whoop.com/us/en/terms-of-use/>

<sup>2</sup> <https://join.whoop.com/select/membership>

1 **II. Parties.**

2 6. Plaintiff Donrick Sanderson resides in Walnut Creek, California.

3 7. The proposed class includes citizens of California.

4 8. Defendant Whoop, Inc. (“Whoop”) is a Delaware corporation with its principal place  
5 of business at 1325 Boylston St., Suite 401, Boston, MA 02215.

6 **III. Jurisdiction and Venue.**

7 9. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2). The amount  
8 in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and the matter  
9 is a class action in which one or more members of the proposed class are citizens of a state different  
10 from the Defendant.

11 10. The Court has personal jurisdiction over Defendant because it does business in  
12 California. It advertises and sells its Whoop Memberships in California, and serves a market for its  
13 products and Memberships in California. Due to Defendant’s actions, its products and Memberships  
14 have been marketed and sold to consumers in California, and harmed consumers in California.  
15 Plaintiff’s claims arise out of Defendant’s contacts with this forum. Due to Defendant’s actions,  
16 Plaintiff purchased Defendant’s Whoop Membership in California, and was auto-renewed in  
17 California. Plaintiff was harmed in California.

18 11. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of  
19 Defendant’s conduct giving rise to the claims occurred in this District, including selling a Whoop  
20 Membership to Plaintiff.

21 **IV. Facts.**

22 **A. California’s Automatic Renewal Law.**

23 12. The Automatic Renewal Law (“ARL”) is part of California’s False Advertising Law.  
24 The purpose of the ARL is to “end the practice of ongoing” subscription charges “without the  
25 consumers’ explicit consent.” Cal. Bus. & Prof. Code §17600. To this end, the law makes it illegal  
26 for companies to charge consumers for automatically renewing subscriptions, unless the company  
27 meets strict disclosure and consent requirements.

1           13. Under the ARL, a company must “present the automatic renewal offer terms or  
2 continuous service offer terms in a clear and conspicuous manner before the subscription or  
3 purchasing agreement is fulfilled and in visual proximity, or in the case of an offer conveyed by  
4 voice, in temporal proximity, to the request for consent to the offer.” Cal. Bus. & Prof. Code  
5 §17602(a)(1).<sup>3</sup>

6           14. Also, if “the offer also includes a free gift or trial, the offer shall include a clear and  
7 conspicuous explanation of the price that will be charged after the trial ends or the manner in which  
8 the subscription or purchasing agreement pricing will change upon conclusion of the trial.” Cal. Bus.  
9 & Prof. Code § 17602(a)(1).

10          15. The “automatic renewal offer terms” that must be presented include:

- 11           1) That the subscription or purchasing agreement will continue until the consumer  
12           cancels.
- 13           2) The description of the cancellation policy that applies to the offer.
- 14           3) The recurring charges that will be charged to the consumer’s credit or debit card or  
15           payment account with a third party as part of the automatic renewal plan or  
16           arrangement, and that the amount of the charge may change, if that is the case, and  
17           the amount to which the charge will change, if known.
- 18           4) The length of the automatic renewal term or that the service is continuous, unless the  
19           length of the term is chosen by the consumer.
- 20           5) The minimum purchase obligation, if any.

21 Cal. Bus. & Prof. Code §17601(b)(1)-(5).

22          16. A “clear and conspicuous” disclosure “means in larger type than the surrounding text,  
23 or in contrasting type, font, or color to the surrounding text of the same size, or set off from the  
24 surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention  
25 to the language.” Cal. Bus. & Prof. Code §17601(c).

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28           <sup>3</sup> A new version of the ARL became effective July 1, 2022. This Complaint cites to the  
previous version of the law (effective before July 1, 2022). The changes are immaterial to the claims  
alleged here.

1           17. After presenting all of this information, the company must then obtain the  
2 “consumer’s affirmative consent to the agreement containing the automatic renewal offer terms or  
3 continuous service offer terms.” Cal. Bus. & Prof. Code §17602(a)(2).

4           18. The ARL also has post-purchase acknowledgment requirements (required in addition  
5 to the pre-purchase requirements described above). Cal. Bus. & Prof. Code §17602(a)(3) & (b). The  
6 post-purchase acknowledgment must include “the automatic renewal offer terms or continuous  
7 service offer terms, cancellation policy, and information regarding how to cancel in a manner that is  
8 capable of being retained by the consumer.” Cal. Bus. & Prof. Code §17602(a)(3).

9           **B. Whoop violates the Automatic Renewal Law.**

10           19. As explained above, Whoop sells Whoop Memberships, which are popular fitness  
11 wearable trackers and associated fitness tracking.

12           20. Whoop sells its Whoop Memberships through its website, join.whoop.com, and  
13 through its app, and has throughout the statute of limitations period. In all relevant respects,  
14 throughout the entire statute of limitations period, across all versions of its website and app, the  
15 enrollment process is substantially similar. And, it violates California’s Automatic Renewal Law in  
16 substantially the same way, by failing to provide conspicuous disclosure of the automatic renewal  
17 terms and by failing to obtain affirmative consent.

18           21. Generally speaking, across all versions of the website and app, users are given the  
19 option to sign up for a “24 Month Membership” or an “Annual Membership.” Both memberships  
20 include a fitness tracker, as well as data processing and analytics, and other related services for the  
21 relevant period of time (24 months or one year). The 24 Month Membership is billed through a  
22 single upfront payment. The Annual Membership can be billed through a single upfront payment or  
23 monthly (the upfront payment costs less). Whoop also offers a one-month free trial, which includes a  
24 pre-owned fitness tracker.<sup>4</sup>

25           22. At the end of the term (24 months or one year or, in the case of the free trial, one  
26 month), Whoop automatically enrolls customers in a new one-year membership. But at enrollment,  
27 Whoop does not provide clear and conspicuous disclosures that its plans auto-renew, or obtain  
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<sup>4</sup> This option appears to have been introduced around May 2023.

1 affirmative consent. So, when it enrolls consumers like Plaintiff in its automatically renewing  
2 subscription plans, Whoop violates California’s Automatic Renewal Law.

3 23. Example enrollment flows are depicted and described in greater detail below.

4 Website

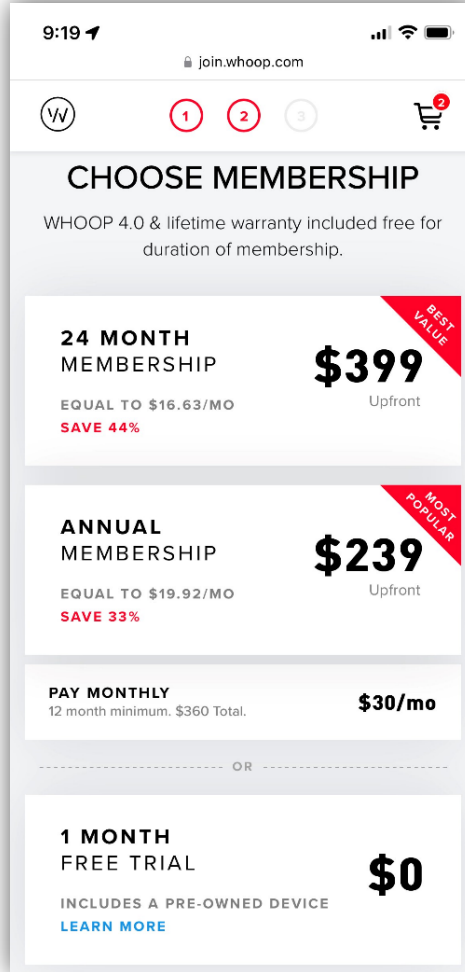
5 24. The enrollment process through Whoop’s website is described below. The process is  
6 described with reference to a recent version of the mobile website, but the process is substantially  
7 similar for all versions of both the mobile and desktop website throughout the relevant timeframe.

8 25. To join Whoop via the website, consumers are first instructed to choose a free Whoop  
9 device.



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27 26. Consumers are then given the option of choosing a 24-month Membership or an  
28 Annual Membership (and, if they choose an annual membership, the option to pay upfront or

1 monthly). Alternatively, consumers are given the option to choose a 1-month free trial which  
 2 includes a pre-owned device:



21 27. To reasonable consumers, the options appear to be definite term memberships that last  
 22 the specified term. In other words, a reasonable consumer looking at the options presented would  
 23 understand that they are signing up to receive a Whoop device and membership lasting the specified  
 24 period. They would understand that, if they select the “24 Month Membership,” they will purchase a  
 25 Membership consisting of a tracking device plus data processing and analytics for a set period of 24  
 26 months, billed upfront. If they select the “Annual Membership,” they will purchase a Membership  
 27 consisting of a tracking device plus data processing and analytics for a set period of 1 year, billed  
 28 either upfront or monthly (depending on their selection). And if they select the “1 Month Free Trial,”



1 they will receive a free Membership consisting of a pre-owned device plus data processing and  
2 analytics for a set period of one month. (Whoop incentivizes consumers to pay more up front and  
3 make longer commitments by lowering the monthly price for longer plans with up-front pay.)

4         28. In truth, no matter what the user selects, at the end of the specified term, Whoop will  
5 enroll the user in a new, subsequent Annual Membership (billed either upfront or monthly) consisting  
6 of a Whoop device plus data processing and analytics for an additional year. And, Whoop will bill  
7 the user for that Annual Membership at the prevailing rates for its Memberships at the time of the  
8 renewal.<sup>5</sup>

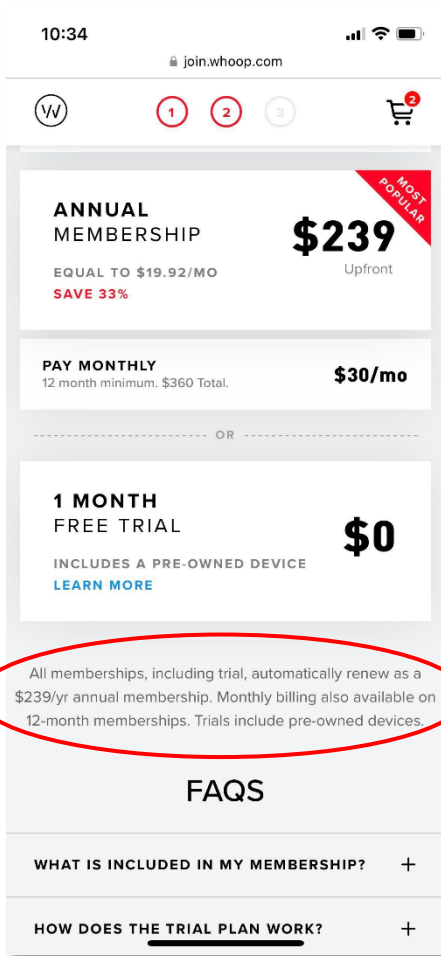
9         29. But none of the disclosures regarding this auto-renewal and automatic billing that  
10 California's ARL requires are conspicuously disclosed to the consumer before they choose their  
11 membership plan.

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<sup>5</sup> Once the free trial ends, Whoop automatically enrolls consumers in its 12-month plan.

1           30.     The only mention of any of this is displayed below. It is shown on the screen only if a  
 2 consumer happens to scroll down further, past the membership options:



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 20           31.     The disclosures are not made in a clear and conspicuous manner. A “clear and  
 21 conspicuous” disclosure “means in larger type than the surrounding text, or in contrasting type, font,  
 22 or color to the surrounding text of the same size, or set off from the surrounding text of the same size  
 23 by symbols or other marks, in a manner that clearly calls attention to the language.” Cal. Bus. &  
 24 Prof. Code §17601(c).

25           32.     Here, the disclosures are in a smaller type than the surrounding text, and are in low  
 26 contrast. The text is in very small, gray text, against a gray background, making it hard to read. The  
 27 text is not set off from the surrounding text in a manner that clearly calls attention to it. Instead, the  
 28 hidden location, small font size, and low contrast color are designed to go unnoticed. This is in

1 contrast to, for example, the large, bold, black font against white background that is used to highlight  
2 the \$0 free trial and the \$239 Annual Membership.

3 33. The disclosure also fails to provide a description of the cancellation policy that applies  
4 to the offer. Nor does it obtain affirmative consent for these automatic charges. It does not, for  
5 example, require the user to affirmatively check a checkbox agreeing to the terms. Nor does it even  
6 require the user to press a button suggesting that the user is agreeing to something (for example, “I  
7 agree to autorenewal terms, continue”). Instead, as soon as the user selects one of the membership  
8 options, it proceeds to the next screen.

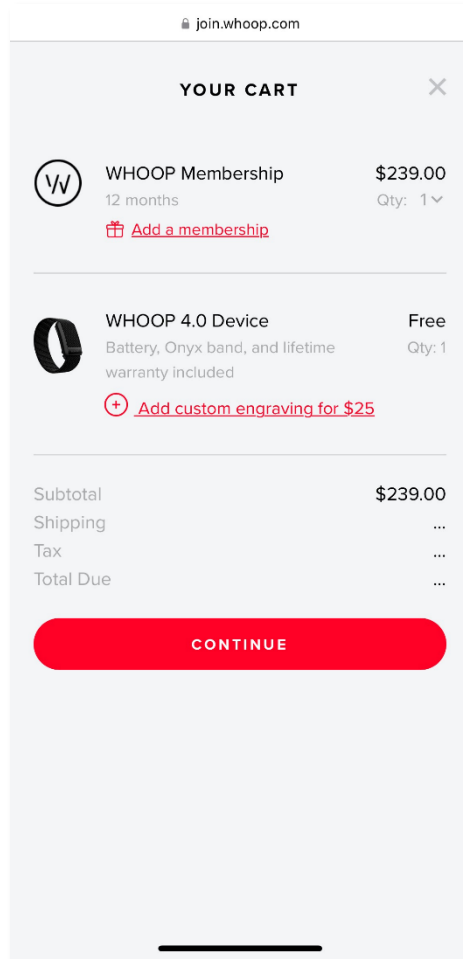
9 34. Plus, because the disclosures are hidden “below the scroll,” at the bottom of the page,  
10 and invisible unless the consumer scrolls down past any of the options the consumer might actually  
11 want to select, consumers choose their memberships without viewing the disclosures. In addition,  
12 because the website does not require the consumer to scroll, or suggest that important disclosures and  
13 terms are hidden at the bottom, consumers have no reason to scroll down. Thus, consumers sign up  
14 for a Whoop Membership without ever seeing the disclosures and linked terms.<sup>6</sup>

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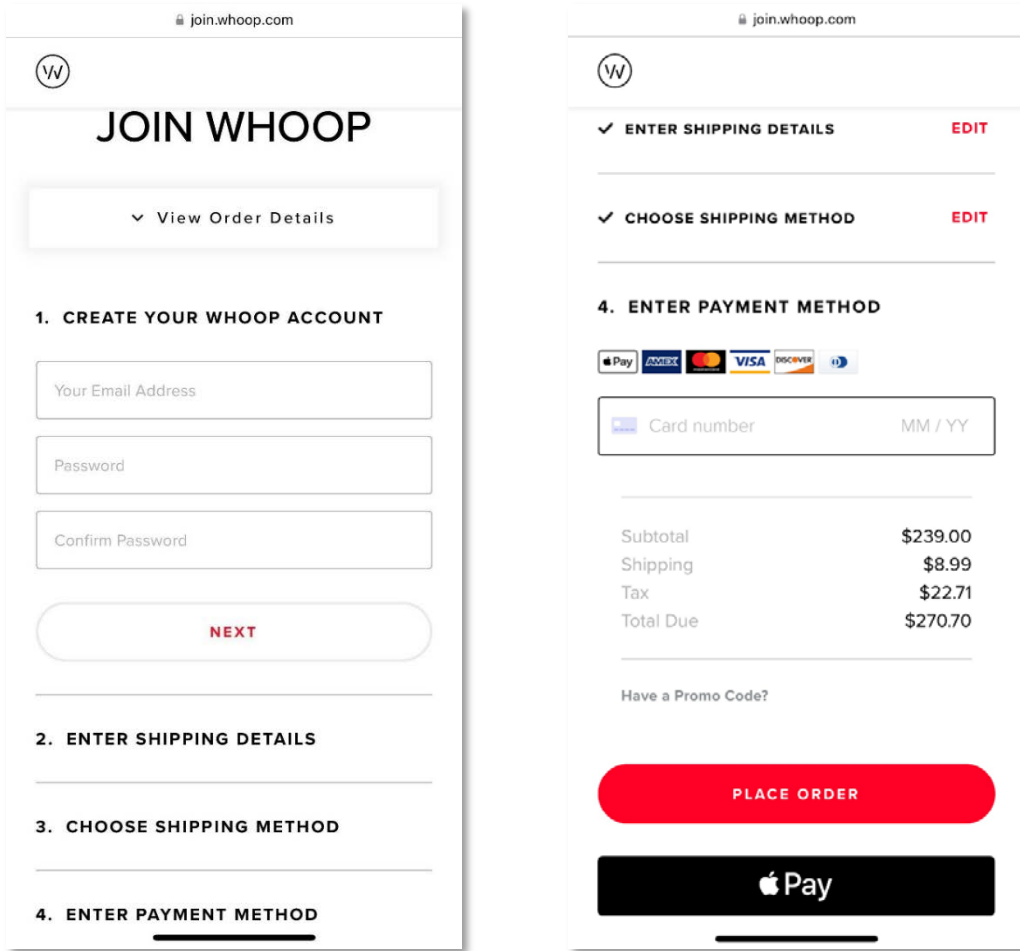
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<sup>6</sup> In some versions of the desktop website, the tiny disclosures are above (rather than below) the “continue” button. (In other versions, it is below.) This difference is immaterial because, regardless of the placement, the disclosures are deficient for all the reasons just described.

1           35.     After the consumer selects their preferred membership, a “Your Cart” page is  
2 displayed. A “Your Cart” page for a consumer who selected a Whoop 4.0 device and an Annual  
3 Whoop Membership is displayed below:



36.     On the next page, the consumer is asked to create a Whoop account by entering their  
email address and a password; enter shipping details; choose a shipping method; and enter payment  
information:

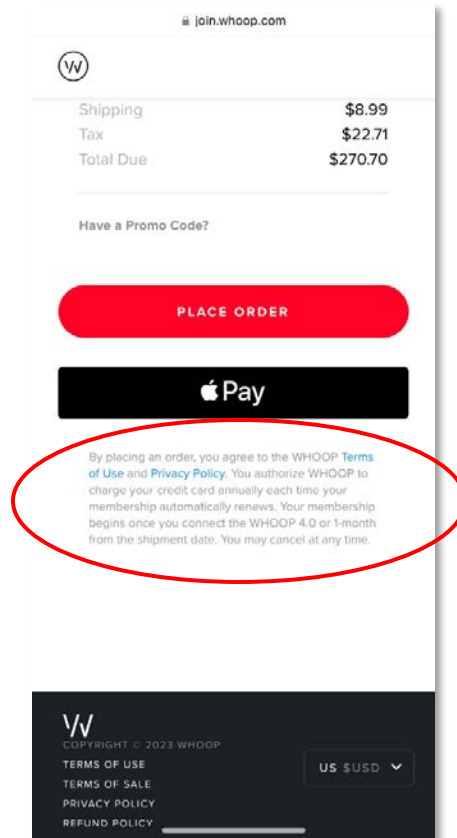


37. At no point in any of these pages does Whoop clearly and conspicuously disclose that the subscription or purchasing agreement will continue until the consumer cancels. Whoop fails to clearly and conspicuously disclose the description of the cancellation policy that applies to the offer and the length of the automatic renewal terms. Whoop also fails to include a clear and conspicuous explanation of the price that will be charged after the trial ends or the manner in which the subscription or purchasing agreement pricing will change upon conclusion of the trial. In addition, Whoop fails to obtain the consumers’ affirmative consent to the agreement containing the automatic renewal offer terms or continuous service offer terms.

38. After entering all the requested information, the consumer can then choose “Place Order” or “Pay.” Once a consumer does so, the transaction is processed and the consumer is enrolled in Whoop’s automatically renewing Whoop Membership.

1           39. As the above signup flow demonstrates, a consumer can enroll in Whoop's  
2 automatically renewing Whoop Membership without ever seeing any disclosures about automatic  
3 renewal. None of the required disclosures regarding auto-renewal are visible to the consumer before  
4 they place their order or pay. Instead, the disclosures are located past the bottom of the screen, hidden  
5 from view. They require a consumer to scroll down the page to view them.

6           40. Only if a consumer happened to scroll down further, past the membership options,  
7 would they see this:



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22           41. The disclosures are in tiny, light grey text. This makes the text hard to read. The  
23 hidden location, small font size, and low contrast color are designed to go unnoticed, and consumers  
24 purchase the Memberships without ever seeing the disclosure.

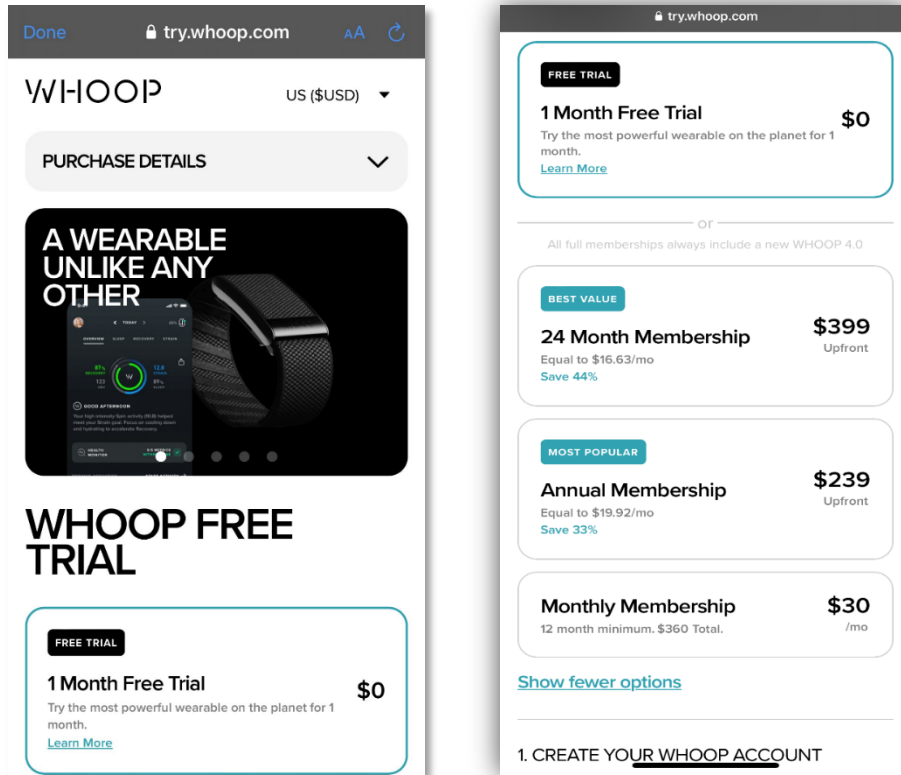
25           42. Because the disclosures are hidden at the bottom of the page (invisible unless the  
26 consumer decides to scroll down), consumers choose their memberships and pay for the  
27 memberships without ever viewing the disclosures. There is no requirement that the consumer scroll  
28 down the page to see this disclosure. In addition, because the website does not require the consumer

1 to scroll, or suggest that important disclosures and terms are hidden at the bottom, consumers have no  
 2 reason to scroll down. Thus, consumers sign up for a Whoop Membership without ever seeing the  
 3 disclosures and linked terms.

4 Mobile App

5 43. The enrollment process through Whoop’s mobile app is described below. The process  
 6 is described with reference to a recent version of the mobile app, but the process is substantially  
 7 similar for all versions of both the mobile and desktop website throughout the relevant timeframe.

8 44. To join Whoop via the app, consumers are first instructed to try a 1-month free trial,  
 9 the 24-month Membership, or Annual Membership (and if they choose the Annual membership, they  
 10 can choose to pay upfront or monthly).



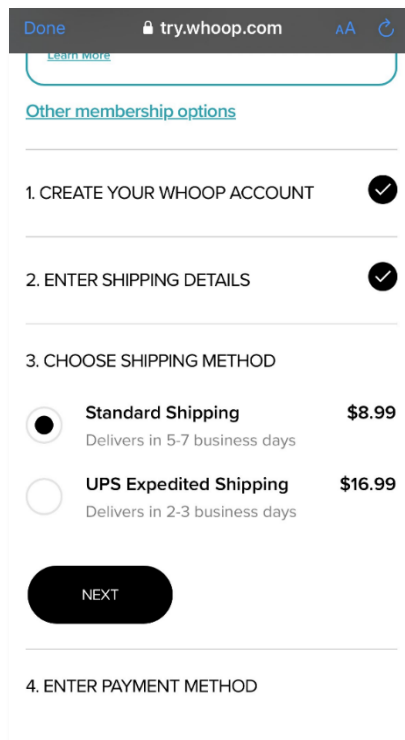
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24 45. To reasonable consumers, the options appear to be definite term memberships that last  
 25 the specified term. In other words, a reasonable consumer looking at the options presented would  
 26 understand that they are signing up to receive a Whoop device and membership lasting the specified  
 27 period. They would understand that, if they select the “24 Month Membership,” they will purchase a  
 28 Membership consisting of a tracking device plus data processing and analytics for a set period of 24

1 months, billed upfront. If they select the “Annual Membership,” they will purchase a Membership  
 2 consisting of a tracking device plus data processing and analytics for a set period of 1 year, billed  
 3 either upfront or monthly (depending on their selection). And if they select the “1 Month Free Trial,”  
 4 they will receive a free Membership consisting of a pre-owned device plus data processing and  
 5 analytics for a set period of one month. (Whoop incentivizes consumers to pay more up front and  
 6 make longer commitments by lowering the monthly price for longer plans with up-front pay.)

7 46. In truth, no matter what the user selects, at the end of the specified term, Whoop will  
 8 enroll the user in a new, subsequent Annual Membership consisting of a Whoop device plus data  
 9 processing and analytics for an additional year. And, Whoop will bill the user for that Annual  
 10 Membership at the prevailing rates for its Memberships at the time of the renewal.

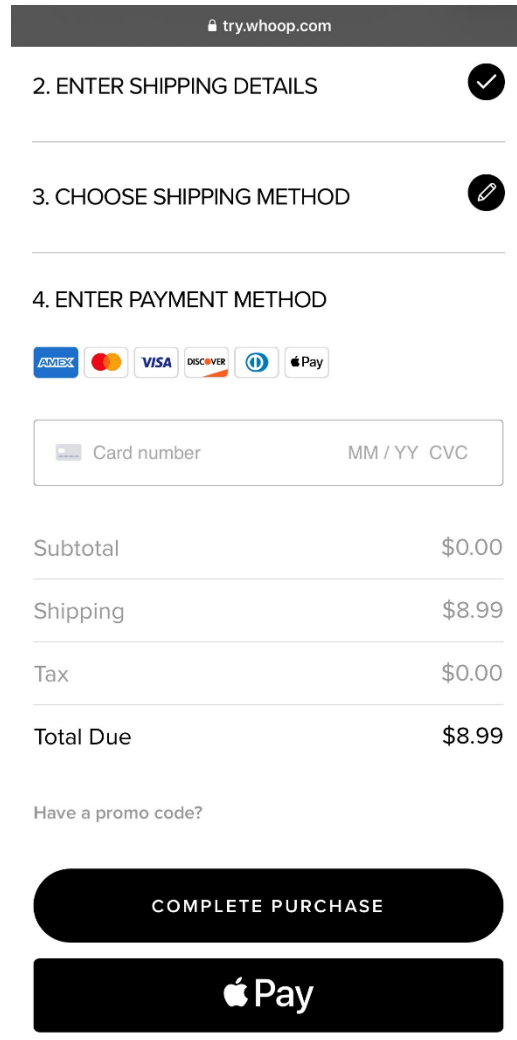
11 47. But none of the disclosures regarding this auto-renewal and automatic billing that  
 12 California’s ARL requires are conspicuously disclosed to the consumer before they choose their  
 13 membership plan.

14 48. The consumer is then instructed to then create a Whoop account, enter a shipping  
 15 address, and choose a shipping method (for shipment of the free Whoop device):



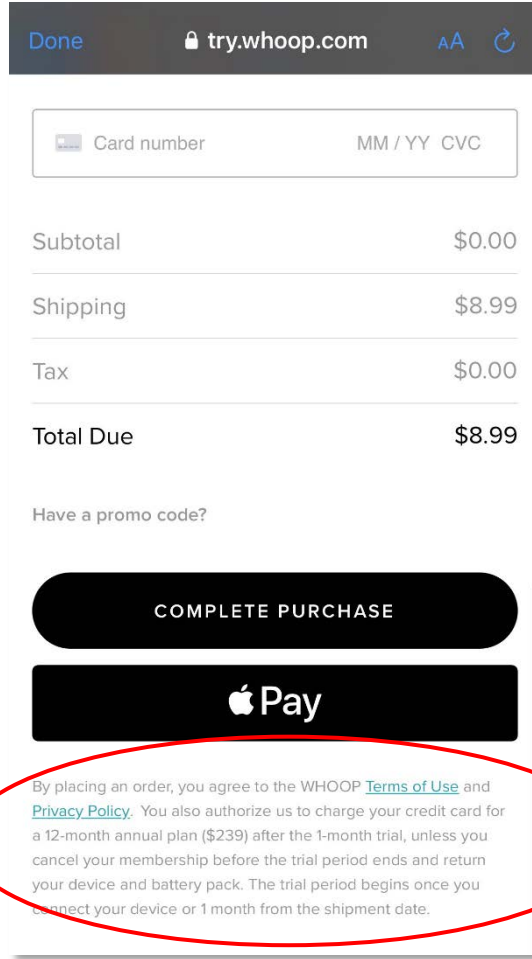


1           49.     The consumer then enters the payment method. After entering the payment method,  
 2 the consumer can press the “Complete Purchase” or “Pay” button to complete the transaction:



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 22           50.     Again, none of the required disclosures regarding auto-renewal are visible to the  
 23 consumer before they place their order or pay. Instead, the disclosures are located past the bottom of  
 24 the screen, hidden from view. They require a consumer to scroll down the page to view them.

25           51.     Only if a consumer happened to scroll down further, past the membership options,  
 26 would they see this:



52. As in the website version, in the app version, the disclosures are hidden at the bottom of the page (invisible unless the consumer decides to scroll down). Also, because the website does not require the consumer to scroll, or suggest that important disclosures and terms are hidden at the bottom, consumers have no reason to scroll down. Thus, consumers sign up for a Whoop Membership without ever seeing the disclosures and linked terms.

53. The disclosures are not made in a clear and conspicuous manner. A “clear and conspicuous” disclosure “means in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the language.” Cal. Bus. & Prof. Code §17601(c).

54. Here, the disclosures are in a smaller type than the surrounding text, and are in low contrast. The text is in very small, low-contrast light gray text, making it hard to read. The text is

1 not set off from the surrounding text in a manner that clearly calls attention to it. The text is smaller  
2 and lower contrast than the text around it. The hidden location, small font size, and low contrast  
3 color are designed to go unnoticed.

4 55. The disclosure also fails to provide a description of the cancellation policy that applies  
5 to the offer. Nor does it obtain affirmative consent for these automatic charges. It does not, for  
6 example, require the user to affirmatively check a checkbox agreeing to the terms. Nor does it even  
7 require the user to press a button suggesting that the user is agreeing to something (for example, “I  
8 agree to autorenewal terms, continue”). Instead, as soon as the user selects one of the membership  
9 options, it proceeds to the next screen.

10 56. Plus, because the disclosures are hidden “below the scroll,” at the bottom of the page,  
11 and invisible unless the consumer scrolls down past any of the options the consumer might actually  
12 want to select, consumers choose their memberships and pay without viewing the disclosures. In  
13 addition, because the website does not require the consumer to scroll, or suggest that important  
14 disclosures and terms are hidden at the bottom, consumers have no reason to scroll down. Thus,  
15 consumers sign up for a Whoop Membership without ever seeing the disclosures and linked terms.

#### 16 Post-Purchase Acknowledgment

17 57. After purchasing a Whoop Membership, Mr. Sanderson and the class did not receive a  
18 post-purchase acknowledgment email containing the automatic renewal offer terms or continuous  
19 service offer terms, cancellation policy, or information regarding how to cancel in a manner that is  
20 capable of being retained by the consumer.

21 \* \* \*

22 58. In sum, both for enrollments through its website and enrollments through its app,  
23 Whoop violates the Automatic Renewal Law. Both the website and app violate the law in  
24 substantially the same way. They both fail to present the terms of its automatic renewal or  
25 continuous service offer in a clear and conspicuous manner before fulfilling the subscription and in  
26 visual proximity to the request for consent to the offer.

27 59. Whoop also violates the ARL, via both website and app, by charging Plaintiff and  
28 class members for automatic renewals or continuous service without first obtaining the consumer’s

1 affirmative consent to the agreement containing the automatic renewal offer terms or continuous  
2 offer terms.

3 60. Whoop also violates the ARL, via both website and app, by failing to include a clear  
4 and conspicuous explanation of the price that will be charged after the trial ends or the manner in  
5 which the subscription or purchase agreement pricing will change upon conclusion of the trial.

6 61. Whoop also violates the ARL by failing to provide a post-purchase acknowledgment  
7 email that includes the automatic renewal offer terms or continuous service offer terms, cancellation  
8 policy, and information regarding how to cancel in a manner that is capable of being retained by the  
9 consumer.

10 62. For purposes of the claims asserted in this action, Whoop has violated the ARL in the  
11 ways described above during the entire applicable statute of limitations periods, via both website and  
12 app, in substantially the same way.

13 **C. Whoop misled and injured Mr. Sanderson.**

14 63. Mr. Sanderson signed up for a Whoop Annual Membership, through the Whoop  
15 mobile phone website, on or around June 2021. When he signed up, he was not aware that, at the end  
16 of the annual membership period, Whoop would automatically charge him \$288.00 and enroll him in  
17 an automatically renewing annual subscription. He believed that after annual term of the  
18 Membership ended, he would have to opt-in if he wanted to continue the service. In other words, he  
19 believed that he was signing up for a one-time charge for a fixed-term, one-year subscription, not an  
20 automatically renewing Membership that renewed each year.

21 64. And, Whoop did not clearly and conspicuously disclose to Mr. Sanderson that he was  
22 being enrolled in an automatically renewing subscription. Whoop did not clearly and conspicuously  
23 disclose to Mr. Sanderson that the subscription or purchasing agreement will continue until he  
24 canceled. Whoop failed to clearly and conspicuously disclose the description of the cancellation  
25 policy that applies to the offer and the length of the automatic renewal terms. Whoop did not include  
26 a clear and conspicuous explanation of the price that would be charged after the trial ends or the  
27 manner in which the subscription or purchasing agreement pricing will change upon conclusion of  
28 the trial. In addition, Whoop failed to obtain the Mr. Sanderson's affirmative consent to the

1 agreement containing the automatic renewal offer terms or continuous service offer terms. Finally,  
2 Whoop failed to send Mr. Sanderson a post-acknowledgment email that included the automatic  
3 renewal offer terms or continuous service offer terms, cancellation policy, and information regarding  
4 how to cancel in a manner that is capable of being retained by the consumer.

5         65. Without his knowledge or consent, Whoop enrolled Mr. Sanderson in an  
6 automatically renewing subscription that renewed annually until he took affirmative steps to cancel  
7 it. In addition, without his knowledge and consent, Whoop automatically renewed Mr. Sanderson's  
8 for two additional annual Whoop Memberships. And without his knowledge or consent, Whoop  
9 charged Mr. Sanderson for those renewed annual Whoop Memberships two years in a row: \$288.00  
10 for an annual subscription in June 2022 and \$239.00 for an annual subscription in June 2023.<sup>7</sup> Mr.  
11 Sanderson did not notice that he had been auto-renewed until he had already been auto-renewed  
12 twice.

13         66. Because Mr. Sanderson did not know he had been enrolled in an automatically  
14 renewing subscription, he did not keep track of how much time had passed since he had originally  
15 purchased his Whoop. And, because the subscription fee was automatically billed to his credit card,  
16 he did not notice that he had been auto-renewed. Because the subscription fee for automatic renewals  
17 is automatically billed to the credit card consumers used to make their initial purchase, and the  
18 renewal charge only appears once every year or two for consumers who chose to pay upfront, it is  
19 easy for consumers like Mr. Sanderson to miss.

20         67. If Mr. Sanderson had known the truth, he would not have signed up for an Annual  
21 Membership in the first place, and would not have paid Whoop the initial Annual Membership fee.  
22 He also would not have paid Whoop for the annual renewals for which he was charged.

23         68. On or about June 2023, Mr. Sanderson received a phone notification from his bank  
24 and noticed that he had been charged for Whoop in June 2023. He then looked into his bank  
25 statements and learned that he had been charged in June 2022 as well.

26         69. By the time Mr. Sanderson noticed the June 2023 charge, he had not used his Whoop  
27 in many months. Mr. Sanderson stopped using Whoop in fall of 2022, because his Whoop device

28 \_\_\_\_\_  
<sup>7</sup> Whoop decreased the price of the Annual Whoop Membership sometime between June 2022  
and June 2023.

1 stopped working. Had he known he that he had been enrolled in an automatically renewing  
2 subscription and that he would be auto-renewed and charged for an additional annual subscription in  
3 June 2023, he would have canceled, because he did not have a working Whoop device. (A Whoop  
4 device is required to collect a user's fitness and wellness data, and the subscription is used to view  
5 and analyze the data. Thus, without a Whoop device, the Whoop subscription is useless.)

6 70. After realizing that he had been auto-renewed, Mr. Sanderson reached out to Whoop  
7 and explained that he no longer used the device, and asked for a refund of the annual charge.  
8 Whoop, however, refused to refund him the annual fee. So, Mr. Sanderson resigned himself to the  
9 \$288.00 and \$239.00 charges, until the end of his 2023 subscription period. This is not something he  
10 would have agreed to, had it been clearly disclosed up front. Mr. Sanderson did not have a working  
11 Whoop device for any of the period June 2023-present, and he still does not have a functioning  
12 Whoop device. So, he could not possibly have gotten any benefit from the subscription; the  
13 subscription is worthless to him.

14 71. Very recently, Mr. Sanderson located a confirmation email from Whoop in May 2023,  
15 stating that his card would be charged for the renewal. The email, however, does not disclose the  
16 renewal or its terms clearly or conspicuously. And Mr. Sanderson receives many emails (including  
17 many junk emails and a variety of marketing emails from Whoop), and he did not notice this email  
18 when it was received. (If he had, he would have canceled his Membership, considering he was no  
19 longer using the Membership at the time). And the ARL exists precisely because post-purchase  
20 emails are not sufficient; to ensure that California consumers know that they are being enrolled in an  
21 automatically renewing subscription, the law requires pre-purchase disclosures and upfront  
22 affirmative consent. Mr. Sanderson and other consumers are not being afforded this legally-required  
23 opportunity.

24 72. Mr. Sanderson faces an imminent threat of future harm. He likes the Whoop service  
25 and would buy a (limited term, non-renewing) subscription again if he had a functioning Whoop  
26 device and could feel sure that Whoop would not illegally auto-renew him. But without an  
27 injunction, he cannot trust that Whoop will comply with the ARL.

28 **V. Class Action Allegations.**

1           73. Mr. Sanderson brings his claims for the following Class: all persons who purchased a  
2 Whoop subscription in California, during the applicable statute of limitations period.

3           74. The following people are excluded from the Class: (1) any Judge or Magistrate Judge  
4 presiding over this action and the members of their family; (2) Defendant, Defendant's subsidiaries,  
5 parents, successors, predecessors, and any entity in which the Defendant or its parents have a  
6 controlling interest and their current employees, officers and directors; (3) persons who properly  
7 execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter  
8 have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and  
9 Defendant's counsel, and their experts and consultants; and (6) the legal representatives, successors,  
10 and assigns of any such excluded persons.

11           ***Numerosity & Ascertainability***

12           75. The proposed class contains members so numerous that it is impractical to bring every  
13 individual claim. There are tens or hundreds of thousands of class members.

14           76. Class members can be identified through Defendant's sales records and public notice.

15           ***Predominance of Common Questions***

16           77. Common questions of law and fact predominate over individual issues. Common  
17 questions of law and fact include, without limitation: (1) whether Whoop's automatic renewal plans  
18 violate the ARL and California consumer protection laws and; (2) restitution needed to compensate  
19 Plaintiff and the class, and (3) class-wide injunctive relief necessary to prevent harm to Plaintiff and  
20 the class.

21           ***Typicality and Adequacy***

22           78. Plaintiff's claims are typical of the class. Like the class, Plaintiff was charged for a  
23 Whoop Membership. There are no conflicts of interest between Plaintiff and the class.

24           ***Superiority***

25           79. A class action is superior to all other available methods for the fair and efficient  
26 adjudication of this litigation because individual litigation of each claim is impractical. It would be  
27 unduly burdensome to have individual litigation of individual claims in separate lawsuits, every one  
28 of which would present the issues presented in this lawsuit.

1 **VI. Claims.**

2 **First Cause of Action: False Advertising Law (FAL)**

3 80. Plaintiff incorporates the facts alleged above.

4 81. Plaintiff brings this claim individually and for the class.

5 82. The FAL authorizes a private right of action for any violation of Chapter 1, including  
6 the ARL. See Cal. Bus. & Prof. Code § 17535 (actions can be brought by “any person who has  
7 suffered injury in fact and has lost money or property as a result of a violation of this chapter”); §  
8 17602 (ARL); *see Arnold v. Hearst Magazine Media, Inc.*, at \*17-18 (S.D. Cal. Feb. 10, 2021)  
9 (explaining how the FAL authorizes a private right of action under the ARL).

10 83. Defendant has violated Sections 17500 and 17602 of the Business and Professions  
11 Code.

12 84. Defendant violated Section 17500 of the Business and Professions Code by  
13 disseminating misleading advertisements concerning the automatically renewing nature of Whoop  
14 Memberships. As described more fully above, Defendant’s advertising of the Whoop Memberships  
15 (and its failure to display ARL compliant disclosures with those advertisements) misleads reasonable  
16 consumers about the automatically renewing nature of the plans.

17 85. The same behavior violates Section 17602 of the Business and Professions Code (the  
18 ARL). As alleged in detail above, Defendant violated the ARL by failing to present the terms of its  
19 automatic renewal or continuous service offer in a clear and conspicuous manner before fulfilling the  
20 subscription and in visual proximity to the request for consent to the offer.

21 86. Defendant also violated the ARL by charging Plaintiff and class members for  
22 automatic renewals or continuous service without first obtaining the consumer’s affirmative consent  
23 to the agreement containing the automatic renewal offer terms or continuous offer terms.

24 87. Defendant also violated the ARL by failing to provide Plaintiff and class members  
25 with a post-purchase acknowledgment disclosing the terms of Defendant’s automatic renewal offer  
26 terms or continuous service offer terms, Defendant’s cancellation policy, or information regarding  
27 how to cancel in a manner that is capable of being retained by the consumer.

28



1 88. Defendant knew or reasonably should have known that its violations are misleading to  
2 reasonable consumers.

3 89. Plaintiff relied upon Defendant's misleading representations and omissions, as  
4 detailed above. Defendant's misrepresentations were a substantial factor in Plaintiff's purchase  
5 decision. If he had known about the automatic renewal scheme, he would not have purchased his  
6 initial 12-month membership.

7 90. In addition, class-wide reliance can be inferred because Defendant's  
8 misrepresentations and omissions were material, i.e., a reasonable consumer would consider them  
9 important in deciding whether to buy the Whoop Memberships.

10 91. Defendant's violations were a substantial factor and proximate cause of economic  
11 harm to Plaintiff and class members. Defendant's violations were a substantial factor and proximate  
12 cause of economic harm to Plaintiff and class members.

13 **Second Cause of Action: Unfair Competition Law (UCL)**

14 92. Plaintiff incorporates the facts alleged above.

15 93. Plaintiff brings this claim individually and for the class.

16 ***Unlawful***

17 94. Under the "unlawful" prong of the UCL, a violation of another law is treated as unfair  
18 competition and is independently actionable. Defendant committed unlawful practices because, as  
19 alleged above and incorporated here, it violated California's Automatic Renewal Law.

20 ***Unfair***

21 95. As alleged in detail above, Defendant committed "unfair" acts by enrolling consumers  
22 in automatically recurring subscriptions, in violation of the ARL.

23 96. The harm to Plaintiff and the class greatly outweighs the public utility of Defendant's  
24 conduct. There is no public utility to illegal automatic renewal practices. This injury was not  
25 outweighed by any countervailing benefits to consumers or competition. Illegal auto-renewal  
26 practices only injure healthy competition and harm consumers.

27 97. Plaintiff and the class could not have reasonably avoided this injury. Defendant's  
28 representations and omissions were deceiving to reasonable consumers like Plaintiff. There were

1 reasonably available alternatives to further Defendant’s legitimate business interests, such as  
2 complying with the ARL.

3 98. Defendant violated established public policy by violating the ARL. The unfairness of  
4 this practice is tethered to a legislatively declared policy (that of the FAL and ARL).

5 99. Defendant’s conduct, as alleged above, was immoral, unethical, oppressive,  
6 unscrupulous, and substantially injurious to consumers.

7 ***Deceptive***

8 100. As alleged in detail above, Defendant committed “deceptive” acts by enrolling  
9 consumers in automatically recurring subscriptions, in violation of the ARL.

10 101. Defendant’s representations and deficient ARL disclosures were misleading to  
11 Plaintiff and other reasonable consumers.

12 102. Plaintiff relied upon Defendant’s misleading representations and omissions, as  
13 detailed above.

14 \* \* \*

15 103. Defendant’s violative conduct was a substantial factor and proximate cause of  
16 economic harm to Plaintiff and class members.

17 **Third Cause of Action: Consumers Legal Remedies Act (CLRA)**

18 104. Plaintiff incorporates the facts alleged above.

19 105. Plaintiff brings this claim individually and for the class.

20 106. Plaintiff and the class are “consumers,” as the term is defined by California Civil Code  
21 § 1761(d).

22 107. Plaintiff and the class have engaged in “transactions” with Defendant as that term is  
23 defined by California Civil Code § 1761(e).

24 108. The conduct alleged in this Complaint constitutes unfair methods of competition and  
25 unfair and deceptive acts and practices for the purpose of the CLRA, and the conduct was undertaken  
26 by Defendant in transactions intended to result in, and which did result in, the sale of goods or  
27 services to consumers.

28

1           109. Defendant violated California Civil Code § 1770(a)(5) by representing that its Whoop  
2 Memberships have certain characteristics that they do not have. As alleged in detail above, Defendant  
3 represented that it was selling a “free trial” of Whoop, as well as 12-month and 24-month  
4 subscriptions. In reality, no matter what option the user selects, at the end of the specified term,  
5 Defendant enrolls users in a new, subsequent Annual Membership (billed either upfront or monthly).  
6 And Defendant bills the user for that Annual Membership at the prevailing rates for Defendant’s  
7 memberships at the time of the renewal.

8           110. Defendant violated California Civil Code § 1770(a)(9) by advertising goods or  
9 services with the intent not to sell them as advertised. As alleged in detail above, Defendant’s  
10 advertising of the Whoop Membership (and its failure to display ARL compliant disclosures with  
11 those advertisements) misleads reasonable consumers about the automatically renewing nature of the  
12 plans. Defendant also advertises a free trial of Whoop (as well as 12-month and 24-month  
13 memberships), but Defendant intended to automatically enroll customers in a recurring subscription  
14 plan.

15           111. Defendant’s representations were likely to deceive, and did deceive, Plaintiff and  
16 reasonable consumers. Defendant knew or reasonably should have known that its representations are  
17 misleading to reasonable consumers.

18           112. Defendant’s misrepresentations were intended to induce reliance, and Plaintiff and the  
19 class reasonably relied on them. Defendant’s misrepresentations were a substantial factor in  
20 Plaintiff’s and the class’s purchase decisions.

21           113. Defendant’s violative conduct was a substantial factor and proximate cause of  
22 economic harm to Plaintiff and class members.

23           114. Decisions regarding the price, term, renewal, and advertising of Whoop Memberships  
24 are significant decisions that directly impact revenue and are inherently tied to corporate policy.  
25 Thus, these decisions were made with the direction of or ratification by Defendant’s officers,  
26 directors, or managing agents. In other words, Defendant’s officers, directors, or managing agents  
27 knew about and authorized the violative conduct alleged herein and intended that Plaintiff and class  
28 members rely on them.

1 115. Plaintiff and the class were injured as a direct and proximate result of Defendant's  
2 conduct.

3 116. Plaintiff and class members seek injunctive relief.

4 117. CLRA § 1782 NOTICE. On June 10, 2024, a CLRA demand letter was sent to  
5 Defendant's California registered agent and Defendant's headquarters via certified mail (return  
6 receipt requested). This letter provided notice of the particular violations alleged here and demanded  
7 that Defendant correct the problems. It has been more than 30 days since Defendant received notice  
8 of its CLRA violations. In that time, Defendant has not corrected the problem for Plaintiff or for  
9 members of the class. Accordingly, Plaintiff seeks all monetary relief available under the CLRA,  
10 including restitution, damages (including compensatory damages, expectation damages, and punitive  
11 damages), attorneys' fees, and all other forms of monetary relief available.

12 118. A CLRA venue declaration is attached.

13 **VII. Relief.**

14 119. Plaintiff seeks the following relief for himself and the proposed class:

- 15 • An order certifying the asserted claims, or issues raised, as a class action;
- 16 • A judgment in favor of Plaintiff and the class;
- 17 • Damages, treble damages, and punitive damages where applicable;
- 18 • All available monetary forms of recovery, including restitution, disgorgement, and  
19 other just equitable relief;
- 20 • An injunction;
- 21 • Pre- and post-judgment interest
- 22 • Reasonable attorneys' fees and costs, as allowed by law; and
- 23 • Any additional relief that the Court deems reasonable and just.

24 **VIII. Demand for Jury Trial.**

25 120. Plaintiff demands the right to a jury trial on all claims so triable.

27 Dated: August 16, 2024

Respectfully submitted,

28 By: /s/ Stephen D. Andrews

Stephen D. Andrews (Cal. Bar No. 354327)

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