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

JAMES LEAK, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

THE ATHLETIC MEDIA COMPANY,

Defendant.

Case No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff James Leak, (hereinafter “Plaintiff”), brings this action on behalf of himself and all
2 others similarly situated against Defendant The Athletic Media Company (“Defendant”). Plaintiff
3 makes the following allegations pursuant to the investigation of his counsel and based upon
4 information and belief, except as to allegations specifically pertaining to himself and his counsel,
5 which are based on personal knowledge.

6 **NATURE OF THE ACTION**

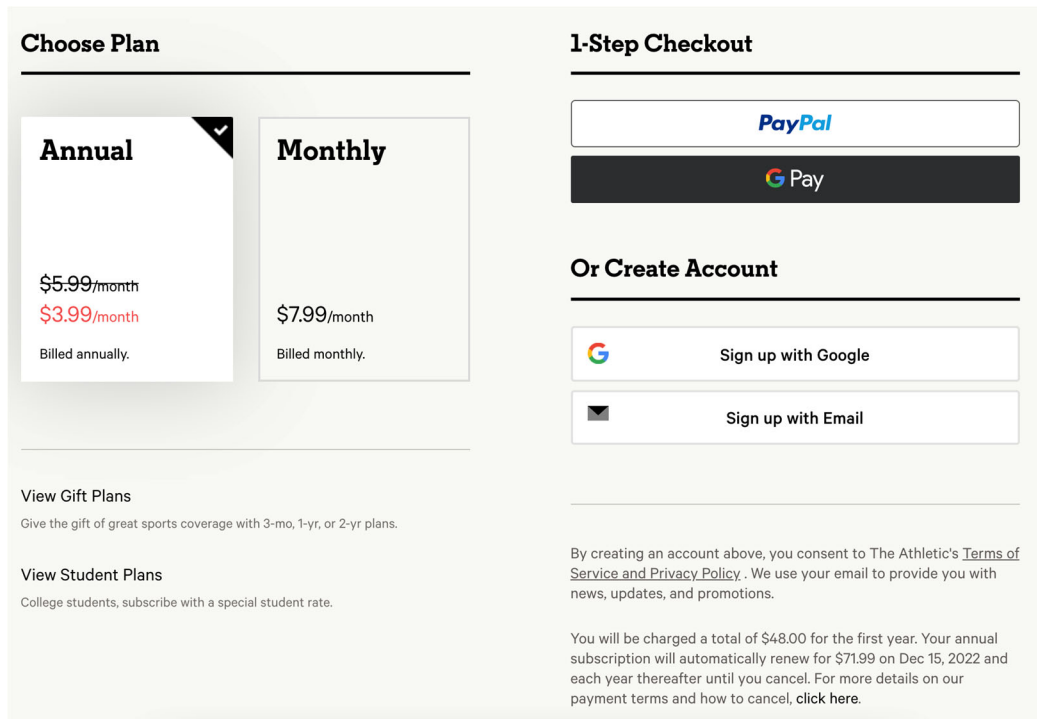
7 1. This is a putative class action lawsuit against Defendant for engaging in an illegal
8 “automatic renewal” scheme with respect to *The Athletic*, a subscription-based sports website that
9 provides national and local coverage in 47 North American cities as well as the United Kingdom.
10 Relevant to Plaintiff’s allegations, when consumers subscribe to *The Athletic*, Defendant actually
11 enrolls consumers in a program that automatically renews their subscriptions from month-to-month
12 or year-to-year and results in monthly or annual charges to the consumer’s credit card, debit card,
13 or third-party payment account. In doing so, however, Defendant fails to provide the requisite
14 disclosures and authorizations required to be made to North Carolina consumers under North
15 Carolina G.S. § 75-41.

16 2. Consumers can subscribe to *The Athletic* through either Defendant’s website,
17 www.theathletic.com, or Defendant’s mobile application. To do so, customers provide Defendant
18 with their billing information and Defendant then automatically charges its customers’ payment
19 method as payments are due, on a monthly or yearly basis. Defendant is able to unilaterally charge
20 its customers renewal fees without their consent, as it is in possession of its customers’ payment
21 information. Thus, Defendant has made the deliberate decision to bilk Plaintiff and other similarly
22 situated customers on a repeat basis, relying on consumer confusion and inertia to retain customers,
23 combat consumer churn, and bolster its revenues.

24 3. Pursuant to North Carolina’s G.S. § 75-41, any person engaged in commerce that
25 sells, leases, or offers to sell or lease, any products or services to a consumer pursuant to a contract,
26 where the contract automatically renews unless the consumer cancels the contract, shall do all of
27 the following: (1) Disclose the automatic renewal clause clearly and conspicuously in the contract
28 or contract offer; (2) Disclose clearly and conspicuously how to cancel the contract in the initial

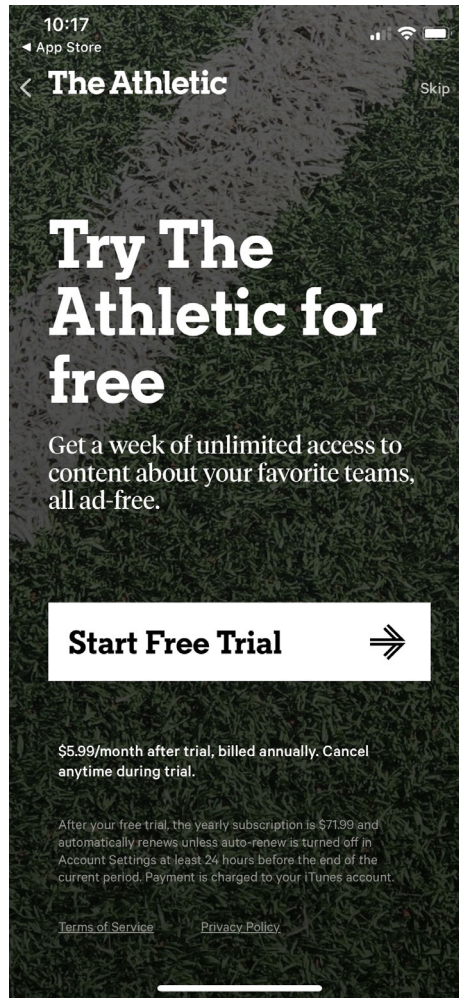
1 contract, contract offer, or with delivery of products or services; (3) For any automatic renewal
2 exceeding 60 days, provide written notice to the consumer by personal delivery, electronic mail, or
3 first-class mail, at least 15 days but no earlier than 45 days before the date the contract is to be
4 automatically renewed, stating the date on which the contract is scheduled to automatically renew
5 and notifying the consumer that the contract will automatically renew unless it is cancelled by the
6 consumer prior to that date; and (4) If the terms of the contract will change upon the automatic
7 renewal of the contract, disclose the changing terms of the contract clearly and conspicuously on
8 the notification in at least 12 point type and in bold print. Here the enrollment process for
9 subscriptions to *The Athletic* violates requirements (2) and (3) of G.S. § 75-41.

10 4. When consumers sign up for *The Athletic* through Defendant’s website, they are
11 presented with the following screen:



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24 5. When consumers sign up for *The Athletic* through Defendant’s mobile application,
25 they are presented with the following screen:
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6. Accordingly, Defendant violates G.S. § 75-41 by (i) failing to disclose clearly and conspicuously how to cancel the contract in the initial contract, and (ii) for yearly subscriptions, by failing to provide written notice to the consumer at least 15 days before the contract is to be renewed. Thus, per G.S. § 75-41(e), the automatic renewal is rendered void and unenforceable.

7. For the foregoing reasons, Plaintiff brings this action individually and on behalf of all North Carolina purchasers of any of Defendant's *The Athletic* subscriptions who, within the applicable statute of limitations period up to and including the date of judgment in this action, incurred unauthorized fees for the renewal of their subscriptions. Based on Defendant's unlawful conduct, Plaintiff seeks to recover all money Defendant has collected from North Carolina subscribers to *The Athletic*, the contracts for which are rendered void and unenforceable.

JURISDICTION AND VENUE

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2 8. Jurisdiction is proper pursuant to 28 U.S.C. § 1332(d)(2). Plaintiff is a citizen of the
3 State of North Carolina and resides in North Carolina.

4 9. Defendant is a corporation with its principal place of business in San Francisco and
5 is organized and existing under the laws of the State of California.

6 10. Upon information and belief, the amount in controversy is in excess of \$5,000,000,
7 exclusive of interests and costs.

8 11. This Court has personal jurisdiction over the parties because Defendant maintains
9 its headquarters in this District.

10 12. Venue is proper because Defendant maintains its headquarters in this District.

11 **PARTIES**

12 **Plaintiff**

13 13. Plaintiff is an individual consumer who, at all times material hereto, was a citizen of
14 North Carolina. During the Class Period Plaintiff purchased the Subscription for personal and/or
15 household use. Plaintiff was not advised that his subscription was scheduled to automatically
16 renew. Plaintiff did not receive written notice of the automatic renewal or that his credit card was
17 going to be charged. Plaintiff was assessed a charge for a subscription that he did not intend to
18 purchase or use – without receiving the required notice.

19 **Defendant**

20 14. Defendant The Athletic Media Company is a corporation with its principal place of
21 business in San Francisco, California. Defendant manufactures, markets, advertises, and
22 distributes content through various media platforms that are accessible through Subscriptions
23 throughout the United States. Defendant created and/or authorized the policy and practice by
24 which consumers like Plaintiff are charged for automatic renewals without providing written notice
25 of such charges. Defendant profits from such deceptive schemes, including by way of
26 Subscriptions that are unused and by way of charges for individuals that no longer have access to
27 unsubscribe – or that have forgotten that they subscribed to a never-ending cycle of automatic
28 renewal charges.

CLASS ALLEGATIONS

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2 15. **Class Definition:** Plaintiff brings this action pursuant to Fed. R. Civ. P. 23 on
3 behalf of a class of similarly situated individuals, defined as follows (the “Class”):

4 All persons in North Carolina who, within the applicable statute of
5 limitations period, up to and including the date of final judgment in
6 this action, incurred renewal fee(s) in connection with Defendant’s
7 *The Athletic* subscription offerings.

8 16. Specifically excluded from the Class are Defendant and any entities in which
9 Defendant has a controlling interest, Defendant’s agents and employees, the judge to whom this
10 action is assigned, members of the judge’s staff, and the judge’s immediate family.

11 17. Plaintiff reserves the right to amend the definition of the Class if discovery or
12 further investigation reveals that the Class should be expanded or otherwise modified.

13 18. **Numerosity:** Members of the Class are so numerous that their individual joinder
14 herein is impracticable. On information and belief, the Class comprises at least tens of thousands
15 of consumers throughout California. The precise number of Class members and their identities are
16 unknown to Plaintiff at this time but may be determined through discovery. Class members may
17 be notified of the pendency of this action by mail and/or publication through the distribution
18 records of Defendant.

19 19. **Commonality and Predominance:** Common questions of law and fact exist as to
20 all Class members and predominate over questions affecting only individual Class members.
21 Common legal and factual questions include, but are not limited to: (a) whether Defendant’s
22 subscriptions constitute “automatic renewals” within the meaning of G.S. § 75-41; (b) whether
23 Defendant failed to provide timely written notice required by G.S. § 75-41 prior to fulfilling the
24 automatic renewal of its subscriptions; (c) whether Defendant’s conduct alleged herein constitutes
25 unjust enrichment; (d) whether Plaintiff and the Class are entitled to damages and/or restitution;
26 and (e) whether Defendant should be enjoined from further engaging in the misconduct alleged
27 herein.

28 20. **Typicality:** The claims of plaintiff are typical of the claims of the Class in that
Plaintiff and the Class sustained damages as a result of Defendant’s uniform wrongful conduct,

1 based upon Defendant's failure to comply with G.S. § 75-41 in connection with its offerings of
2 subscriptions to *The Athletic*..

3 21. **Adequacy:** Plaintiff will fairly and adequately protect Class Members' interests.
4 Plaintiff has no interests antagonistic to Class Members' interests, and Plaintiff has retained
5 counsel that have considerable experience and success in prosecuting complex class-actions and
6 consumer-protection cases.

7 22. **Superiority:** A class action is superior to the other available methods for the fair
8 and efficient adjudication of this controversy for, inter alia, the following reasons: prosecutions of
9 individual actions are economically impractical for members of the Class; the Class is readily
10 definable; prosecution as a class action avoids repetitious litigation and duplicative litigation costs,
11 conserves judicial resources, and ensures uniformity of decisions; and prosecution as a class action
12 permits claims to be handled in an orderly and expeditious manner.

13 23. Defendant has acted or failed to act on grounds generally applicable to the Class,
14 thereby making appropriate final injunctive relief with respect to the Class as a whole.

15 24. Without a class action, Defendant will continue a course of action that will result in
16 further damages to Plaintiff and members of the Class and will likely retain the benefits of their
17 wrongdoing.

18 25. Based on the foregoing allegations, Plaintiff's claims for relief include those set
19 forth below.

20 **FIRST CAUSE OF ACTION**
21 **VIOLATION OF NORTH CAROLINA § 75-41**
22 **(On Behalf of Plaintiff and All Class and/or North Carolina Subclass Members)**

23 26. Plaintiff repeats and realleges each and every allegation contained in all the
24 foregoing paragraphs as if fully set forth herein.

25 27. N.C. Chapter § 75-41 provides in pertinent part that Defendant must (i) "Disclose
26 clearly and conspicuously how to cancel the contract in the initial contract, contract offer, or with
27 delivery of products or services" and (ii) For any automatic renewal exceeding 60 days, [the
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1 company] must provide written notice to the consumer by personal delivery, electronic mail, or
2 first-class mail, at least 15 days ... before the date the contract is to be automatically renewed[.]”

3 28. At the time Plaintiff subscribed to *The Athletic*, Defendant failed clearly and
4 conspicuously disclose how to cancel the contract, and thereafter, Defendant failed to supply
5 Plaintiff with written notification before automatically renewing his subscription. Indeed, Plaintiff
6 was charged for an annual subscription without notice by Defendant.

7 29. Plaintiff has been harmed in the amounts that he otherwise would not have paid.

8 30. Plaintiff would have cancelled his subscription had he been provided notice of his
9 subscription renewing.

10 **SECOND CAUSE OF ACTION**
11 **UNJUST ENRICHMENT**

12 **(On Behalf of Plaintiff and All Class Members in the Alternative)**

13 31. Plaintiff repeats and realleges each and every allegation contained in the foregoing
14 paragraphs as if fully set forth herein.

15 32. Plaintiff, on behalf of himself and consumers nationwide, brings a common law
16 claim for unjust enrichment.

17 33. Defendant’s conduct violated, *inter alia*, state and federal law by automatically
18 renewal subscriptions without written notice.

19 34. Defendant’s unlawful conduct as described in this Complaint allowed Defendant to
20 knowingly realize substantial revenues from selling its Subscriptions at the expense of, and to the
21 detriment or impoverishment of, Plaintiff and Class Members, and to Defendant’s benefit and
22 enrichment. Defendant has thereby violated fundamental principles of justice, equity, and good
23 conscience.

24 35. Plaintiff and Class Members conferred significant financial benefits and paid
25 substantial compensation to Defendant for the Subscriptions, which they did not intend to renew.

26 36. Under common law principles of unjust enrichment, it is inequitable for Defendant
27 to retain the benefits conferred by Plaintiff’s and Class Members’ overpayments.
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** To be Admitted Pro Hac Vice*
Attorneys for Plaintiff

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [The Athletic Hit with Class Action Over Automatic Subscription Renewals](#)
