

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

BRANNON SKILLERN and RYAN
CORKEN, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

PELOTON INTERACTIVE, INC.,

Defendant.

Case No. 1:21-cv-06808

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Brannon Skillern and Ryan Corken, individually and behalf of all others similarly situated (collectively, the “Classes”), bring this class action against defendant Peloton Interactive, Inc. (“Peloton”).

NATURE OF THE ACTION

1. This is a class action for breach of contract and consumer protection act violations arising from Peloton’s unlawful charge of a “sales tax” to Massachusetts, New York, and Virginia customers on their Peloton membership subscriptions, despite the tax-exempt status of such digital goods under state law.

2. Peloton is an exercise equipment and media company that allows its customers to replicate the “boutique” studio-fitness experience at home by streaming live and on-demand exercise classes.¹ Funded in 2012 and launched in 2013, Peloton offers for sale an internet-connected stationary bicycle (the “Peloton Bike” or “Bike”) and treadmill (the “Peloton Tread” or “Tread”) that monthly subscribers can use to participate remotely in exercise classes that are streamed to the Bike and Tread’s connected screens. In addition, Peloton’s class library includes

¹ Peloton, Our Story, <https://www.onepeloton.com/company>. All websites cited herein were last accessed on August 11, 2021.

live and on-demand strength training, yoga, stretch, and meditation, which can be used without the Bike and Tread.

3. Peloton describes itself as “the largest interactive fitness platform in the world” and boasts over 5.4 million members as of March 31, 2021.² Peloton generated \$1.8 billion in revenue in 2020 and \$1.26 billion as of the third-quarter 2021.³

4. With a \$39/month All-Access Membership subscription, users can access Peloton’s full catalogue of classes along with real-time performance metric tracking when used with the Bike or Tread.⁴ Peloton also offers an individual-user Digital Membership (together with the All-Access Membership, “Peloton Membership”) for \$12.99/month through the Peloton App, which grants subscribers with a compatible device access to Peloton’s live and on-demand class catalogue. Subscription to Peloton’s All Access Membership is required with the purchase of the Peloton Bike and Peloton Tread.

5. By purchasing or using a Peloton Membership, subscribers agree to Peloton’s Membership Terms, which supplement and comprise part of Peloton’s Terms of Service. The Membership Terms provide that subscribers “agree to pay the monthly fee specified” at purchase “plus any applicable taxes and other charges.”⁵ Subscribers also provide a payment method that is saved and charged on a recurring, monthly basis at the beginning of the monthly membership cycle. The Membership Terms further provide that subscribers authorize Peloton to use that provided payment method “to pay any amounts described [in the Membership Terms] without requiring a signed receipt.”⁶

² Peloton, Investor Relations, <https://investor.onepeloton.com/investor-relations>.

³ *Id.*

⁴ Peloton, Bikes, <https://www.onepeloton.com/bikes>; Peloton, Treads, <https://www.onepeloton.com/tread>.

⁵ Peloton, Membership Terms, <https://www.onepeloton.com/membership-terms>.

⁶ *Id.*

6. In January and December 2019, plaintiffs Brannon Skillern and Ryan Corken, respectively, purchased the Peloton Bike and subscribed to Peloton's All-Access Membership subscription for \$39/month. Yet, Peloton charged them both an over-6% "sales tax" on their subscriptions every month through December 2020 even though no such tax was actually owed under state law, resulting in substantial overcharges in violation of Peloton's Membership Terms and state law.

7. Peloton's unlawful practice has harmed plaintiffs and all Class members in precisely the same way. Indeed, on a standard and uniform basis, Peloton charges users in several U.S. states a sales tax on their monthly subscription even though digital products in many of those states are not taxable, in violation of Peloton's Membership Terms and state law. Peloton has charged its customers, including plaintiffs, in at least Virginia, New York, and Massachusetts, an unlawful digital sales tax, collecting millions of dollars in overcharges.

8. Furthermore, Peloton willfully and knowingly overcharged its subscribers a false and unlawful sales tax on their Peloton Memberships. When customers complained or inquired about the impermissible tax charge, Peloton assured them that its business practices comply with state and local tax requirements. And Peloton falsely represented that the tax charges imposed on Peloton Membership subscriptions were consistent with the practices of other digital subscription businesses. Although Peloton claims to regularly review its billing and collection practices for taxability compliance purposes, Peloton engaged in a uniform, years-long practice of charging a "sales tax" on its customers' Peloton Memberships subscriptions in jurisdictions that do not permit the taxation of digital products.

9. Worse, Peloton admittedly has not remitted the unlawfully collected “sales tax” to state authorities, recouping these overcharges in an effort to maximize profits at their subscribers’ expense and under the guise of a state-imposed tax.

10. Peloton eventually changed its taxation practices in at least Massachusetts, New York, and Virginia, effective January 1, 2021, despite knowing about the impropriety of its overcharge misconduct before that date. Peloton has not reimbursed plaintiffs or Class members for the unlawful taxes it collected before January 1, 2021.

11. Plaintiffs bring this action on behalf of themselves individually and all others similarly situated to challenge Peloton’s breach of the membership contract and its willful and knowing unlawful, deceptive, and fraudulent overcharging practices. Plaintiffs seek all available compensatory, statutory, and punitive damages, and reasonable attorney’s fees and costs.

THE PARTIES

12. Plaintiff Brannon Skillern resides in Vienna, Virginia and is a citizen of Virginia. Skillern has owned a Peloton Bike and subscribed to Peloton’s All-Access Membership since January 2019, when she purchased the Bike while living in Brooklyn, New York. Skillern has lived in Vienna, Virginia since April 1, 2020.

13. Plaintiff Ryan Corken resides in Reading, Massachusetts, and is a citizen of Massachusetts. Corken has owned a Peloton Bike and subscribed to Peloton’s All-Access Membership since December 2019.

14. Defendant Peloton is a Delaware corporation with its corporate headquarters and principal place of business located in New York, New York. Peloton is therefore a citizen of Delaware and New York.

JURISDICTION AND VENUE

15. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d)(2) because this is a class action in which at least one member of the class is a citizen of a state different from defendant, the amount in controversy exceeds \$5 million, exclusive of interest and costs, and the proposed class contains more than 100 members.

16. The Court has personal jurisdiction over Peloton because Peloton resides in and is subject to general jurisdiction in this District. The Court also has personal jurisdiction over Peloton because Peloton markets, distributes, offers, and sells the Peloton Bike, Peloton Tread, and Peloton Membership throughout the United States, including in this District, and the conduct complained of occurred in or was targeted at this District. Additionally, Peloton's Terms of Service provide that all disputes not required to be arbitrated be adjudicated in New York, New York and are to be governed by New York law.

17. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1)–(2) because Peloton resides in this District and a substantial portion of the events giving rise to plaintiffs' claims occurred in this judicial district.

FACTUAL BACKGROUND

A. Peloton & Plaintiffs' Peloton Memberships

18. Peloton allows its customers to replicate a high-end studio-fitness experience at home by streaming live and on-demand exercise classes from its Peloton Bike and Peloton Tread products as well as through the Peloton App that is compatible with a number of cell phones, tablets, and televisions and is available online.

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