

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

Sanderson v. Whoop, Inc.

Sanderson · No. 3:23-CV-05477-CRB · Decided March 7, 2025

OPINION

1 2 3 4 5 IN THE UNITED STATES DISTRICT COURT 6 FOR THE NORTHERN DISTRICT
OF CALIFORNIA 7 8 DONRICK SANDERSON, individually Case No. 3:23-CV-05477-CRB
and on behalf of all others similarly 9 situated, ORDER GRANTING IN PART AND DENYING
IN PART CLASS 10 Plaintiff, CERTIFICATION 11 v. 12 WHOOP, INC., 13 Defendant. 14 This
is a proposed class action arising from alleged violations of California state 15 consumer
protection laws.

Plaintiff Donrick Sanderson alleges that Whoop, Inc. did not 16 17 adhere to California’s
Automatic Renewal Law (ARL), thereby deceiving consumers and 18 illegally charging them for
continued memberships. Plaintiff moves to appoint Sanderson 19 as class representative and
Dovel & Luner, LLP as class counsel.

The Court GRANTS 20 Plaintiff’s motion to certify a 23(b)(3) class and subclass and DENIES
Plaintiff’s motion 21 22 to certify a 23(b)(2) class. 23 I. BACKGROUND 24 Plaintiff filed suit in
2023, alleging that Whoop sold an auto-renewing membership 25 to Plaintiff without properly
disclosing the terms of the auto-renewal, in violation of the 26 27 ARL. See generally Compl.
(dkt.

1); First Am. Compl. (dkt. 29); Second Am. Compl. renewing memberships without making “clear
and conspicuous” disclosures of specific 1 2 “automatic renewal offer terms” “in visual
proximity... to the request for consent to the 3 offer.” Cal. Bus. & Prof. Code §§ 17601(a)(2),
17602(a)(1). 4 Whoop sells wearable fitness trackers and a subscription-based membership that 5
allows users to access associated tracking software.

SAC ¶ 3. Although users initially 6 7 sign up for an “Annual Membership,” a “24 Month
Membership,” or a “1 Month Free 8 Trial,” at the end of that initial membership period, Whoop
automatically enrolls users in a 9 new Annual Membership billed on an auto-renewing basis. See
id. ¶¶ 27–28. Plaintiff 10 alleges that Whoop’s pre-purchase disclosures violated the ARL because
they did not 11 12 include required terms and were not presented in a “clear and conspicuous”
way.

Id. ¶ 29. 13 Plaintiff also alleges that Whoop violated the ARL by failing to give adequate post- 14
purchase acknowledgements. Id. ¶ 57. Plaintiff specifically alleges that Sanderson 15 purchased a

Whoop Membership in 2021 and that Whoop auto-renewed that membership 16 17 twice, without his knowledge or consent. Id. ¶¶ 63–71. 18 Plaintiff has brought three claims against Whoop: one under California’s False 19 Advertising Law (FAL); one under the unlawful, unfair, and deceptive prongs of 20 California’s Unfair Competition Law (UCL); and one under California’s Consumer Legal 21 22 Remedies Act (CLRA).

All three causes of action rely on the alleged ARL violations. Id. 23 ¶¶ 80–118. This Court has diversity jurisdiction. See 28 U.S.C. § 1332(a). 24 Plaintiff seeks to certify the following class: 25 All persons in California who purchased a Whoop Membership 26 through the Whoop website, were enrolled in [Whoop’s] 27 automatically renewing Whoop Membership subscription, and were automatically renewed and charged for at least one period ended, during the applicable statute of limitations.

1 2 Mot. (dkt. 45) at 6. Plaintiff also seeks to certify the following subclass: “[a]ll members of 3 the Class who were automatically renewed and charged for at least one renewal term that 4 they did not use (the ‘No Use Autorenewal’ subclass).” Id. Whoop opposes Plaintiff’s 5 motion. Opp’n (dkt. 52) at 20. 6 7 II. LEGAL STANDARD 8 Plaintiffs bear the burden of proving, by a preponderance of the evidence, that class 9 10 certification is appropriate.

See *Hawkins v. Comparet-Cassani*, 251 F.3d 1230, 1238 (9th Cir. 2001). Certification is a two-step process. 12 First, plaintiffs must meet the four explicit requirements of Rule 23(a): numerosity, 13 commonality, typicality, and adequacy. Fed. R. Civ. P. 23(a). “Class certification is 14 15 proper only if the trial court has concluded, after a ‘rigorous analysis,’ that Rule 23(a) has 16 been satisfied.” *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 542–43 (9th Cir.

2013) 17 (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011)). 18 Second, plaintiffs must show that the proposed class meets at least one of the 19 20 provisions of Rule 23(b). Fed. R. Civ. P. 23(b); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997). Rule 23(b)(3) requires that “questions of law or fact common to 22 class members predominate over any questions affecting only individual members, and 23 that a class action is superior to other available methods for fairly and efficiently 24 25 adjudicating the controversy.” These are known as the predominance and superiority 26 requirements.

Rule 23(b)(2) requires that “the party opposing the class has acted or 27 refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” 1 2 At the class certification stage, the Court considers the merits of a plaintiff’s case 3 “only to the extent that they are relevant to determining whether the Rule 23 prerequisites 4 for class certification are satisfied.” *In re Diamond Foods, Inc. Sec. Litig.*, 295 F.R.D.

5 240, 245 (N.D. Cal. 2013) (quoting *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 6 7 455, 466 (2013)). 8 III. DISCUSSION 9 First, this order will analyze whether Plaintiff has met the 23(a)(1) numerosity, 10 23(a)(3) typicality, and 23(a)(4) adequacy requirements.

Second, this order will analyze 11 12 whether Plaintiff has met the 23(a)(2) commonality and 23(b)(3) predominance 13 requirements. Third, this order will analyze whether Plaintiff has met the 23(b)(3) 14 superiority requirement. Fourth, this order will discuss Plaintiff's request for 23(b) (2) 15 certification.

The Court concludes that Plaintiff has met all of the 23(a) and 23(b)(3) 16 17 requirements, and certifies a 23(b)(3) class and subclass. The Court declines to certify a 18 23(b)(2) class. 19 a. Rule 23(a) Numerosity, Typicality, and Adequacy 20 i. Numerosity 21 22 Under the first Rule 23(a) factor, a class must be "so numerous that joinder of all 23 members is impracticable." Fed.

R. Civ. P. 23(a)(1). "Although there is no exact number, 24 some courts have held that numerosity may be presumed when the class comprises forty or 25 more members." *Krzesniak v. Cendant Corp.*, No. C 05-05156 MEJ, 2007 U.S. Dist. 26 sufficiently numerous, as is Plaintiff's subclass of Plaintiff has 1 2 satisfied numerosity. Mot. at 7. 3 ii. Typicality 4 Under the third Rule 23(a) factor, a representative party's claims or defenses must 5 be "typical of the claims or defenses of the class." Fed.

R. Civ. P. 23(a)(3). "The purpose 6 7 of the typicality requirement is to assure that the interest of the named representative aligns 8 with the interest of the class." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 9 1992) (citations omitted). "Like the commonality requirement, the typicality requirement 10 is 'permissive' and requires only that the representative's claims are 'reasonably co- 11 12 extensive with those of absent class members; they need not be substantially identical.'" 13 *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir.

2010) (quoting *Hanlon v. Chrysler* 14 Corp., 150 F.3d 1011, 1020 (9th Cir. 1998)). 15 Whoop contends that Sanderson's claims are not typical of other class members' 16 17 claims for several reasons. First, Whoop notes that Sanderson could not remember details 18 of the Whoop website's appearance. Opp'n at 18; Suehiro Decl. (dkt. 52-1) Ex. D 19 (Sanderson Dep.) at 91:17–92:3, 187:13–189:18 (Sanderson could not recall "any of the 20 colors" on the webpage or the size of the font on the webpage).

Second, Whoop states that 21 22 Sanderson admitted that the screenshot images from the complaint were not identical to the 23 page he viewed at time of his purchase. Opp'n at 18; Suehiro Decl. Ex. D (Sanderson 24 Dep.) at 193:20–194:17, 128:3–10, 128:21–24.1 Third, Whoop asserts that Sanderson 25 26 1 When asked what the sign-up page looked like when he visited it, Sanderson said, "it 27 wasn't a hundred percent" identical to the screenshot from the

complaint, but the “general could not recall the exact amount he was charged for his first purchase, whether he 1 2 received a receipt, or whether he received an auto-renewal notice.

Opp’n at 19. All of 3 this, Whoop argues, means that Sanderson cannot prove that his alleged harm was caused 4 by Whoop’s allegedly noncompliant disclosures rather than Sanderson’s own oversight. 5 Id. Whoop further contends that because Sanderson said that he could not speak to the 6 7 claims, expectations, or experiences of other class members, his interests differ from those 8 of the class.² Id. 9 Plaintiff responds that Sanderson can prove his claims with common evidence 10 provided by Whoop.

Reply (dkt. 56) at 13. Plaintiff also argues that whether Sanderson 11 12 can recall details off the top of his head “has nothing to do with typicality.” Id. 13 Additionally, Plaintiff maintains that Sanderson’s interests align with all class members: 14 all are interested in “recovering against [Whoop] for [Whoop’s] ARL violations.” Id. 15 According to Plaintiff, Sanderson’s claims, and all class members’ claims, turn on whether 16 17 Whoop complied with the ARL.

Id. So, Plaintiff asserts, any differences in class 18 members’ experiences or expectations “cannot defeat typicality” because they all derive 19 from the same common question and can be proven with common evidence. Id. at 13–14. 20 Plaintiff argues that Sanderson “asserts the same claims as class members, based on the 21 22 same course of events” and that Sanderson and class members “will make similar 23 free trial option, so that option was not visible on the version of the page that he saw.

Id. 24 at 128:3–10. Sanderson acknowledged that “logically speaking,” there might have been “some other text there.” Id. at 128:21–24. 25 2 Whoop does not provide an accurate pincite for this deposition testimony. Whoop asserts 26 that Sanderson “does not know if fellow class members even were actually harmed by Whoop and admits he does not know what membership options putative class members 27 saw,” but the cited deposition clip does not contain such testimony.

See Suehiro Decl. Ex. arguments to prove [Whoop’s] liability,” so Sanderson’s claims are “reasonably 1 2 coextensive with those of the proposed class.” Mot. at 4, 8; see also *Doe v. Neopets, Inc.*, 3 No. CV 15-8395 DMG (PLAx), 2016 U.S. Dist. LEXIS 206880, at *9–10 (C.D. Cal. Feb. 4 22, 2016) (“Doe purchased an automatically renewing subscription from the [defendant’s] 5 [w]ebsite, as did all other putative class members.

He has satisfied the typicality 6 7 requirement.”). 8 Whoop does not adequately address the typicality requirement.³ Whoop’s sole 9 argument against typicality is that if Sanderson does not remember the details of his own 10 purchase experience, it is impossible for his claims to align with those of the class. See 11 12 Opp’n at 19. But this argument does not address the Ninth Circuit’s typicality threshold, 13 that “the representative’s claims are reasonably co-extensive with

those of absent class 14 members.” See Rodriguez, 591 F.3d at 1124 (internal quotation marks omitted).

As 15 Plaintiff notes, both Sanderson’s claims and all class members’ claims “turn on whether 16 17 [Whoop] made ARL-compliant disclosures and obtained affirmative consent,” so they are 18 reasonably co-extensive. Reply at 13.

The reliability of Sanderson’s own memory does 19 not matter in making that determination. Regardless of whether Sanderson remembers 20 seeing certain details or receiving an auto-renewal notice, Whoop’s own records contain 21 22 information on what he experienced. *Id.* The typicality inquiry is not concerned with how 23 the class representative will prove his claim, only whether that claim “is reasonably co- 24 25 3 This section of Whoop’s brief has more to do with the merits of Sanderson’s claim.

The only case in this subsection did not address typicality at all, but rather involved a motion to 26 dismiss an ARL claim because of insufficient factual allegations. See Opp’n at 19 (citing *Turnier v. Bed Bath & Beyond Inc.*, 517 F. Supp. 3d 1132, 1140 (S.D. Cal. 2021)). 27 Whoop cites no cases holding that a finding of typicality hinges on the merits of a lead extensive” with other class members’.

See Rodriguez, 591 F.3d at 1124 (internal quotation 1 2 marks omitted). This is why Whoop’s argument misses the mark. Moreover, Sanderson’s 3 interest “aligns with the interest of the class” because all of them seek to recover against 4 Whoop for alleged ARL violations. See Hanon, 976 F.2d at 508; Reply at 13.

Therefore, 5 Plaintiff has satisfied typicality with respect to its proposed class. 6 7 For identical reasons, Plaintiff has satisfied typicality with respect to its proposed 8 subclass. Sanderson’s claims are “reasonably co-extensive” with those of the proposed 9 subclass and Sanderson’s interests align with those of the proposed subclass.⁴ See 10 Rodriguez, 591 F.3d at 1124; Hanon, 976 F.2d at 508.

11 12 iii. Adequacy 13 Under the fourth Rule 23(a) factor, class representatives must show that they can 14 “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). Courts 15 determine whether the named plaintiffs and counsel (1) “have any conflicts of interest with 16 17 other class members” and (2) will “prosecute the action vigorously on behalf of the class.” 18 See Hanlon, 150 F.3d at 1020.

19 1. Adequacy of counsel 20 Whoop does not challenge the adequacy of Plaintiff’s counsel. Plaintiff’s counsel, 21 22 Dovel & Luner, LLP, has no conflicts of interest, has vigorously prosecuted this case up to 23 this point, and has declared their commitment to continue doing so. See Mot. Ex. 18 24 (Franzini Decl.) ¶ 5. Plaintiff has satisfied adequacy of counsel.

25 26 4 Plaintiff alleges that Sanderson did not use his Whoop Membership between the fall of 2022 and the time the complaint was filed, in October of 2024. SAC ¶¶ 69–70. Thus he is 27 a member of the “No Use Autorenewal” subclass because he did not use his membership 2. Adequacy of party representative 1 2 Whoop contends that Sanderson is not an adequate class representative because “the 3 evidence shows inconsistencies between the Complaint and the facts,” Opp’n at 20, but 4 Whoop does not clearly identify these inconsistencies.

Whoop also argues that Sanderson 5 is unfamiliar with certain details of his purchase experience, the allegations in the case, and 6 7 his role as a class representative. *Id.* Whoop cites to a case in which the court held that “a 8 party who is not familiar with basic elements of its claim is not considered to be an 9 adequate representative for the class.”⁵ See *id.* (citing *Burkhalter Travel Agency v. 10 MacFarms Intern., Inc.*, 141 F.R.D.

144, 153 (N.D. Cal. 1991)). Whoop argues that 11 12 because Sanderson testified that he “can’t speak” to class members’ claims, what class 13 members saw during their purchase experiences, what type of memberships class members 14 purchased, or what class members intend to do with their memberships, he is unable to 15 perform his role as class representative.

Id. Finally, Whoop contends that because 16 17 Sanderson did not know “whether he was seeking to represent any subclass in this suit,” or 18 who took the screenshots included in the complaint, he is unfamiliar with the case and is 19 therefore inadequate. *Id.* 20 Plaintiff argues that Sanderson is sufficiently familiar with the basis of the suit, the 21 22 details of his own complaint, and the duties of a class representative.

Reply at 14. 23 Plaintiff identifies numerous excerpts from Sanderson’s deposition that demonstrate this. 24 5 Whoop cites another Northern District case to show that any inconsistencies should be 25 dispositive of the adequacy question. See Opp’n at 20 (citing *Feske v. MHC Thousand Trails Ltd. Partnership*, No. 11–4124 PSG, 2013 WL 1120816, at *12–14 (N.D. Cal. Mar.

26 18, 2013)). But the Feske court specifically noted that the proposed class representative’s claims “were atypical for other reasons” and that the court did not disqualify them as 27 representatives on the “grounds” of any inconsistencies “alone.” See *Feske*, 2013 WL *Id.* Plaintiff also argues that Sanderson need not demonstrate familiarity with irrelevant 1 2 details or legal strategy to satisfy the adequacy requirement.

Id. at 14–15. 3 Sanderson has no conflicts of interest, and Whoop does not dispute this. See 4 *Hanlon*, 150 F.3d at 1020. Accordingly, the adequacy analysis here hinges on whether 5 Sanderson is able to prosecute the action vigorously on behalf of the class. See *id.* Whoop 6 7 relies on Sanderson’s supposed lack of knowledge of the details of his and other class 8 members’ claims to argue that Sanderson is inadequate.

Opp’n at 20 (citing Burkhalter, 9 141 F.R.D. at 153–54). But Burkhalter is distinguishable. In Burkhalter, the proposed 10 class representative “lacked a basic understanding of the identity of some of the defendants 11 12 in th[e] action,” and said that he thought he would be representing a class “composed of 13 the defendants,” which indicated that he was an “essentially unknowledgeable client” for 14 class counsel.

141 F.R.D. at 154. Sanderson is far more knowledgeable than the class 15 representative in Burkhalter. See id. 16 17 Whoop bases its argument that Sanderson “demonstrate[s] unfamiliarity with the 18 allegations in the case” on the following exchanges: 19 Q: Are you pursuing the same claims on behalf of all class 20 members? A: I can’t speak to the claims of other class members...

21 22 Q: Are you seeking to represent any subclass in this suit? A: I am not sure... 23 Q: Were these screenshots... taken from your personal 24 phone? 25 A: No. Q: Do you know on whose phones these screenshots were 26 taken? 27 A: I don’t know. excerpts do not demonstrate an egregious lack of familiarity with the case. They merely 1 2 show that Sanderson is not an attorney.⁶ Indeed, Plaintiff successfully demonstrates that 3 Sanderson is familiar with the lawsuit.

See Reply Ex. 20 (dkt. 56-4) (Sanderson Dep.) at 4 186:24–189:3 (demonstrating his knowledge that the lawsuit is about Whoop’s alleged 5 failure to clearly and conspicuously provide pre-purchase disclosures), 193:13–19 6 7 (acknowledging the details of his complaint), 195:12–17 (outlining additional allegations 8 in his complaint), 197:15–21 (identifying who is included in the proposed class).

9 Whoop argues that because Sanderson could not “recall the circumstances of his 10 Whoop purchase experience,” he is an “unsuitable” representative. Opp’n at 20. But some 11 12 of these details (such as webpage background color) are irrelevant to Sanderson’s claim. 13 And to the extent that other details (such as font size and webpage layout) are material, 14 Sanderson need not be able to recall these details because they “can be found in [Whoop’s] 15 records.” See Reply at 15; supra Part III(a)(ii).

A finding of adequacy does not hinge on 16 17 the specificity with which a lead plaintiff can recall information. Even where a proposed 18 class representative could not remember material details “without looking at the 19 complaint,” one court found that the plaintiff had established adequacy because “lead 20 21 6 Other courts have ruled that a class representative need not understand the legal details of 22 their case in order to be adequate.

See, e.g., *Torliatt v. Ocwen Loan Servicing*, 570 F. Supp. 3d 781, 796 (N.D. Cal. 2021) (finding a class representative adequate even though 23 “he did not know what type or amount of damages were sought or whether the case [sought] injunctive relief,” because “it is not necessary that [class representatives] be 24 intimately familiar with every factual and legal issue in the case”) (citation omitted); *In re Tableware Antitrust Litig.*, 241 F.R.D.

644, 649 (N.D. Cal. 2007) (“Because class 25 representatives serve as a guardian of the interests of the class, the representatives must have some minimal familiarity with the litigation, although a detailed understanding of the 26 theories and facts of the case is not required.”) (internal citations omitted); *In re Emulex Corp.*, 210 F.R.D. 717, 721 (C.D. Cal. 2002) (“Plaintiffs’ reliance on counsel to file 27 documents and to investigate and litigate the case does not show a failure to supervise or plaintiffs need only be familiar with the basis for the suit and their responsibilities as lead 1 2 plaintiffs.” *In re LendingClub Sec. Litig.*, 282 F. Supp. 3d 1171, 1182 (N.D.

Cal. 2017) 3 (internal citations omitted). 4 Whoop also contends that Sanderson is unfamiliar with his role as a class 5 representative because when asked about what class members saw on their respective sign- 6 7 up pages, what type of memberships class members purchased, or whether class members 8 intended to renew their memberships, Sanderson repeatedly responded with “I can’t 9 speculate” or “I can’t speak to that.” See Suehiro Decl.

Ex. D (Sanderson Dep.) at 197:22– 10 198:20. But, as Plaintiff demonstrates, Sanderson is familiar with his duties as class 11 12 representative. See Reply Ex. 20 (Sanderson Dep.) at 196:24–197:11 (explaining the role 13 of the class representative and confirming that he intends to fulfill that role in this case), 14 201:22–202:1 (explaining his role in speaking for class members should the case reach 15 settlement negotiations); see also Local Joint Exec.

Bd. of Culinary/Bartender Tr. Fund v. 16 17 Las Vegas Sands, Inc., 244 F.3d 1152, 1162 (9th Cir. 2001) (“The record indicates clearly 18 that [lead plaintiff] understands his duties and is currently willing and able to perform 19 them.

The Rule does not require more.”). Furthermore, this is a class of 20 and a subclass of. Mot. at 7. Sanderson cannot possibly have 21 22 personal knowledge of each one of their experiences. 23 Sanderson is more knowledgeable than other class representatives who have been 24 deemed adequate in this district. See, e.g., *O’Connor v. Uber Techs.*, No. C-13-3826 25 EMC, 2015 U.S. Dist.

LEXIS 116482, at *41, *49 (N.D. Cal. Sept. 1, 2015) (class 26 27 representative was found to be adequate despite testifying that he did not “have any certified as a class...”), rev’d on other grounds, 904 F.3d 1087 (9th Cir. 2018); *Mulderrig 1 2 v. Amyris, Inc.*, 340 F.R.D. 575, 584 (N.D. Cal. 2021) (class representative was adequate 3 even though he could not remember important dates, whether those dates impacted his 4 decisions, which court filings he reviewed, or who was involved in alleged misstatements, 5 because he “sufficiently expressed a general understanding of the litigation.”).

Overall, 6 7 Plaintiff demonstrates that Sanderson will vigorously prosecute the action. Sanderson is 8 an adequate class representative. See *Sayce v. Forescout Techs., Inc.*, No. 20-cv-00076-SI, 9 2024 U.S. Dist. LEXIS 94700, at *57 (N.D. Cal. May 28, 2024) (class representative was 10

adequate where he was “actively involved in the litigation, appeared for [his] deposition, 11 12 [was] willing to serve as a representative party on behalf of the class, and underst[ood] 13 [his] duties as class representative.”).

14 Therefore, Plaintiff has satisfied adequacy with respect to both class counsel and the 15 class representative. 16 17 b. Rule 23(b)(3) Predominance and Rule 23(a)(2) Commonality 18 Predominance and commonality are two separate inquiries. See Fed. R. Civ. P. 19 23(a)–(b). But the parties’ arguments about predominance and commonality overlap. 20 Indeed, Whoop references commonality only once in its opposition.

See Opp’n at 6 21 22 (“Plaintiff has no common evidence regarding whether and how putative class members 23 viewed these disclosures, precluding a finding of commonality and predominance.”). Both 24 parties discuss predominance far more than they do commonality. This section will first 25 discuss predominance, then address the parties’ cursory dispute over commonality.

The 26 27 Court concludes that Plaintiff has satisfied the predominance requirement. It follows that i. Predominance 1 2 Under the first Rule 23(b)(3) factor, a plaintiff must show that “the questions of law 3 or fact common to class members predominate over any questions affecting only 4 individual members.” Fed. R. Civ. P. 23(b)(3). A plaintiff must also present a model of 5 damages that (1) identifies damages that stem from the defendant’s alleged wrongdoing 6 7 and (2) is “susceptible of measurement across the entire class.” Comcast Corp. v. 8 Behrend, 569 U.S. 27, 34–38 (2013).

Proof is not a prerequisite for class certification. See 9 Amgen, 568 U.S. at 459 (“Rule 23(b)(3) requires a showing that questions common to the 10 class predominate, not that those questions will be answered, on the merits, in favor of the 11 12 class.”). 13 Whoop argues that three central issues in this case preclude a finding of 14 predominance, because their resolution will require individualized inquiries that 15 predominate over questions common to the class.

See Opp’n 11–18. These issues are (a) 16 17 ARL compliance, (b) Article III standing, and (c) damages calculations. See id. Plaintiff 18 responds that these are common questions that will be resolved via classwide proof, such 19 that predominance is satisfied. See Reply at 1–12.

The Court agrees with Plaintiff. 20 1. ARL Compliance 21 22 Whoop argues that Plaintiff must rely on individualized inquiries to determine ARL 23 compliance, which makes it an individual question. Opp’n at 6. All of Plaintiff’s claims 24 hinge on whether Whoop complied with the ARL’s disclosure requirements. See supra 25 Part I. Compliance with the ARL requires that: (1) pre-purchase disclosures on the Whoop 26 27 website were “clear and conspicuous... and in visual proximity” to the request for disclosures included the required “automatic renewal terms”; and (4)

Whoop provided an 1 2 adequate post-purchase acknowledgement that included a specified set of terms.

See Mot. 3 at 9 (citing Cal. Bus. & Prof. Code §§ 17601(a)(2)–(3), 17602(a)(1)–(4)).⁷ This order will 4 refer to these as Requirements 1–4, respectively. This section will discuss each 5 requirement, though Whoop only discussed Requirements 1 and 2. According to Whoop, 6 7 whether it satisfied Requirements 1 and 2 are individualized questions that defeat 8 predominance.

Plaintiff contends that whether Whoop satisfied Requirements 1–4 are 9 common questions that can be answered via common proof, so predominance is met. This 10 section of the order will conclude that each of these four ARL requirements present 11 12 common questions sufficient to satisfy predominance. 13 a. Requirement 1 14 Whoop asserts that whether it met Requirement 1 cannot be answered using 15 classwide proof.

See Opp’n at 11. According to Whoop, individual users’ device 16 17 settings—such as “vertical or horizontal orientation” and “preferences in terms of font 18 size, browser format, zoom percentages, and similar”—could affect “how and where 19 disclosures by Whoop appeared” to the user. Id. at 7. Whoop also notes that the website 20 layout changed over time, so individual users viewed different versions of the disclosure.⁸ 21 22 Id. Whoop asserts that because personalized device settings are unique to the individual, 23 and users viewed different iterations of the Whoop site depending on when they signed up 24 7 The ARL carries additional requirements, but Plaintiff only references these four— 25 presumably because additional requirements were added on January 1, 2025, several months after Plaintiff filed its SAC.

See Cal. Bus. & Prof. Code §§ 17602(a)(5)–(8). 26 8 Changes included that “the disclaimer moved from below to above the ‘place order’ 27 button” and that “subscription plan offerings varied over time” so “there may be additional for their memberships, Plaintiff cannot use classwide evidence to show that disclosures 1 2 were “clear and conspicuous” and in sufficient proximity to the request for consent.

Id. at 3 6–7. 4 Plaintiff responds that whether Whoop met Requirement 1 is a common question 5 that can be resolved via classwide proof. Reply at 1. Plaintiff’s central contention is that 6 7 liability under the ARL hinges on whether Whoop published noncompliant disclosures, not 8 whether or how users saw those disclosures. See id. at 3–4. So, Plaintiff contends, 9 whether Whoop satisfied Requirement 1 is a common question that must be resolved via 10 classwide evidence and cannot be subject to individualized inquiries.

Id. at 1, 4. Plaintiff 11 12 argues that individual device settings like screen orientation and zoom percentage “cannot 13 plausibly affect” whether a disclosure was “clear and conspicuous” and “in visual 14 proximity” to the request for consent, so individual inquiries need not be addressed to 15 determine whether Whoop met Requirement 1. Id. at 2; Cal. Bus. & Prof.

Code § 16 17 17602(a)(1). Plaintiff adds that “website text that is not programmed to be set off by 18 symbols or other marks will not be set off in this manner on any device—regardless of 19 settings or orientation.” Reply at 2. Likewise for “text that is programmed to be smaller 20 than surrounding text.” Id. 21 22 In response to Whoop’s argument that the timing of sign-up, and therefore the 23 version of the disclosure that class members saw, is an individualized inquiry, Plaintiff 24 contends that Whoop never published an ARL-compliant disclosure satisfying 25 Requirement 1.

See id. at 2; Mot. at 9. Plaintiff asserts that all proposed class members 26 27 1 || went through “substantially similar join flow steps” regardless of when they joined.? Mot. 2 || at 9. Plaintiff posits that “the general layout of the checkout page, and the type, font, and 3 |! color of the disclaimer on that page” were “substantially the same for all class members, 4 regardless of when the order was placed, or what device they used.” Id. Citing Whoop’s 5 6 30(b)(6) witness, Plaintiff notes that throughout the relevant time period, there were re ee a 10 | i. citing ce.

3 (au. 45-3 12 || (Giacalone Dep.) at 95:14—96:2, 366:19—25, 394:18—20, 92:6—94:25, 102:9—25). 13 Plaintiff’s arguments are convincing. At this stage, any alleged differences in the 14 appearance of the sign-up page across the class do not appear to be material. See *Jenson v. 15 g 16 Fiserv Trust Co.*, 256 F. App’x 924, 926 (9th Cir. 2007) (affirming class certification 5 17 || where “the ‘center of gravity’ of the [defendant’s] fraud predominate[d] over details of 18 || individual communications.”).

Plaintiff’s goal in this case is to prove that Whoop 19 “automatically renew[ed] class members without adequate disclosure or consent, in 20 violation of the ARL.” Mot. at 8. It is plain from the text of the ARL that compliance is 22 || determined from the perspective of the publisher, not the user. Cal. Bus. & Prof. Code § 23 17602(a)(1) (“It is unlawful for any business that makes an automatic renewal offer or 24: ua, continuous service offer to a consumer in this state to... [flail to present the automatic 25 26 9: 9_AG-. | cy 28 renewal offer terms or continuous service offer terms in a clear and conspicuous manner 1 2... and in visual proximity... to the request for consent to the offer.”) (emphasis added).

3 Moreover, other district courts in California characterize the ARL as establishing 4 affirmative obligations for publishers to present adequate disclosures to users. See *Zeller 5 v. Optavia LLC*, 22-cv-434-DMS-MSB, 2024 U.S. Dist. LEXIS 51882, at *19 (S.D. Cal. 6 7 Mar. 14, 2024) (“The ARL imposes upon Octavia a duty to present the terms of the offer 8 in a clear and conspicuous manner before the subscription or purchasing agreement is 9 fulfilled and in visual proximity... to the request for consent to the offer...”) (emphasis 10 added); *Farmer v. Barkbox, Inc.*, 5:22-cv-01574-SSS-SHKx, 2023 U.S. Dist.

LEXIS 11 12 222435, at *12 (C.D. Cal. Oct. 6, 2023) (“the ARL creates an obligation to disclose 13 automatic renewal terms...”) (emphasis added). The common question here is whether 14

Whoop complied with Requirement 1. 15 It does not matter whether class members had different device settings that resulted 16 17 in visually different disclosures.¹⁰ As Plaintiff notes, if ARL liability turned on how users 18 saw auto-renewal disclosures, no ARL case could ever be certified as a class—but courts 19 have certified ARL classes.

See, e.g., *Doe*, 2016 U.S. Dist. LEXIS 206880, at *15. Plus, 20 the Ninth Circuit has explained that “online providers have complete control over the 21 22 design of their websites,” so “the onus must be on website owners to put users on notice of 23 24 10 Even if it did matter, user device settings apply uniformly to the entire display page, rendering Whoop’s argument about such settings moot.

Picture a hypothetical disclosure 25 written in small, low-contrast font that is significantly smaller than surrounding text, making it noncompliant with the ARL. Increasing the font size on one’s browser may 26 result in a more prominent disclosure, but it will not make that disclosure larger than the surrounding text.

Thus, users cannot self-remedy the problem of an inadequate disclosure 27 by making it appear larger on their own devices. Liability still hinges on what the the terms to which they wish to bind consumers.” See *Berman v. Freedom Fin. Network*, 1 2 LLC, 30 F.4th 849, 857 (9th Cir. 2022) (citations omitted). More importantly, as Whoop’s 3 own 30(b)(6) witness noted, certain relevant features about the disclosure did not change 4 during the class period.

See Mot. at 9. This undermines Whoop’s argument that class 5 members’ individual experiences with different versions of the disclosure at different times 6 7 make this an individualized question. 8 Whether Whoop satisfied Requirement 1 is a common question. 9 b. Requirement 2 10 Whoop argues that whether it satisfied Requirement 2 is an individualized question 11 12 that defeats predominance.

Opp’n at 7. Whoop reasons that “[w]hat customers understood 13 or thought they were agreeing to when they were placing an order depends on what they 14 saw, which varied among the class,... their expectations, and what they understood to be 15 purchasing at the time.” *Id.* at 13–14. Whoop asserts that because these questions demand 16 17 individualized answers, Plaintiff cannot satisfy predominance.

18 Plaintiff argues that whether users’ consent via “sign-in wrap” was sufficient to 19 satisfy Requirement 2 is a common question. Reply at 4. Plaintiff contends that California 20 appellate law requires that courts evaluate this type of consent based on objective factors, 21 22 not subjective ones, so it must be resolved using classwide proof. *Id.* 23 Whoop’s arguments about consent do not align with recent Ninth Circuit reasoning.

24 A California appellate court in *Sellers v. JustAnswer LLC*, 73 Cal. App. 5th 444, 460 25 (2021) discussed how “[m]utual assent is determined under an objective standard applied 26 27 to the

outward manifestations or expressions of the parties, i.e., the reasonable meaning of court found that where the conspicuousness of a textual notice on a webpage did not 1 2 satisfy the ARL's requirements, the agreement did not bind the plaintiffs because "a 3 reasonably prudent offeree" would not be "on inquiry notice of the terms at issue," 4 precluding mutual assent.

See *id.* at 471, 477–78. The Ninth Circuit in *Berman* applied 5 the reasoning of *Sellers* and found that because a textual notice was not reasonably 6 7 conspicuous and did not explicitly inform users of the terms of the agreement, users could 8 not "be deemed to have manifested assent" to those terms. 30 F.4th at 857–58.

The Ninth 9 Circuit applied identical reasoning in an ARL case only a few days ago, holding that a user 10 could not be bound by a sign-in wrap agreement because the website publisher did not 11 12 provide "reasonably conspicuous notice of the Terms of Use" and the user did not 13 "unambiguously manifest her assent to the Terms of Use." See *Chabolla v. Classpass Inc.*, 14 No. 23-15999, 2025 U.S. App.

LEXIS 4591, at *10–11, *25 (9th Cir. Feb. 27, 2025). 15 The Court applies the Ninth Circuit's objective standard for determining mutual 16 17 assent. Using this objective inquiry, Whoop's characterization of Requirement 2 as an 18 individualized question fails. Affirmative consent hinges not on what individual users 19 thought, but rather on objective conspicuousness.

See *Berman*, 30 F.4th at 857–58. 20 Plaintiff cites multiple cases in which district courts explicitly deemed affirmative consent 21 22 to be a common question in ARL class actions.¹¹ As such, whether Whoop met 23 Requirement 2 is a common question. 24 25 26 11 See Reply at 5 (citing *Doe*, 2016 U.S. Dist. LEXIS 206880, at *14; *Beer v. GoBrands, Inc.*, No. 27 CV 22-7386 FMO (RAOx), 2024 U.S. Dist.

LEXIS 93502, at *14 (C.D. Cal. Jan. 3, 2024); *Kissel v. Code 42 Software, Inc.*, No. SACV 15-1936-JLS (KES), 2017 U.S. Dist. LEXIS 223526, at c. Requirement 3 1 2 Whoop does not address Requirement 3 in its opposition. 3 Plaintiff argues that whether Whoop satisfied Requirement 3 is a common question 4 because the allegedly deficient "content" of the disclosures "was materially the same 5 classwide." Reply at 1.

Plaintiff contends that, at all points in the relevant period, the 6 7 disclosures themselves did not "clearly and conspicuously disclose that Whoop 8 Memberships continue until the consumer cancels," "accurately or fully describe the 9 cancellation policy," "disclose what the recurring charges that will be charged will be, or 10 that that amount may change," or "clearly disclose what the length of the automatic 11 12 renewal term will be." Mot. at 10.

So, Plaintiff asserts, all class members were "exposed 13 to the same material omissions," and the determination of whether Whoop satisfied 14 Requirement 3 can be made using classwide information. *Id.* at 10–11. This, Plaintiff 15 argues, makes it a common question. 16 17 Plaintiff's

argument is persuasive. Based on Plaintiff's framing of the deficiencies in the pre-purchase disclosures, determining compliance with Requirement 3 cannot be an individualized inquiry.

It is a common question that can only be answered using classwide information, because Plaintiff alleges that all class members were "exposed to the same material omissions." Id. Whether Whoop satisfied Requirement 3 is a common question. d. Requirement 4 Whoop does not address Requirement 4 in its opposition. Plaintiff argues that Whoop's post-purchase acknowledgement was insufficient at all times, failing to satisfy Requirement 4.

Id. at 11. The acknowledgement did not notice." Id. Plaintiff notes that the post-purchase acknowledgement 1 2. Id.; id. Ex. 3 (Giacalone Dep.) at 160:19–161:6 3 (). 4 Whoop does not argue that individual questions predominate in evaluating 5 Requirement 4. Plaintiff asserts that, classwide, the content of Whoop's post-purchase 6 7 acknowledgements was deficient.

Reply at 1. Determining compliance with Requirement 8 4 is therefore a common question. 9 2. Article III Standing 10 Whoop argues that Plaintiff must rely on individualized inquiries to establish 11 12 Article III standing, which makes it an individual question. Opp'n at 8.

To 13 demonstrate Article III standing, a plaintiff must establish (1) that she has suffered an 14 injury-in-fact, (2) that her injury is "fairly traceable" to a defendant's conduct, and (3) that 15 her injury would likely be "redressed by a favorable decision." *Lujan v. Defs. of Wildlife*, 16 17 504 U.S. 555, 560–61 (1992).

The Ninth Circuit has recognized that "to the extent that 18 class members were relieved of their money" because of a defendant's wrongful conduct, 19 "they have suffered an injury-in-fact sufficient to establish Article III standing." See 20 *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 595 (9th Cir. 2012) (citations omitted), 21 22 overruled on other grounds by *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods 23 LLC*, 31 F.4th 651, 682 n.32 (9th Cir.

2022). 24 Whoop argues that determining Article III standing for each class member would 25 require individual inquiries. Opp'n at 8. Whoop cites to Sanderson's deposition, in which 26 27 he answered affirmatively when asked whether in "considering his own damages," he is up for the Whoop Membership." Id. at 14 (citing Suehiro Decl., Ex. D (Sanderson Dep.) at 1 2 206:7–11).

When Sanderson was asked whether other class members would consider their 3 personal expectations when evaluating their damages, he responded: "I cannot speak to 4 their expectations or what we have to do." Id. (citing Suehiro Decl., Ex. D (Sanderson 5 Dep.) at 206:12–17). Extrapolating from this exchange, Whoop posits that Sanderson 6 7 "does not know if his fellow class members were harmed" and characterizes his responses 8 as indicating that Plaintiff's theory of injury "depends on [class members'] expectations 9 and assumptions." Id. This is Whoop's only argument as to why individualized inquiries 10 predominate in evaluating injury-in-fact sufficient for Article III standing.

11 12 Plaintiff contends that it can establish Article III standing for each class member 13 using Whoop’s own transactional data, which is a source of classwide proof. Reply at 7. 14 Plaintiff posits that “class members were relieved of the money they paid for their 15 renewals” because Whoop “enrolled them in automatically-renewing Whoop 16 17 Memberships—and then charged them for renewals—in violation of the ARL.” Id. So, 18 Plaintiff theorizes, class members suffered economic injury in the form of wrongfully 19 charged membership costs.

Id. A favorable judgment, Plaintiff asserts, will likely redress 20 this injury in the form of refunds for wrongful auto-renewals. Id. Plaintiff also cites a 21 22 Ninth Circuit case in which a plaintiff had Article III standing where he was charged for 23 auto-renewal of a membership without being provided ARL-required disclosures. See 24 Mot. at 16 (citing *Johnson v. Pluralsight, LLC*, 728 F. App’x 674, 676 (9th Cir.

2018)). 25 Plaintiff’s argument prevails. Johnson indicates that if the allegations in the 26 27 complaint are true, all class members have injuries-in-fact sufficient to confer Article III “was not entitled to charge customers” for its subscriptions, so the plaintiff had Article III 1 2 standing because he experienced monetary harm through “unlawfully retained 3 subscriptions payments”).

Moreover, as Plaintiff notes, Plaintiff can use Whoop’s own log 4 of transactional data to prove this injury. Mot. at 14. Sanderson’s belief about his own 5 expectations at the time of purchase does not supersede Ninth Circuit precedent. This is a 6 7 common question that predominates over any individual questions. It can be answered 8 using common, classwide proof.

9 3. Damages Calculations 10 Whoop argues that Plaintiff must rely on individualized inquiries to calculate 11 12 damages, which makes damages an individual question. Opp’n at 8. Whoop asserts that 13 Plaintiff’s damages model improperly assumes that class members would not have signed 14 up for memberships if Whoop’s allegedly wrongful disclosures were instead ARL- 15 compliant.

Id. Whoop’s main point is that Plaintiff cannot prove, with classwide 16 17 evidence, that class members would not have renewed their memberships “but for” the 18 allegedly wrongful auto-renewals. Id. Whoop notes that Sanderson used his Whoop 19 Membership during the auto-renewal period, and only stopped using it because the device 20 stopped working. Id. at 15–16.

This, Whoop contends, is proof that Sanderson derived 21 22 some value from his membership, which should be subtracted from the full autorenewal 23 charges in calculating damages. See id. at 16. In making this argument, Whoop cites 24 excerpts from Sanderson’s deposition that appear to indicate that he viewed the disclosure 25 at the time of purchase and decided not to cancel his membership even though he knew he 26 27 would be auto-renewed.

Id. Whoop implies that, because other class members used their the calculation of damages an individual question.¹² Id. at 16–17. Finally, Whoop 1 2 disputes Plaintiff’s assumption that if

users did not use the Whoop app, it was because they 3 did not want to be auto-renewed. Id. at 15. 4 Plaintiff notes that it is undisputed that the proposed model measures damages 5 classwide.¹³ See Reply at 10.

Plaintiff also argues that the proposed model measures 6 7 damages that stem directly from Whoop's ARL violations, so "individual damages issues 8 do not defeat predominance" and "Comcast is satisfied." Id. at 9–10. Plaintiff maintains 9 that ARL liability does not depend on what a website user thought, saw, or wanted, but 10 instead depends on whether a website publisher complied with the requirements of the law.

11 12 Id. at 10. Plaintiff centers much of its argument around the "unconditional gifts" provision 13 of the ARL, which states that if a business violates the ARL, that business transforms its 14 membership product into an "unconditional gift" for which it is "not entitled to charge 15 consumers." See id.; Johnson, 728 F. App'x at 675–76; Cal. Bus. & Prof. Code § 17603.

16 17 Plaintiff asserts that in violating the ARL, Whoop transformed its Whoop Memberships 18 into unconditional gifts, and therefore Whoop unlawfully obtained any payment it received 19 from its subscribers for auto-renewed memberships. Mot. at 16.

As such, Plaintiff's 20 damages model seeks to refund class members the amounts of money for which they were 21 22 12 Whoop cites a case in which a plaintiffs' full refund model did not account for the value 23 of benefits derived, so the model could not "accurately measure classwide damages." See Opp'n at 17 (citing *In re POM Wonderful LLC*, No. ML 10–02199 DDP (RZx), 2014 WL 24 1225184, at *3 (C.D.

Cal. Mar. 25, 2014)). 25 13 Plaintiff's proposed damages model seeks to recover full refunds for auto-renewed memberships. Mot. at 15. This model does not include refunds for the initial membership 26 period purchased by class members, and Plaintiff does not seek a recovery of those membership costs. Judge Kim addressed this issue in resolving an earlier discovery 27 dispute, holding that "information about the value of the initial term of membership is not unlawfully charged.

Reply at 10. Plaintiff also argues that class members' ongoing use of 1 2 their Whoop devices does not relate to predominance or class certification. Id. at 11. 3 Plaintiff contends that the Court need not offset class members' recovery by the value of 4 their ongoing use, but that even if it did, the Court could calculate prorated refunds using 5 classwide data provided by Whoop.

Mot. at 16–17. 6 7 Whoop's arguments are unconvincing. Even if Sanderson or other class members 8 did use their Whoop Memberships throughout the auto-renewal periods, and even if they 9 did cancel their memberships for reasons unrelated to the auto-renewals, this does not 10 mean that these customers wanted to be auto-renewed. Nor would class members' reasons 11 12 for using or cancelling their memberships affect whether Whoop violated the ARL when it 13

auto-renewed them.¹⁴ As the Ninth Circuit recognized in *Johnson*, monetary harm can derive from ARL violations that “transform subscriptions into unconditional gifts pursuant to section 17603” of the California Business and Professions Code, gifts for which businesses are “not entitled to charge consumers.” See 728 F. App’x at 675–76; see also *Roz v. Nestle Waters N. Am., Inc.*, 2:16-cv-04418-SVW-JEM, 2017 U.S. Dist.

LEXIS 5177, at *24 (C.D. Cal. Jan. 11, 2017) (“When the Defendant collected money from the Plaintiffs that it was not owed by charging their debit or credit cards, the Plaintiffs were undoubtedly injured and lost money as the result of the Defendant’s actions. Being forced to pay money for what should be considered a gift must qualify as an injury.”).

This is relevant for certifying both Plaintiff’s proposed class and its “No Use Autorenewal” subclass. Whoop argues in a single footnote that the subclass cannot be certified because in order to determine why users did not use their memberships, the Court would need to consider “individual issues,” defeating predominance. Opp’n at 17, n.14. But as discussed here, Whoop’s liability for violating the ARL does not depend on why As discussed earlier in this order, the violation itself, rather than an individual user’s expectation, results in damage.

See supra Part III(b)(i)(1)(b). It follows that the calculation of damages can depend on the fact of the violation; what the user might have actually wanted does not matter. See *Roz*, 2017 U.S. Dist. LEXIS 5177, at *23–24 (“The clear meaning of this provision is that when a business violates the requirements of [the ARL]... that consumer has no obligation to pay the business for the product because it is deemed a gift...

The statute specifically places no conditions on these gifts, meaning that the product is considered a gift whether or not the Plaintiffs can show they did not actually want the product.”). Moreover, a full refund damages model cannot create individual questions because it applies across the entire class, regardless of individual circumstances. See *Leanne Tan v. Quick Box, LLC*, 20cv1082-LL-DDL, 2024 U.S. Dist.

LEXIS 6935, at *44 (S.D. Cal. Jan. 12, 2024) (“Plaintiff shows that damages can be determined without excessive difficulty and that each model stems from her theory of liability, which is sufficient at this stage to establish that common questions predominate.”). To the extent that the recovery of damages might depend on the calculation of offsetting benefits, such that any value derived from use of a Whoop Membership would be subtracted from the full membership cost, using Whoop’s data to do so (as Plaintiff suggests) would mitigate any predominance issues.^{15,16} Whoop’s internal data contains Whoop argues that Plaintiff cannot seek a full refund of membership costs for those class members who derived some tangible benefit from use of their membership during autorenewal periods.

Opp'n at 16. This might be true, but only for claims under the UCL. See *Robinson v. OnStar, LLC*, No.: 15-CV-1731 JLS (MSB), 2020 U.S. Dist. LEXIS 26 10797, at *72 (S.D. Cal. Jan. 22, 2020) (rejecting a full refund damages model in a UCL case). 27 information on all class members' use of their Whoop Memberships during the 1 2 autorenewal periods. See Opp'n at 16.

This is a source of classwide evidence; individual 3 inquiries do not predominate over this common inquiry. The predominance requirement, 4 and in particular the Comcast damages standard, helps avoid throwing the Court into a 5 series of "individualized mini-trials to determine each class member's damage award." 6 7 See *Olean*, 31 F.4th at 682 n.31. Using a common batch of data to conduct these inquiries, 8 rather than conducting individual discovery into each class member's offsetting benefits, 9 would avoid "individualized mini-trials." See *id.* 17 Whoop does not identify any cases in 10 which a plaintiff sought a full refund because of an ARL violation, and that damages 11 12 model defeated predominance.

Nor is it clear why the use of classwide proof from 13 Whoop's own data would constitute an individual question sufficient to undermine 14 predominance, especially when the CLRA permits class members to recover a full 15 refund. 18 Moreover, the Ninth Circuit has held that "the need for individual damages 16 17 calculations does not, alone, defeat class certification," and that "[d]amages issues 18 damages for the subclass would not threaten predominance.

19 17 The Ninth Circuit has held that "[u]ncertainty regarding class members' damages does 20 not prevent certification of a class as long as a valid method has been proposed for calculating those damages," and "[t]he fact that the amount of damage... may be 21 uncertain, contingent or difficult of ascertainment does not bar recovery." See *Lambert v. Nutraceutical Corp.*, 870 F.3d 1170, 1182 (9th Cir.

2017) (citations omitted), rev'd on 22 other grounds, 586 U.S. 188 (2019). It also noted that "[c]lass wide damages calculations under the UCL, FAL, and CLRA are particularly forgiving." *Id.* at 1183. 23 18 Plaintiff notes that on the CLRA claim, it "can seek actual damages, instead of 24 restitution, which does not require Plaintiff to account for value received." Mot. at 15; see *Amavizca v. Nutra Mfg., LLC*, 8:20-cv-01324-RGK-MAA, 2021 U.S. Dist.

LEXIS 36009, 25 at *33–34 (C.D. Cal. Jan. 27, 2021) (holding that damages under the CLRA could be calculated classwide, which was sufficient to meet the predominance requirement under 26 Rule 23(b)(3)); see also *Zeller*, 2024 U.S. Dist. LEXIS 51882, at *22–23 (S.D. Cal. Mar. 14, 2024) ("Section 17603 states that Plaintiffs shall not be liable for qualifying 27 unconditional gifts," which "permits Plaintiffs to seek a full refund in the form of damages predominate only where a plaintiff cannot prove that damages resulted from the 1 2 defendant's conduct." *Vaquero v. Ashley Furniture Indus.*, 824 F.3d 1150, 1154–55 (9th 3 Cir.

2016). 4 In sum, Whoop’s predominance arguments about Plaintiff’s damages model are: (1) 5 that calculating damages for each class member is an individual question that threatens to 6 7 overwhelm common questions; and (2) that the full refund model is not capable of 8 classwide damages measurement. Opp’n at 15. But Whoop does not adequately support 9 those arguments with case law.

And, even if damages calculations were individualized, 10 this does not overwhelm common questions with individualized inquiries. See *Vaquero*, 11 12 824 F.3d at 1155. 13 Having considered Whoop’s arguments with respect to ARL compliance, Article III 14 standing, and damages calculations, common questions will predominate over individual 15 questions for both the proposed class and the proposed subclass.

Plaintiff has satisfied 16 17 predominance. 18 ii. Commonality 19 Under the second Rule 23(a)(2) factor, plaintiffs must show the existence of 20 “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2).

The 21 22 commonality inquiry is less demanding than the predominance inquiry. See *DZ Rsrv. v. 23 Meta Platforms, Inc.*, 96 F.4th 1223, 1233 (9th Cir. 2024) (citing *Amchem*, 521 U.S. at 24 624). Commonality is satisfied where claims “depend upon a common contention... 25 capable of classwide resolution” such that “determination of its truth or falsity will resolve 26 27 an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart, fact.*” *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 957 (9th Cir.

2013) (quoting 1 2 *Mazza*, 666 F.3d at 589). 3 As noted earlier, the parties’ predominance arguments completely overlap with their 4 commonality arguments. Though the standards for each requirement are different, in order 5 for common questions to predominate over individual questions, common questions must 6 7 exist.

The Court has already determined that predominance is satisfied. Accordingly, 8 Plaintiff has satisfied commonality for both the proposed class and the proposed subclass. 9 Because common questions predominate over individual questions, in looking for 10 one “significant” common question sufficient to satisfy commonality, the parties can take 11 12 their pick.

See *id.* Were the published disclosures “clear and conspicuous” and “in visual 13 proximity” to the request for consent, satisfying Requirement 1 of the ARL? See Cal. Bus. 14 & Prof. Code § 17601(a)(3). Based on a reasonable user inquiry, did class members give 15 affirmative consent, satisfying Requirement 2? See *id.* § 17602(a)(4). Did the published 16 17 disclosures include the required “automatic renewal offer terms,” satisfying Requirement 18 3?

See *id.* § 17601(2). Was the content of the post-purchase acknowledgements adequate, 19 satisfying Requirement 4? See *id.* Were all class members injured? See *supra* Part 20 III(b)(i)(2). Any will do. 21 22 c. Rule 23(b)(3) Superiority 23 Under the second Rule 23(b)(3) requirement,

plaintiffs must show “that a class 24 action is superior to other available methods for fairly and efficiently adjudicating the 25 controversy.” A court must consider Rule 23(b)(3)’s four factors.

See *Zinser v. Accufix 26 27 Research Institute, Inc.*, 253 F.3d 1180, 1190 (9th Cir. 2001). These factors are: “(a) the actions; (b) the extent and nature of any litigation concerning the controversy already 1 2 begun by or against class members; (c) the desirability or undesirability of concentrating 3 the litigation of the claims in the particular forum; and (d) the likely difficulties in 4 managing a class action.” Fed.

R. Civ. P. 23(b)(3)(A)–(D). “Where recovery on an 5 individual basis would be dwarfed by the cost of litigating on an individual basis, this 6 7 factor weighs in favor of class certification.” *Wolin v. Jaguar Land Rover North Am., 8 LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (citing *Zinser*, 253 F.3d at 1189). 9 Whoop does not mention the superiority requirement at all, mentioning only that the 10 allegedly high number of “individualized issues... render class treatment an inferior 11 12 method of adjudicating Plaintiff’s claims.” Opp’n at 12.

Whoop provides no support for 13 this point other than its predominance arguments. 14 Plaintiff notes that the monetary value of individual claims is small, such that class 15 members have no “significant interest in pursuing individual litigation.” Mot. at 17 (citing 16 17 *Lilly v. Jamba Juice Co.*, 308 F.R.D. 231, 241 (N.D. Cal. 2014)). Plaintiff also argues that 18 there is no “already-commenced litigation concerning the controversy,” “economies of 19 scale make it desirable to concentrate the claims of these... class members in this...

20 forum” because Whoop is based here, and there are “no likely difficulties in managing this 21 22 case as a class action.” Id. 23 Because this order has already determined that individual issues do not 24 predominate, Whoop’s superiority argument, based on its theory of a lack of 25 predominance, also fails.

Moreover, all of the 23(b)(3) superiority requirements are met in 26 27 this case: individual recovery “would be dwarfed by the cost of litigating on an individual prosecution of this action. See *Wolin*, 617 F.3d at 1175 (internal citations omitted). There 1 2 is no preexisting litigation on the matter involving class members. Mot. at 17. It is 3 desirable to concentrate these claims in the forum where Whoop resides.

Id. Finally, as 4 previously discussed, Whoop’s “individualized inquiries” argument is not convincing 5 evidence that there would be “difficulties in managing” this case as a class action. Opp’n 6 7 at 12; Fed. R. Civ. P. 23(b)(3)(D). Plaintiff has satisfied superiority for both the proposed 8 class and the proposed subclass. 9 Because Plaintiff has satisfied all of the 23(b)(3) requirements, the Court GRANTS 10 the motion to certify Plaintiff’s proposed class and proposed subclass under 23(b)(3).

11 12 d. 23(b)(2) Injunction Class Certification 13 Plaintiff also seeks to certify a class under Rule 23(b)(2). Mot. at 17–18. Rule 14 23(b)(2) permits class certification where “the party opposing the class has acted or 15 refused to act on grounds that apply generally to the class, so that final injunctive relief or 16 17 corresponding declaratory relief is appropriate respecting the class as a whole.” Fed.

R. 18 Civ. P. 23(b)(2). “[I]t does not authorize class certification when each class member 19 would be entitled to an individualized award of monetary damages” and where “the 20 monetary relief is not incidental to the injunctive or declaratory relief.” Wal-Mart, 564 21 22 U.S. at 360–61. 23 The Court declines to certify the class under Rule 23(b)(2) because Plaintiff’s 24 primary form of requested relief is monetary.

See Fed. R. Civ. P. 23(b)(2) advisory 25 committee’s notes to 1966 amendment (“The subdivision does not extend to cases in 26 27 which the appropriate final relief relates exclusively or predominantly to money 1 relief sought is declaratory or injunctive.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 2 || 986 (9th Cir. 2011) (citing *Zinser*, 253 F.3d at 1195).

This is because 23(b)(3) class 3 || members “are afforded the right to be notified of the action and to opt out of the class,” but 23(b)(2) class members have no opportunity to opt out. *Id.* at 987 (citing *Wal-Mart*, 564 6 U.S. at 362). “The absence of these protections in a class action predominantly for 7 || monetary damages violates due process.” *Id.* (citing *Phillips Petroleum Co. v. Shutts*, 472 8 || U.S. 797, 812 (1985)). ° Plaintiff spends the majority of its motion discussing why appropriate relief should consist of money damages via full refunds for auto-renewed subscriptions.

See Mot. at 5— 12 || 17 (discussing in twelve pages why this Court should certify a damages class), 17—18 13 (discussing in two paragraphs why this Court should certify an injunction class). The 4 primary form of relief Plaintiff seeks is monetary damages.

As such, Ninth Circuit law 3 ° prohibits 23(b)(2) certification. See *Ellis*, 657 F.3d at 986. 5 17 Accordingly, the Court DENIES Plaintiff’s motion to certify a class under 23(b)(2). 18 || IV. CONCLUSION 9 For the foregoing reasons, the Court GRANTS the motion for 23(b)(3) certification, CERTIFIES Plaintiff’s proposed 23(b)(3) class and subclass, APPOINTS Dovel & Luner 22 || as class counsel, and APPOINTS Donrick Sanderson as class representative.

The Court 23 || DENIES the motion for 23(b)(2) certification. 24 95 IT IS SO ORDERED. ao k 26 Dated: March 7 __, 2025 CHARLES R. BREYER 7 United States District Judge 28