

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

KIP BARNETT,
individually and on behalf of all
others similarly situated,

Plaintiff,

CLASS ACTION

JURY TRIAL DEMANDED

v.

FITNESS INTERNATIONAL, LLC
d/b/a LA FITNESS,

Defendant.

_____ /

CLASS ACTION COMPLAINT

Plaintiff Kip Barnett brings this class action against Defendant Fitness International, LLC d/b/a LA Fitness, and alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

NATURE OF THE ACTION

1. With over 700 locations, Defendant is the largest fitness facility owner/operator in the country. Its annual revenue consistently exceeds \$2 billion.
2. During a time when the entire country is focused on dealing with the health and financial impact of the COVID-19 pandemic, Defendant seized on the opportunity to enrich itself.
3. Specifically, on or about March 16, 2020, Defendant voluntarily closed its fitness facilities around the country through April 1, 2020, and furloughed most of its employees. Rather than provide a much-needed refund to its members, Defendant kept millions of dollars in unearned membership fees.
4. On March 23, 2020, Plaintiff, through counsel, sent a correspondence to Defendant

demanding for Defendant to refund unearned membership fees to all members of Defendant's facilities.

5. On March 27, 2020, Defendant responded by stating that it was "reviewing" the issue. Then, at 1:28 a.m. on March 30, 2020, Defendant sent an email to all members purporting to offer extended memberships or a free three-month membership for a friend or family member as an apology for closing its facilities earlier in the month and not refunding its members.

6. The e-mail contains hyperlink to Defendant's website where members are supposed to select one of the two options. Defendant's website contains a "Limitation of Liability" clause in its Terms and Conditions, which absolves Defendant of liability for the unearned membership fees it is attempting to keep for this month.

7. As of the filing of this lawsuit, Defendant has yet to reimburse its members, including Plaintiff, the millions of dollars in unearned membership fees it collected this month.

8. Accordingly, Plaintiff has been left with no choice but to file this lawsuit to seek damages on behalf of himself and the Class Members, as defined below, and any other available legal or equitable remedies resulting from the unlawful actions of Defendant.

JURISDICTION AND VENUE

9. This Court has personal jurisdiction over Defendant because Defendant directs, markets, and provides its business activities throughout the State of Florida. Further, this Court has personal jurisdiction over Defendant because Defendant's tortious conduct against Plaintiff occurred in part within this District and, on information and belief, Defendant committed the same wrongful acts to other individuals within this judicial district, such that some of Defendant's acts have occurred within this district, subjecting Defendant to jurisdiction here.

10. The Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because there is diversity of residence of the named parties. Additionally, this court has subject matter

jurisdiction under 28 U.S.C. § 1332(d)(2). Plaintiff seeks damages, which, when aggregated among a proposed class numbering in the millions, exceeds the \$5,000,000.00 threshold for federal court jurisdiction under the Class Action Fairness Act (“CAFA”).

11. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) because Defendant is deemed to reside in any judicial district in which it is subject to personal jurisdiction, and because a substantial part of the events or omissions giving rise to the claim occurred in this District.

PARTIES

12. Plaintiff is a natural person who, at all times relevant to this action, was a citizen of and domiciled in Broward County, Florida.

13. Defendant is a California limited liability company whose principal office is located at 3161 Michelson Dr. Ste. 600, Irvine, CA 92612.

FACTS

14. Plaintiff has been a member of Defendant’s fitness facilities for over 14 years and has a month-to-month membership agreement with Defendant.

15. Earlier this month, Plaintiff paid his membership fee of \$32.09 to Defendant for the month of March 2020.

16. On March 16, 2020, Defendant voluntarily closed its fitness facilities around the country, including the location where Plaintiff regularly exercises.

17. On or about March 20, 2020, Plaintiff received an e-mail from Defendant stating that Defendant had decided to voluntarily close its clubs through March 31, 2020.

18. However, rather than reimburse Plaintiff the unearned membership fee amount of \$15.52 for the remainder of the month, Defendant kept that amount and notified Plaintiff in the e-mail that all billing would be suspended, but not until April 1, 2020.

19. On March 23, 2020, Plaintiff, through counsel, sent a correspondence to Defendant demanding “(1) that Fitness International refund to him prorated fees from the date of the voluntary closure through March 31, 2020; (2) that Fitness International reimburse all membership accounts prorated fees from the date of the voluntary closure through March 31, 2020; and (3) that Fitness International modify its policies and procedures so that members are not charged fees when Fitness International voluntarily closes its facilities.”

20. On March 27, 2020, Defendant responded to Plaintiff’s demand by e-mailing Plaintiff’s counsel and stating that it was “reviewing” the issue.

21. Then, on March 30, 2020 at approximately 1:28 a.m., Defendant sent an e-mail to all members with a purported apology and offer to compensate members for the early closure of its clubs. The offer contained in the e-mail is as follows:

OPTION 1: A free additional one-month extension to the end of your membership; or

OPTION 2: A three-month membership (valued at over \$175) for you to give to a friend or family member, which will give them access to all of our clubs.

22. To redeem the offer, Plaintiff and other members are required to click on a hyperlink re-directing them to Defendant’s website. That website contains terms and conditions, including a “Limitation of Liability” pursuant to which Defendant self-servingly absolves itself of all liability for any damages resulting from the interruption of its services. For example, the unearned membership fees at issue in this case.

23. Plaintiff did not click on the link and is not bound by Defendant’s “Limitation of Liability” clause.

24. As of the filing of this Complaint, Plaintiff and the Class Members have not been

reimbursed the unearned membership fees at issue.

25. Plaintiff and the Class Members have been harmed by Defendant in the amount of unearned membership fees totaling in the millions of the dollars for the time period of March 16, 2020 through March 31, 2020.

CLASS ALLEGATIONS

PROPOSED CLASS

26. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23, on behalf of herself and all others similarly situated.

27. Plaintiff brings this case on behalf of following Class:

All persons who paid to Defendant membership fees for the month of March 2020 and have not received reimbursement for the time period of March 16, 2020 through March 31, 2020 during which Defendant's facilities were closed.

28. Defendant and its employees or agents are excluded from the Class.

29. Plaintiff does not know the exact number of members in the Class but believes the Class members number in the several thousands, if not more.

NUMEROSITY

30. Upon information and belief, Defendant has harmed thousands of consumers by keeping unearned membership fees for the month of March 2020. The members of the Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

31. The exact number and identities of the Class members are unknown at this time and can be ascertained only through discovery. Identification of the Class members is a matter capable of ministerial determination from Defendant's records.

COMMON QUESTIONS OF LAW AND FACT

32. There are numerous questions of law and fact common to the Class which predominate

over any questions affecting only individual members of the Class. Among the questions of law and fact common to the Class are: (1) whether Defendant unjustly enriched itself by failing to reimburse Plaintiff and the Class Members unearned membership fees; (2) whether Defendant negligently enriched itself by failing to reimburse Plaintiff and the Class Members unearned membership fees; (3) whether Plaintiff and the Class Members have suffered monetary damages; and (4) whether Plaintiff and the Class Members are entitled to injunctive relief.

33. The common questions in this case are capable of having common answers. If Plaintiff's claims are accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

TYPICALITY

34. Plaintiff's claims are typical of the claims of the Class members, as they are all based on the same factual and legal theories.

PROTECTING THE INTERESTS OF THE CLASS MEMBERS

35. Plaintiff is a representative who will fully and adequately assert and protect the interests of the Class and has retained competent counsel. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

SUPERIORITY

36. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all members of the Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class Members are in the millions of dollars, the individual damages incurred by each member of the Class resulting from Defendant's wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual Class members prosecuting their own separate claims is remote,

and, even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

37. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For example, one court might enjoin Defendant from performing the challenged acts, whereas another may not. Additionally, individual actions may be dispositive of the interests of the Class, although certain class members are not parties to such actions.

COUNT I
UNJUST ENRICHMENT
(On Behalf of Plaintiff and the Class)

38. Plaintiff re-alleges and incorporates the foregoing allegations as if fully set forth herein.

39. Plaintiff and the Class Members conferred a benefit upon Defendant in the form of membership fees for the month of March 2020.

40. Defendant had knowledge of the benefits conferred upon it by Plaintiff and the Class Members.

41. Defendant voluntarily accepted and retained the benefits conferred upon it by Plaintiff and the Class Members, even after it voluntarily closed its facilities.

42. Under the circumstances, it would be inequitable for Defendant to retain the benefit conferred upon it by Plaintiff and the Class Members.

43. Defendant has been unjustly enriched and is required to refund Plaintiff and the Class Members the benefits they conferred upon Defendant.

44. Plaintiff and the Class Members demand the applicable relief set forth in the Prayer for Relief below.

COUNT II
NEGLIGENCE
(On Behalf of Plaintiff and the Class)

45. Plaintiff incorporates and realleges by reference each and every allegation contained in paragraphs 1-37 as if fully set forth herein.

46. Defendant had a duty to Plaintiff and the Class Members to provide fitness facility services in exchange for the membership dues it collected from Plaintiff and the Class Members for the month of March 2020.

47. Defendant breached its duty to Plaintiff and the Class Members by failing to provide services from March 16, 2020 through March 31, 2020, and by failing to reimburse Plaintiff and the Class Members the membership fees that they paid.

48. Defendant knew or should have known that its wrongful acts would cause damage to Plaintiff and the Class Members.

49. Defendant's conduct has directly and proximately caused damages to Plaintiff and Class Members in the amount of unearned membership fees paid by Plaintiff and the Class Members.

50. Plaintiff and the Class Members demand the applicable relief set forth in the Prayer for Relief below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Kip Barnett, on behalf of himself and the Class Members, prays for the following relief:

a. A declaration that this lawsuit may properly be maintained as a class action and certifying the Class claims herein;

b. Award Plaintiff and the Class Members actual damages, including the total amount of unearned membership fees collected by Defendant for the period of March 16, 2020 through March 31, 2020.

c. Award Plaintiff and the Class Members injunctive relief in the form of a guarantee by Defendant not to charge membership fees during periods when its facilities are closed, as well as adopting policies and procedures to ensure that members are reimbursed fees collected for any period during which Defendant's facilities are closed.

d. Award other declaratory and injunctive relief as permitted by law;

e. Award Plaintiff and the Class Members damages flowing from the requested injunction;

f. Appoint the undersigned as Class Counsel;

g. Appoint Plaintiff as Representatives of the Class;

h. Award reasonable attorneys' fees, filing fees, expert fees, and costs of suit to counsel based upon the benefit received by Plaintiff and the Class Members; and

i. Award Plaintiff and the Class Members any further relief that the Court deems just and proper.

JURY DEMAND

Plaintiff and the Class Members hereby demand a trial by jury.

Date: March 30, 2020

Respectfully submitted,

HIRALDO P.A.

/s/ Manuel S. Hiraldo
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Counsel for Plaintiff and the Class

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS KIP BARNETT

DEFENDANTS FITNESS INTERNATIONAL, LLC
d/b/a LA FITNESS

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

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

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Hiraldo P.A., 401 E. Las Olas Blvd., Ste. 1400, Fort Lauderdale, FL
33301, 954-400-4713

Attorneys (If Known)

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

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

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

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

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3

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

CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES

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

- 1 Original Proceeding
2 Removed from State Court
3 Re-filed (See VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation Transfer
7 Appeal to District Judge from Magistrate Judgment
8 Multidistrict Litigation - Direct File
9 Reremanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case YES NO b) Related Cases YES NO

VII. CAUSE OF ACTION Unjust enrichment and Negligence

LENGTH OF TRIAL via 5 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE
DATE March 30, 2020 SIGNATURE OF ATTORNEY OF RECORD Manuel S. Hiraldo

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked. Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

KIP BARNETT,
individually and on behalf of all
others similarly situated,

Plaintiff(s)

v.

FITNESS INTERNATIONAL, LLC
d/b/a LA FITNESS,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Fitness International, LLC d/b/a LA Fitness

Registered Agent:
CT CORPORATION SYSTEM
1200 SOUTH PINE ISLAND ROAD
PLANTATION, FL 33324

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Manuel S. Hiraldo, Esq.
Florida Bar No. 030380
401 E. Las Olas Boulevard, Suite 1400
Ft. Lauderdale, Florida 33301
mhiraldo@hiral dolaw.com
954-400-4713

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: