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22
23 **UNITED STATES DISTRICT COURT**
24 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

25 JESSICA WILLIAMS individually and
26 on behalf of all others similarly situated,

27
28 Plaintiff,

1
2 -against -

3
4 24 HOUR FITNESS USA. INC.,

5
6 Defendant.

**CLASS ACTION
COMPLAINT**

JURY DEMAND

7
8 Plaintiff Jessica Williams brings this action on behalf of herself and all
9 others similarly situated against Defendant 24 Hour Fitness USA, Inc. (“24 Hour
10 Fitness” or “Defendant”). Plaintiff makes the following allegations pursuant to the
11 investigation of Plaintiff’s counsel and based upon information and belief, except as
12 to the allegations specifically pertaining to Plaintiff which are based on personal
13 knowledge.

14 **NATURE OF THE CLAIMS**

15 1. Plaintiff is a member of Defendant 24 Hour Fitness. Each month she
16 pays a fee to use the Defendant’s gym in the upcoming month.

17 2. On March 16, 2020, as the coronavirus pandemic grew throughout the
18 world, Defendant 24 Hour Fitness closed all of its gyms throughout the country,
19 preventing Plaintiff and other members from using the gyms.

20 3. Although Defendant closed its gyms and prevented members from
21 using its gyms, Defendant continued to charge monthly usage fees to Plaintiff and
22 other members. At the beginning of April for example, Defendant charged
23 Plaintiff more than \$40 as a monthly membership fee.

24 4. After numerous members complained about being improperly charged,
25 Defendant credited some of its members for a portion of the improper fees.
26 However, Defendant did not return all of the improper charges. For example,
27 Defendant possibly credited \$20 of the \$42.55 charge to Plaintiff. It is not certain,
28 however, that this credit was related to membership fees or if was for some other

1 unknown, unspecified, and improper charge.

2 5. Plaintiff seeks to recover the fees that Defendant has charged Plaintiff
3 and other Class members after Defendant closed its gyms on March 16, 2020.

4 6. The claims by Plaintiff and the Class members are “small claims”
5 that are excluded from any arbitration provision in Defendant’s membership
6 agreement. Each claim is in an amount that is less than the jurisdictional
7 maximum for small claims courts.

8 7. Plaintiff did not knowingly waive her rights to file this lawsuit.
9 Many of the claims at issue in this action may not be resolved by an
10 arbitrator, and any arbitration agreement in Defendant’s materials is vague
11 and ambiguous, including because the agreement specifically allows Plaintiff
12 and other Class members to file lawsuits in this District and represents that
13 members may file small claims in court, including in federal or state courts
14 such as this District.

15 8. Plaintiff seeks relief in this action individually and on behalf of all
16 of Defendant’s customers nationwide whom Defendant has charged
17 membership fees while Defendant’s gyms were closed.

18 9. Plaintiff seeks relief for Defendant’s violations of the California
19 Consumer Legal Remedies Act (“CLRA”), Civil Code §§ 1750, *et seq.*, Unfair
20 Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*, False
21 Advertising Law (“FAL”), Bus. & Prof. Code §§ 17500, *et seq.*, for unjust
22 enrichment, money - had - and - received, conversion, breach of contract, and
23 violation of California’s Health Studio Services Contract Law, Civil Code §§
24 1812.80, *et seq.*

25 **PARTIES**

26 10. Plaintiff Jessica Williams is a citizen of California, residing in Woodland
27 Hills, California.

28 11. At all relevant times, Plaintiff has been a member of Defendant’s 24

1 Hour Fitness gyms, paying approximately \$40 per month for her membership.

2 12. Defendant 24 Hour Fitness USA, Inc. is a California corporation with
3 its headquarters at 4450 Norris Canyon Road, San Ramon, California.

4 13. Defendant operates more than 430 gyms nationwide, including gyms in
5 California.

6 **JURISDICTION AND VENUE**

7 14. This Court has original jurisdiction over this case pursuant to 28
8 U.S.C. § 1332(d)(2)(A).

9 15. Plaintiff is a citizen of California.

10 16. Defendant has its headquarters in California.

11 17. This Court has subject matter jurisdiction over this class action
12 because it involves citizens of different states, more than 100 class members,
13 minimal diversity, and the amount in controversy for all Class members exceeds
14 \$5,000,000, exclusive of interest and costs.

15 18. This Court has personal jurisdiction over Defendant because
16 Defendant is amenable to service of process in this District and has minimum
17 contacts with this District and has purposefully availed itself of the privilege of
18 conducting business in this state.

19 19. Venue is proper in this forum pursuant to 28 U.S.C. § 1391 because
20 a substantial part of the events giving rise to these claims occurred in this District,
21 including the decisions made by Defendant to sell the contract at issue in this case.

22 20. Defendant is subject to personal jurisdiction in this District.

23 21. Defendant transacts business in this District.

24 **CLASS ALLEGATIONS**

25 22. This action is brought by Plaintiff individually and on behalf of the
26 Class described below (the “Class”) pursuant to Rule 23, subdivisions (a),
27 (b)(1),(b)(2), and (b)(3) of the Federal Rules of Civil Procedure.

28 23. Plaintiff seeks certification of the following Class:

1
2 All individuals who paid usage fees to Defendant after
3 March 16, 2020 while Defendant's gyms were closed.
4

5 24. Excluded from the Class are (1) any Judge or Magistrate Judge
6 presiding over this action and their family members; (2) Defendant and each of its
7 corporate parents, subsidiaries and affiliates, officers and directors, and any entity
8 in which Defendant has a controlling interest; (3) persons who properly and timely
9 request to be excluded; and (4) the legal representatives, successors, or assigns of
10 any such excluded persons or entities.

11 25. The Class consists of hundreds, if not thousands, of gym members and
12 is thus so numerous that joinder of all members is impracticable.

13 26. Although the exact number of members is unknown to Plaintiff at this
14 time, the identities and addresses of the members of the Class can be readily
15 determined from business records maintained by Defendant.

16 27. Plaintiff's claims are typical of those belonging to Class members.

17 28. Plaintiff's claims stem from Defendant's improper and illegal
18 practices as alleged in this Complaint.

19 29. Plaintiff will fairly and adequately protect the interests of the Class
20 members and has retained counsel experienced in complex class action litigation.

21 30. Plaintiff and her counsel have no interests which are adverse to those
22 belonging to the Class members that Plaintiff seeks to represent.

23 **Rule 23(b)(1)**

24 31. Class action status is warranted under Rule 23(b)(1)(A).

25 32. Prosecuting separate actions by or against individual members of the
26 class would create a risk of inconsistent or varying adjudications with respect to
27 individual members of the Class, which would establish incompatible standards of
28 conduct for Defendant.

1 33. Class action status is also warranted under Rule 23(b)(1)(B).

2 34. Prosecuting separate actions by or against individual members of the
3 Class would create a risk of adjudications with respect to individual members of
4 the Class which would, as a practical matter, be dispositive of the interests of the
5 other Class members not parties to the adjudications, or substantially impair or
6 impede their ability to protect their interests.

7 **Rule 23(b)(2)**

8 35. This action is appropriate as a class action pursuant to Rule 23(b)(2).
9 Plaintiff seeks injunctive relief and corresponding declaratory relief for the Class.
10 Defendant has acted in a manner generally applicable to each member of the Class.

11 36. Defendant's unlawful practices, if not enjoined, will subject Plaintiff
12 and Class members to continuing harm and will cause irreparable injuries to
13 Plaintiff and the Class members.

14 37. The adverse financial impact of Defendant's unlawful actions is
15 continuing and, unless preliminarily and permanently enjoined, will continue to
16 irreparably injure Plaintiff and Class members.

17 **Rule 23(b)(3)**

18 38. This action is also appropriate as a class action pursuant to Federal
19 Rule of Civil Procedure 23(b)(3).

20 39. Common questions of law and fact predominate over any
21 individualized questions.

22 40. Common legal and factual questions include the following:

- 23 a. Whether Defendant improperly charged Plaintiff and the Class for
24 using Defendant's gyms after March 16, 2020 when Defendant closed
25 all of its gyms nationwide;
- 26
- 27 b. Whether Defendant should credit the full amount of the post-March 16,
28 2020 charges to Plaintiff and the Class;

- 1
- 2 c. Whether Plaintiff and Class members have been damaged, and if so,
- 3 are eligible for, and entitled to, compensatory and punitive damages;
- 4
- 5 d. Whether Plaintiff and Class members are entitled to declaratory relief;
- 6 and
- 7
- 8 e. Whether Plaintiff and Class members are entitled to preliminary or
- 9 permanent injunctive relief, or other equitable relief, against
- 10 Defendant.

11

12 41. A class action is superior to other available methods for the fair and

13 efficient adjudication of this controversy, for the following reasons:

- 14 a. Given the complexity of the issues involved in this action and the
- 15 expense of litigating the claims, few, if any, Class members could
- 16 afford to seek legal redress individually for the wrongs that Defendant
- 17 has committed against them;
- 18
- 19 b. Absent Class members have no substantial interest in individually
- 20 controlling the prosecution of individual actions;
- 21
- 22 c. Once Defendant's liability has been adjudicated, claims of all Class
- 23 members can be determined by the Court;
- 24
- 25 d. This action will ensure an orderly and expeditious administration of
- 26 the claims and will foster economies of time, effort, and expense, and
- 27 ensure uniformity of decisions concerning Defendant's actions;
- 28

1 e. Without a class action, many Class members would continue to suffer
2 injury, and Defendant's violations of law will continue without
3 redress while Defendant continues to reap and retain the substantial
4 proceeds derived from its wrongful conduct; and

5
6 f. This action does not present any undue difficulties that would impede
7 its management by the Court as a class action.
8

9 42. A class action is superior to other available means for the fair and
10 efficient adjudication of this controversy for other reasons as well. The injuries
11 suffered by individual Class members are, though important to them, relatively
12 small compared to the burden and expense of individual prosecution needed to
13 address Defendant's conduct.

14 43. Individualized litigation presents a potential for inconsistent or
15 contradictory judgments. In contrast, a class action presents far fewer management
16 difficulties; allows the hearing of claims that might otherwise go unaddressed; and
17 provides the benefits of single adjudication, economies of scale, and
18 comprehensive supervision by a single court.

19 44. Plaintiff cannot be certain of the form and manner of a proposed
20 notice to Class members until the Class is finally defined and discovery is
21 completed regarding the identity of class members. Plaintiff anticipates, however,
22 that notice by mail or email will be given to Class members who can be identified
23 specifically. In addition, notice may be published in appropriate publications, on
24 the Internet, in press releases and in similar communications in a way that is
25 targeted to reach class members. The cost of notice, after class certification, trial,
26 or settlement before trial, should be borne by Defendant.

27 45. Plaintiff reserves the right to modify or amend the definition of the
28 proposed Class at any time before the Class is certified by the Court.

FACTUAL ALLEGATIONS

1
2 46. Defendant operates more than 400 gyms in the United States,
3 including in California.

4 47. On March 16, 2020, as the coronavirus pandemic spread throughout
5 the United States, Defendant closed all of its gyms and prevented members from
6 using its gyms.

7 48. Despite closing its gyms, after March 16, 2020 Defendant charged its
8 members membership fees.

9 49. For example, on March 27, 2020, while Defendant’s gyms were
10 closed and while Defendant prevented Plaintiff from using the gym, Defendant
11 charged Plaintiff \$42.55 by debiting Plaintiff’s credit card or debit card.

12 50. Defendant imposed similar charges on other Class members after the
13 March 16, 2020 closing.

14 51. After many members of Defendant’s gyms complained that Defendant
15 had unfairly charged them when the gyms were closed, Defendant possibly
16 credited \$20 of the monthly \$42.55 fee to Plaintiff and other members. It is not
17 certain, however, that this credit was related to membership fees or if it was a
18 credit for some other unknown, unspecified, and improper charge.

19 52. By crediting back less than, or none of, the full amount that Defendant
20 took from Plaintiff and the Class, Defendant was able to keep for itself tens of
21 millions of dollars.

22 53. On April 1, 2020, 24 Hour Fitness’s CEO Tony Ueber posted on-line
23 a letter to members, stating that Defendant’s gyms may need to be closed for an
24 extended time and that, effective April 16, 2020, the company would suspend
25 billings for memberships, additional services and fees if clubs are not open by then
26 in a member’s area.

27 54. The letter also stated: “For the membership billings that were charged
28 from March 17 through April 15, members will receive additional days of access

1 equal to the number of days paid for while the clubs were closed in your area. The
2 extension will apply at the end of the membership. If you have a pre-paid
3 membership, your end date will be extended to cover the amount of time the clubs
4 are closed in your area.”

5 55. Defendant never should have charged Plaintiff and the Class for
6 membership fees while denying them access to, and usage of, Defendant’s gyms.

7 56. In fact, Section 4(c) of the membership agreement provides that if the
8 gym closes for more than 30 days (which it now has) Defendant will extend the
9 memberships without dues:

10
11 **4(c). Temporary Closures:** 24 Hour regularly
12 closes its facilities, or portions of its facilities, on a
13 temporary basis for maintenance, selected holidays, and
14 other hours based on municipal requirements or other
15 business reasons and such temporary closures will have
16 no effect on this agreement so long as such temporary
17 closures are reasonable. If your club of enrollment is
18 forced to close for 30 days or less by events or
19 occurrences beyond 24 Hour's control, such as, by way of
20 example, natural disasters, riots or unrest, or action by
21 any lawful authority (Unforeseen Events), you will not be
22 entitled to a refund, dues credit or to terminate your
23 membership. **However, if Unforeseen Events force**
24 **your club of enrollment to close for more than 30**
25 **consecutive days, then 24 Hour will extend your**
26 **membership, *without dues*, for the same period your**
27 **club of enrollment was closed or completely**
28 **unavailable, but only if there is not another club to**

1 **which you have access within 10 miles of your club of**
2 **enrollment.** If 24 Hour closes your club of enrollment
3 for more than 10 consecutive days for any reason not
4 caused by Unforeseen Events, 24 Hour will extend the
5 term of your membership, without dues, for any days
6 beyond 10, but only if there is not another club to which
7 you have access within 10 miles of your club of
8 enrollment. Your obligations if 24 Hour permanently
9 closes or moves your club of enrollment are explained in
10 Section 6. If your club of enrollment closes because it is
11 sold, 24 Hour may assign your membership to the new
12 owner.

13 (emphasis supplied).

14 57. This language required Defendant to extend the membership without
15 dues, but Defendant actually charged dues to Plaintiff and the Class while the
16 gyms were closed, possibly refunded a portion of those dues, and kept the balance
17 in violation of the contract.

18 58. Having improperly charged Plaintiff and the Class, Defendant should
19 return the entire overcharge. Defendant is violating its contract by refusing to
20 return all of the dues it charged while its gyms were closed and by instead offering
21 terms to which Plaintiff and the Class did not agree.

22 59. Defendant should immediately return the full balances owed to
23 Plaintiff and the Class.

24
25 **DEFENDANT’S ARBITRATION PROVISION AND CLASS ACTION**
26 **WAIVER DO NOT APPLY TO THESE SMALL CLAIMS**

27 60. Defendant’s membership agreement contains provisions governing
28 where lawsuits must be brought and excludes from its arbitration agreement and
class action waiver small claims like those there.

1 61. The membership agreement explicitly allows Plaintiff to file this
2 lawsuit in “any federal or state court” in California.

3 62. For example, paragraph 7 of the agreement contains the following
4 language allowing lawsuits to be brought in this District:

5 This Agreement and/or any legal action related to your
6 24 Hour Fitness membership shall be governed by,
7 construed and enforced in accordance with the laws of
8 the state where you live at the time this agreement is
9 executed as indicated in the personal information section
10 on the first page of this agreement, without reference to
11 choice of law principles. **Exclusive venue for any legal**
12 **action related to this Agreement or your 24 Hour**
13 **Fitness membership shall be brought in any federal or**
14 **state court where the agreement was executed**
15 **(“Applicable Courts”).** The parties waive any objection
16 that they have or may have to venue in the Applicable
17 Courts including, but not limited to, any objection that
18 the Applicable Courts are an inconvenient forum. In
19 addition, the parties waive, to the fullest extent they may
20 effectively do so, any objection that they have or may
21 have to the transfer of any legal action to the Applicable
22 Courts.

23 (emphasis supplied)

24 63. Paragraph 9(a) of the membership agreement contains the following
25 language excluding small claims - - like those asserted by Plaintiff - - from the
26 arbitration provision and class action waiver:

27 **AGREEMENT TO ARBITRATE — INCLUDING WAIVER OF CLASS**
28 **ACTION AND JURY RIGHTS**

1
2 **9(a) Agreement to Arbitrate All Disputes Except**
3 **Personal Injury and Small Claims Disputes:**

4 IN THE EVENT OF ANY DISPUTE (OTHER THAN
5 (1) ONE THAT INVOLVES PERSONAL INJURY OR
6 (2) ONE FILED IN A COURT THAT IS LIMITED TO
7 ADJUDICATING SMALL CLAIMS) BETWEEN YOU
8 AND 24 HOUR, (24 HOUR, AS USED IN THIS
9 PROVISION, INCLUDES ITS OFFICERS,
10 DIRECTORS, EMPLOYEES AND AGENTS). YOU
11 AND 24 HOUR WAIVE YOUR RIGHT TO A JURY
12 TRIAL AND CONSENT TO ARBITRATE THAT
13 DISPUTE BEFORE A SINGLE ARBITRATOR
14 UNDER THE THEN CURRENT COMMERCIAL
15 DISPUTE RULES OF THE AMERICAN
16 ARBITRATION ASSOCIATION (“AAA”) IN A
17 LOCATION NEAR YOUR CLUB OF ENROLLMENT,
18 RATHER THAN LITIGATE THE DISPUTE IN
19 COURT, YOU AND 24 HOUR ALSO AGREE THAT
20 EACH MAY BRING CLAIMS AGAINST THE OTHER
21 ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY,
22 AND NOT AS A PLAINTIFF OR CLASS MEMBER IN
23 ANY PURPORTED CLASS OR REPRESENTATIVE
24 PROCEEDING. IN ADDITION, YOU ALSO AGREE
25 NOT TO PARTICIPATE IN CLAIMS BROUGHT IN A
26 PRIVATE ATTORNEY GENERAL OR
27 REPRESENTATIVE CAPACITY, OR
28 CONSOLIDATED CLAIMS INVOLVING ANOTHER

1 PERSON'S ACCOUNT, IF 24 HOUR IS A PARTY TO
2 THE PROCEEDINGS, IF YOU DO NOT WANT TO
3 BE BOUND BY THIS ARBITRATION PROVISION,
4 YOU MAY OPT OUT, IN ORDER TO OPT OUT OF
5 THIS ARBITRATION PROVISION, YOU MUST
6 NOTIFY 24 HOUR IN WRITING THAT YOU DO
7 NOT WANT TO RESOLVE DISPUTES WITH 24
8 HOUR BY ARBITRATION, SUCH NOTICE SHOULD
9 BE DELIVERED BY MAIL TO 24 HOUR FITNESS,
10 P.O. BOX 787 CARLSBAD, CA 92018. WITHIN 90
11 DAYS OF THE DATE YOU SIGN THIS
12 AGREEMENT.

13 (emphasis added).

14 64. Defendant improperly charged Plaintiff either approximately \$40 or
15 \$20 (if the \$20 credit was a refund of a portion of the improper charge) both of
16 which are below the jurisdictional maximum of a small claim and fit within the
17 agreement's exclusion for small claims and its authorization to file claims like
18 these in this District.

19 **FIRST CAUSE OF ACTION**

20
21 **VIOLATION OF CALIFORNIA'S CONSUMERS LEGAL REMEDIES**
22 **ACT, CALIFORNIA CIVIL CODE §§ 1750, *ET SEQ.***
23 **(INJUNCTIVE RELIEF ONLY)**

24 65. Plaintiff hereby incorporates by reference the allegations contained in
25 all preceding paragraphs of this Complaint.

26 66. Plaintiff brings this claim individually and on behalf of members of the
27 proposed Class against Defendant.

28 67. Plaintiff and Class members are consumers who paid fees for use of

1 Defendant's gyms for personal, family or household purposes. Plaintiff and the
2 Class are "consumers" as that term is defined by the CLRA in Cal. Civ. Code §
3 1761(d).

4 68. Defendant's gym access that Plaintiff and Class members purchased
5 from Defendant was a "service" within the meaning of Cal. Civ. Code § 1761(b).

6 69. Defendant's actions, representations, and conduct have violated, and
7 continue to violate the CLRA, because they extend to transactions that intended to
8 result, or which have resulted in, the sale of services to consumers.

9 70. Defendant's advertising that its customers would have access to its
10 gyms upon paying a membership fee is false and misleading to a reasonable
11 consumer, including Plaintiff, because Defendant in fact closed all of its gyms
12 while continuing to charge its customers fees for using and accessing the gyms.

13 71. California's Consumers Legal Remedies Act, Cal. Civ. Code §
14 1770(a)(5), prohibits "[r]epresenting that goods or services have sponsorship,
15 approval, characteristics, ingredients, uses, benefits, or quantities which they do not
16 have or that a person has a sponsorship, approval, status, affiliation, or connection
17 which he or she does not have." By engaging in the conduct set forth herein,
18 Defendant violated and continues to violate Section 1770(a)(5) of the CLRA
19 because Defendant's conduct constitutes unfair methods of competition and unfair
20 or fraudulent acts or practices, in that Defendant misrepresented the particular
21 characteristics, benefits and quantities of the services. Defendant has charged
22 Plaintiff and the Class usage fees when they cannot use the gyms.

23 72. Cal. Civ. Code § 1770(a)(7) prohibits representing that goods or
24 services are of a particular standard, quality, or grade, or that goods are of a
25 particular style or model, if they are of another. By engaging in the conduct set
26 forth herein, Defendant violated and continues to violate Section 1770(a)(7) of the
27 CLRA, because Defendant's conduct constitutes unfair methods of competition and
28 unfair or fraudulent acts or practices, in that Defendant misrepresents the particular

1 standard, quality or grade of the services.

2 73. Cal. Civ. Code § 1770(a)(9) further prohibits “[a]dvertising goods or
3 services with intent not to sell them as advertised.” By engaging in the conduct set
4 forth herein, Defendant violated and continues to violate Section 1770(a)(9),
5 because Defendant’s conduct constitutes unfair methods of competition and unfair
6 or fraudulent acts or practices, in that Defendant advertises services with the intent
7 not to sell the services as advertised. Defendant has advertised and charged for file
8 access to the gyms while denying that access and usage.

9 74. Plaintiff and the Class acted reasonably when they purchased and paid
10 for Defendant’s gym membership in the belief that Defendant’s representations
11 were true and lawful.

12 75. Plaintiff and the Class suffered injuries caused by Defendant because
13 (a) they would not have purchased or paid for Defendant’s gym memberships
14 absent Defendant’s representations and omission of a warning that it would
15 continue charging customers’ credit cards and debit cards while Defendant had
16 closed all of its gyms nationwide; (b) Plaintiff and the Class would not have
17 purchased and paid for gym memberships on the same terms absent Defendant’s
18 representations and omissions; (c) Plaintiff and the Class paid a price premium for
19 Defendant’s gym membership based on Defendant’ misrepresentations and
20 omissions; and (d) Defendant’s gym memberships did not have the characteristics,
21 benefits, or quantities as promised.

22 76. Under California Civil Code § 1780(a), Plaintiff and members of the
23 Class seek injunctive and equitable relief for Defendant’s violations of the CLRA.

24 77. Wherefore, Plaintiff seeks injunctive and equitable relief for these
25 violations of the CPLR.
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SECOND CAUSE OF ACTION

**VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW,
CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, *ET SEQ.***

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78. Plaintiff brings this claim individually and on behalf of the members of
the proposed Class against Defendant.

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79. Defendant is subject to California’s Unfair Competition Law, Cal.
Bus. & Prof. Code §§ 17200, *et seq.* The UCL provides, in pertinent part: “Unfair
competition shall mean and include unlawful, unfair or fraudulent business
practices and unfair, deceptive, untrue or misleading advertising”

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80. Defendant’s advertising that its gyms would be available to its
customers 24 hours per day, and that its customers would have access to its gyms
upon paying a membership fee is false and misleading to a reasonable consumer,
including Plaintiff, because Defendant in fact closed all of its gyms while
continuing to charge its customers for gym membership and access.

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81. Defendant’s business practices, described herein, violated the
“unlawful” prong of the UCL by violating the CLRA, the FAL, and California’s
Health Studio Services Contract Law and other applicable law as described herein.

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82. Defendant’s business practices, described herein, violated the
“unfair” prong of the UCL in that its conduct is substantially injurious to
consumers, offends public policy, and is immoral, unethical, oppressive, and
unscrupulous, as the gravity of the conduct outweighs any alleged benefits.
Defendant’s advertising and its charging of membership fees while its gyms are
closed is of no benefit to consumers.

25
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83. Defendant violated the fraudulent prong of the UCL by misleading
Plaintiff and the Class to believe that they would only be charged fees when they
would have access to Defendant’s gyms and by charging usage fees to Plaintiff and
the Class even after Defendant had closed its gyms nationwide.

1 84. By imposing the charges on Plaintiff and the Class after Defendant
2 had closed its gyms, Defendant obtained tens of millions of dollars for itself.

3 85. Plaintiff and the Class acted reasonably when they signed up for
4 memberships based on the belief that they would only be charged fees when
5 Defendant's gyms were open and accessible and by not canceling their
6 memberships once Defendant closed its gyms.

7 86. Plaintiff and the Class lost money or property as a result of
8 Defendant's UCL violations because (a) they would not have paid for Defendant's
9 gym memberships absent Defendant's representations and omission of a warning
10 that Defendant would continue charging customers' credit cards and debit cards
11 while all even after Defendants had closed all of its gyms nationwide; (b) they
12 would not have purchased or paid for gym memberships on the same terms absent
13 Defendant's representations and omissions; (c) they paid a price premium for
14 Defendant's gym membership based on Defendant's misrepresentations and
15 omissions; and (d) Defendant's gym memberships did not have the characteristics,
16 benefits, or quantities as promised.

17
18 **THIRD CAUSE OF ACTION**

19 **VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW,**
20 **CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17500, *ET SEQ.***

21
22 87. Plaintiff hereby incorporates by reference the allegations contained in
23 all preceding paragraphs of this Complaint.

24 88. Plaintiff brings this claim individually and on behalf of the members
25 of the proposed Class against Defendant.

26 89. California's False Advertising Law, Cal. Bus. & Prof. Code §§ 17500,
27 *et seq.*, makes it "unlawful for any person to make or disseminate or cause to be
28 made or disseminated before the public in this state, ... in any advertising device ...

1 or in any other manner or means whatever, including over the Internet, any
2 statement, concerning ... personal property or services, professional or otherwise,
3 or performance or disposition thereof, which is untrue or misleading and which is
4 known, or which by the exercise of reasonable care should be known, to be untrue
5 or misleading.”

6 90. Defendant engaged in a scheme of charging customers the monthly
7 membership and usage fee even after Defendant had closed all of its gyms and was
8 denying access to Plaintiff and the Class.

9 91. Defendant’s advertising and marketing of its gyms as being accessible
10 24 hours per day misrepresented and/or omitted the true content and nature of
11 Defendant’s services. Defendant’s advertisements and inducements were made in
12 and originated from California and come within the definition of advertising as
13 contained in Bus. & Prof. Code § 17500, *et seq.* in that the promotional materials
14 were intended as inducements to purchase and maintain gym memberships, and are
15 statements disseminated by Defendant to Plaintiff and Class members. Defendant
16 knew that these statements were unauthorized, inaccurate, and misleading.

17 92. Defendant’s advertising that its gyms would be available to its
18 customers 24 hours per day, and that its customers would have access to its gyms
19 upon paying a membership fee is false and misleading to a reasonable consumer,
20 including Plaintiff, because Defendant in fact closed all of its gyms while
21 continuing to charge its customers for gym membership and gym access.

22 93. Defendant violated § 17500, *et seq.* by misleading Plaintiff and the
23 Class to believe that they would be charged fees only when they have access to
24 Defendant’s gyms.

25 94. Defendant knew or should have known, through the exercise of
26 reasonable care that its advertising of its gyms as being accessible for 24 hours a
27 day is false and misleading. Further, Defendant knew or should have known that it
28 was breaching its contracts with its customers and fraudulently charging fees when

1 it continued charging fees while all of its gyms were closed.

2 95. Plaintiff and the Class lost money or property as a result of
3 Defendant's FAL violation because (a) they would not have purchased or paid for
4 Defendant's gym memberships absent Defendant's representations and omission of
5 a warning that it would continue charging customers' credit cards and debit cards
6 while all gyms nationwide are closed; (b) they would not have purchased or paid
7 for gym memberships on the same terms absent Defendant's representations and
8 omissions; (c) they paid a price premium for Defendant's gym membership based
9 on Defendant's misrepresentations and omissions; and (d) Defendant's gym
10 membership did not have the characteristics, benefits, or quantities as promised.

11 **FOURTH CAUSE OF ACTION**

12 **MONEY HAD AND RECEIVED**

13 96. Plaintiff hereby incorporates by reference the allegations contained in
14 all preceding paragraphs of this Complaint.

15 97. Plaintiff brings this claim individually and on behalf of the members
16 of the proposed Class against Defendant.

17 98. Defendant received membership fees that were intended to be used
18 for the benefit of Plaintiff and the Class. Defendant did not use those membership
19 fees for the benefit of Plaintiff and the Class and has not given back or refunded all
20 of the wrongfully obtained money to Plaintiff and the Class.

21 99. Defendant obtained money in the form of membership fees that was
22 intended to be used to provide gym access to Plaintiff and the Class. However,
23 Defendant has charged and retained membership fees while it has closed and
24 denied access to Plaintiff and the Class.

25 100. Defendant did refund some of the charges but has kept the balance of
26 the membership fees for itself.

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FIFTH CAUSE OF ACTION

**VIOLATION OF CALIFORNIA’S HEALTH STUDIO SERVICES
CONTRACT LAW CIVIL CODE §§ 1812.80, ET SEQ.**

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101. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this Complaint.

102. Plaintiff brings this claim individually and on behalf of the members of the proposed Class against Defendant.

103. Under Cal. Civ. Code § 1821.92, any contract for health studio services entered into in reliance upon any willful and false, fraudulent, or misleading information, representation, notice or advertisement of the seller shall be void and unenforceable.

104. Here, Plaintiff and Class members signed up and paid for Defendant’s gym membership based on Defendant’s false and misleading representation that Plaintiff and the Class would have access to Defendant’s gyms 24 hours per day, when, in fact, Defendant unilaterally charged them membership fees after Defendant closed all of its gyms. Accordingly, the membership contracts are void and Defendant must refund all of the membership fees charged while its gyms were and remain closed.

105. Further, Cal. Civ. Code § 1812.85 requires that “[e]very contract for health studio services shall provide that performance of the agreed-upon services will begin within six months after the date the contract is entered into. The consumer may cancel the contract and receive a pro rata refund if the health studio fails to provide the specific facilities advertised or offered in writing by the time indicated.” Here, Defendant advertises that its gyms are open and accessible 24 hours per day, when, in fact, Defendant has charged customers the membership fee even after Defendant closed all of its gyms.

106. Accordingly, Plaintiff and Class members are entitled to refunds for

1 all fees paid while Defendant's gyms were and remain closed.

2 **SIXTH CAUSE OF ACTION**

3 **BREACH OF CONTRACT, INCLUDING BREACH OF THE**
4 **IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

5
6 107. Plaintiff re-alleges and incorporates the allegations elsewhere in the
7 Complaint as if set forth fully herein.

8 108. At all relevant times, Plaintiff and the Class paid monthly membership
9 fees to Defendant and have otherwise performed all obligations under the contract.

10 109. As alleged above, Defendant owed duties and obligations to Plaintiff
11 including the duty to only charge Plaintiff and the Class membership fees if
12 Defendant provided access to Plaintiff and the Class.

13 110. In addition, every contract imposes a duty of good faith and fair dealing
14 on the parties with respect to the performance and enforcement of the terms of the
15 contract. Broadly stated, the covenant requires that neither party do anything which
16 will deprive the other of the benefits of the agreement. The implied covenant is
17 aimed at making effective the agreement's promises, and it is breached when a party
18 seeks to prevent the contract's performance or to withhold its benefits from the other
19 party.

20 111. Defendant breached the covenant of good faith and fair dealing
21 because, to the extent Defendant had the discretion to bill the monthly membership
22 rate, that discretion was sufficiently constrained under the terms of the contract to
23 support an implied obligation of good faith and fair dealing.

24 112. Defendant exercised its discretion in bad faith and breached the implied
25 covenant of good faith and fair dealing by, among other things charging Plaintiff and
26 the Class membership and usage fees even after Defendant closed its gyms on March
27 16, 2020 and by not refunding the full amount of the charges.

28 113. Defendant's contractual breaches, including its breach of the implied

1 covenant of good faith and fair dealing, caused Plaintiff and the Class to suffer
2 damages in an amount to be determined at trial.

3 **SEVENTH CAUSE OF ACTION**

4 **CONVERSION**

5 114. Plaintiff hereby incorporates by reference the allegations contained in
6 all preceding paragraphs of this Complaint.

7 115. Plaintiff brings this claim individually and on behalf of the members
8 of the proposed Class against Defendant.

9 116. Plaintiff and members of the Class had a right to retain their
10 membership fees while all of Defendant's gyms were and remain closed.

11 117. Defendant intentionally charged Plaintiff's and Class members' debit
12 and credit cards for the monthly membership fees after and while Defendant's
13 gyms were closed.

14 118. Plaintiff and Class members did not consent to Defendant's charging
15 of their debit and credit cards while Defendant's gyms are closed.

16 119. Plaintiff and Class members were harmed through Defendant's
17 charging of their debit and credit cards.

18 120. Defendant's conduct was a substantial factor in causing Plaintiff and
19 Class members' harm.

20 **EIGHTH CAUSE OF ACTION**

21 **UNJUST ENRICHMENT**

22 121. Plaintiff hereby incorporates by reference the allegations contained in
23 all preceding paragraphs of this Complaint.

24 122. Plaintiff brings this claim individually and on behalf of the members
25 of the proposed Class against Defendant.

26 123. Plaintiff and members of the Class conferred benefits on Defendant by
27 paying, and being charged, membership fees while all of Defendant's gyms were
28 and remain closed.

1 124. Defendant has knowledge of such benefits.

2 125. Defendant has been unjustly enriched in retaining the revenues
3 derived from Plaintiff and Class members' membership fees.

4 126. Retention of those moneys under these circumstances is unjust and
5 inequitable because Defendant is charging membership and access fees after
6 Defendant closed all of its gyms.

7 127. These misrepresentations and charges injuries to Plaintiff and
8 members of the Class because Plaintiff and the Class would not have paid
9 Defendant's membership fees had the true facts been known.

10 128. Because Defendant's retention of the non-gratuitous benefits
11 conferred on it by Plaintiff and members of the Class is unjust and inequitable,
12 Defendant must pay restitution to Plaintiff and members of the Class for
13 Defendant's unjust enrichment, in an amount to be determined at trial.

14 **NINTH CAUSE OF ATION**

15 **DECLARATORY RELIEF**

16 129. Plaintiff re-alleges and incorporates the allegations elsewhere in the
17 Complaint as if set forth fully herein.

18 130. Plaintiff brings this claim on behalf of Plaintiff and the Class.

19 131. An actual controversy has arisen and now exists between Plaintiff and
20 the Class members, on the one hand, and Defendants, on the other hand,
21 concerning the respective rights and duties of the parties under the plans sold by
22 Defendants.

23 132. Defendants deceptively represented the terms and qualifications of the
24 plans, diverted the membership payments for Defendant's own use and profit, and
25 has kept those payments even after closing its gyms and denying access to Plaintiff
26 and the Class.

27 133. Plaintiff, on behalf of Plaintiff and the Class, seeks a declaration as to
28 the parties' respective rights and requests the Court to declare that Defendants'

1 practices alleged in this Complaint are unlawful so that future controversies may
2 be avoided and direct that Defendants return to Plaintiff and the Class all
3 membership fees paid to Defendants during the Class Period.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff, individually and on behalf of all others similarly
6 situated, seeks judgment against Defendant, as follows:

- 7 a) For an order certifying the Class under Rule 23 of the Federal
8 Rules of Civil Procedure and naming Plaintiff as representative
9 of the Class and Plaintiff's attorneys as Class Counsel to
10 represent the Class members;
- 11
- 12 b) For an order declaring that Defendant's conduct violates the
13 statutes and laws referenced herein;
- 14
- 15 c) For an order finding in favor of Plaintiff and the Class on all
16 counts asserted herein;
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- 18 d) For compensatory and punitive damages in amounts to be
19 determined by the Court and/or jury;
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- 21 e) For prejudgment interest on all amounts awarded;
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- 23 f) For an order of restitution and all other forms of equitable
24 monetary relief;
- 25
- 26 g) For injunctive relief as pleaded or as the Court may deem
27 proper; and
28

1 h) For an order awarding Plaintiff and the Class their reasonable
2 attorneys' fees and expenses and costs of suit.

3
4 **DEMAND FOR TRIAL BY JURY**

5
6 Plaintiff demands a trial by jury of all issues so triable.

7 Dated: May 5, 2020

8 Respectfully submitted,

9 By: /s/ Daniel Keller

10 Daniel Keller (SBC 191738)

11 Stephen M. Fishback (SBN 191646)

12 Daniel C. Bolton (SBN 104236)

13
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24 (subject to *pro hac vic*)

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26 32 East 57th St., 12th Floor

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Attorneys for Plaintiff and the Proposed Class

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Jessica Williams individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Los Angeles, California (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Keller, Fishback & Jackson LLP 28720 Canwood Street, Suite 200 Agoura Hills, CA 91301 tel.818.342.7442

DEFENDANTS

24 Hour Fitness USA, Inc.

County of Residence of First Listed Defendant Contra Costa, California (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status. Includes options like 'Citizen of This State', 'Citizen of Another State', 'Citizen or Subject of a Foreign Country', 'Incorporated or Principal Place of Business In This State', etc.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes specific codes like 110 Insurance, 210 Land Condemnation, 310 Airplane, etc.

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

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332(d)(2)(A)

Brief description of cause:

To recover fees improperly charged to Plaintiff and class members; violation of CA Consumer Legal Remedies Act, etc.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 05/05/2020

SIGNATURE OF ATTORNEY OF RECORD

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate 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 Federal Rule of Civil Procedure 8(a), 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.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 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.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 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; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. 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.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount 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.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.