YES / NO

EXHIBITS

CASE NO. 2019CH8662

DATE: 7/24/19

CASE TYPE: Class Action

PAGE COUNT: 24

CASE NOTE

12-Person Jury

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

ANDY AMBROSIUS, DAVE CRABILL, and MICHELLE SOBARNIA, individually, and on behalf of all others similarly situated,	)	
Plaintiffs,	)	
v.	)	No. 2019CH08662
CHICAGO ATHLETIC CLUBS LLC, EVANSTON ATHLETIC CLUB, INC., LINCOLN PARK ATHLETIC CLUB, INC., LPAC HOLDINGS LLC, WESTLOOP ATHLETIC CLUB LLC, LAKEVIEW ATHLETIC CLUB, INC., LINCOLN SQUARE ATHLETIC CLUB LLC, WICKER PARK ATHLETIC CLUB LLC, and BUCKTOWN ATHLETIC CLUB LLC,	)	
Defendants.	)	Jury Trial Demanded

CLASS ACTION COMPLAINT

Plaintiffs ANDY AMBROSIUS ("Ambrosius"), DAVE CRABILL ("Crabill"), and MICHELLE SOBARNIA ("Sobarnia") (collectively, "Plaintiffs"), individually, and on behalf of all others similarly situated, by and through counsel at ZIMMERMAN LAW OFFICES, P.C., bring this action against Defendants CHICAGO ATHLETIC CLUBS LLC, EVANSTON ATHLETIC CLUB, INC., LINCOLN PARK ATHLETIC CLUB, INC., LPAC HOLDINGS LLC, WESTLOOP ATHLETIC CLUB LLC, LAKEVIEW ATHLETIC CLUB, INC., LINCOLN SQUARE ATHLETIC CLUB LLC, WICKER PARK ATHLETIC CLUB LLC, and BUCKTOWN ATHLETIC CLUB LLC (collectively, "Defendants"), as follows:

Introduction

1. Defendants own and operate the following athletic clubs in and around Chicago, Illinois: Evanston Athletic Club, Lincoln Park Athletic Club, West Loop Athletic Club, Lakeview Athletic Club, Lincoln Square Athletic Club, Wicker Park Athletic Club, and Bucktown Athletic Club (collectively, "gyms" or the "Chicago Athletic Clubs"). Plaintiffs and thousands of other individuals are members of Defendants' gyms. Since 2015, all of Defendants' gyms provided to their members a rewards program (the "CAC Rewards Program") in which gym members earn points ("CAC Rewards Points") for various activities, such as going to the gym, completing gym challenges, referring friends, and purchasing personal training sessions. Defendants' gym members ("CAC Members") were entitled to redeem the CAC Rewards Points for goods and services, such as Chicago Athletic Club merchandise, personal training sessions, guest passes for friends, and monthly membership dues.

2. However, on July 16, 2018, at approximately 12:11 a.m., Defendants announced that they had unilaterally terminated the CAC Rewards Program effective immediately. Further, Defendants refused to allow CAC Members to redeem unused CAC Rewards Points, and Defendants did not compensate gym members for the unused CAC Rewards Points they had accrued.

3. Because Defendants terminated the CAC Rewards Program without prior notice to Plaintiffs and Class members, Plaintiffs and Class members could not redeem the CAC Rewards Points that they earned and those points became worthless.

4. Plaintiffs bring this action against Defendants for violation of the Illinois Consumer Fraud and Deceptive Practices Act ("ICFA"), 815 ILCS 505/1, *et seq.*, promissory estoppel, and unjust enrichment.

Parties

5. At all relevant times, Plaintiff Andy Ambrosius was a resident and citizen of Cook County, Illinois.

6. At all relevant times, Plaintiff Dave Crabill was a resident and citizen of Cook County, Illinois.

7. At all relevant times, Plaintiff Michelle Sobarnia was a resident and citizen of Cook County, Illinois.

8. At all relevant times, Defendant Evanston Athletic Club, Inc. ("EAC") was an Illinois corporation with its principal place of business located at 55 E. Jackson Blvd. #500, Chicago, Illinois 60604, and EAC owned and operated the gym known as Evanston Athletic Club, located at 1723 Benson Ave., Evanston, IL 60201.

9. At all relevant times, Defendants Lincoln Park Athletic Club, Inc. ("LPAC") was an Illinois corporation, and LPAC Holdings LLC ("LPACH") was an Illinois limited liability company, with their principal places of business located at 55 E. Jackson Blvd. #500, Chicago, Illinois 60604, and LPAC and LPACH owned and operated the gym known as Lincoln Park Athletic Club, located at 1019 W. Diversey Pkwy., Chicago, IL 60611.

10. At all relevant times, Defendant Westloop Athletic Club LLC ("WAC") was an Illinois limited liability company with its principal place of business located at 55 E. Jackson Blvd. #500, Chicago, Illinois 60604, and WAC owned and operated the gym known as West Loop Athletic Club, located at 1380 W. Randolph St., Chicago, IL 60607.

11. At all relevant times, Defendant Lakeview Athletic Club, Inc. ("LAC") was an Illinois corporation with its principal place of business located at 55 E. Jackson Blvd. #500,

Chicago, Illinois 60604, and LAC owned and operated the gym known as Lakeview Athletic Club, located at 3212 N. Broadway Ave., Chicago, IL 60657.

12. At all relevant times, Defendant Lincoln Square Athletic Club LLC ("LSAC") was an Illinois limited liability company with its principal place of business located at 55 E. Jackson Blvd. #500, Chicago, Illinois 60604, and LSAC owned and operated the gym known as Lincoln Square Athletic Club, located at 4662 N. Lincoln Ave., Chicago, IL 60625.

13. At all relevant times, Defendant Wicker Park Athletic Club LLC ("WPAC") was an Illinois limited liability company with its principal place of business located at 55 E. Jackson Blvd. #500, Chicago, Illinois 60604, and WPAC owned and operated the gym known as Wicker Park Athletic Club, located at 1635 W. Division St., Chicago, IL 60622.

14. At all relevant times, Defendant Bucktown Athletic Club LLC ("BAC") was an Illinois limited liability company with its principal place of business located at 55 E. Jackson Blvd. #500, Chicago, Illinois 60604, and BAC owned and operated the gym known as Bucktown Athletic Club, located at 2040 W. North Ave., Chicago, IL 60647.

15. At all relevant times, Defendant Chicago Athletic Clubs LLC ("CAC") was an Illinois limited liability company with its principal place of business located at 55 E. Jackson Blvd. #500, Chicago, Illinois 60604, and all of the foregoing gyms were part of the overall CAC enterprise such that all of the gyms were owned and operated, in part, by CAC.

Jurisdiction and Venue

16. Jurisdiction over Defendants is proper under 735 ILCS 5/2-209(a)(1) (transaction of business within the state), 2-209(a)(12) (corporation organized under the laws of this state or having its principal place of business in the state), and 2-209(c) (any other basis now or hereafter

permitted by the Illinois Constitution or the Constitution of the United States). 735 ILCS 5/2-209.

17. Venue is proper in this County, pursuant to 735 ILCS 5/2-101, because Plaintiffs are residents of Cook County, and pursuant to section 2-103, because this is the County where the principal offices of Defendants are located and where the transactions occurred out of which the causes of action arose. 735 ILCS 5/2-101, 2-103.

Factual Allegations

18. Defendants own and operate the aforementioned seven (7) gym facilities in and around Chicago, Illinois.

19. In approximately December 2015, Defendants began the CAC Rewards Program.

20. Defendants advertised the CAC Rewards Program on their website. Pursuant to the webpage on Defendants' website regarding the CAC Rewards Program, CAC Members who enrolled in the CAC Rewards Program ("CAC Rewards Members") could earn "points" for various activities, including checking in at a gym, referring a friend to one of Defendants' gyms, joining various challenges, sharing workouts on social media, and purchasing personal training sessions or other goods and services from Defendants. *See CAC Rewards*, attached hereto as Exhibit A. Defendants' website represented that CAC Rewards Members can "redeem points at any time." *See* Exhibit A.

21. Under the terms of the CAC Rewards Program, active CAC Members are entitled to redeem their CAC Rewards Points for goods and services, as follows:

100 points for a water bottle
100 points for a Chicago Athletic Clubs water bottle
150 points for a weekly gym guest pass for a non-member
500 points for a Chicago Athletic Clubs T-shirt
650 points for a 30-minute adult swim lesson
1,250 points for a 1-hour personal training session

1,250 points for a 1-hour Pilates session
1,500 points for a 1-hour massage
2,000 points for a free month of membership
25,000 points for $500 Visa Giftcard.

See Chicago Athletic Clubs, Perkville, attached hereto as Exhibit B (the "Perkville website").

22. Neither Defendants' website nor the Perkville website state that the CAC Rewards Points ever expire. *See* Exhibit A; Exhibit B. In fact, Defendants represent the opposite, stating that CAC Rewards Members can redeem points "at any time." *See* Exhibit A. Moreover, the "Fine Print" on the Perkville website does not notify CAC Rewards Members that the CAC Rewards Points expire and does not state that Defendants can terminate the CAC Rewards Program without notice to CAC Rewards Members. *See* Exhibit B.

23. While earning points for certain "lesser-valued" goods and services could easily be attained—such as earning 100 CAC Rewards Points to obtain a water bottle—other goods and services require CAC Members to earn thousands of points in order to obtain them. For example, 1,500 points can be redeemed for a 1-hour massage, 2,000 points can be redeemed for a free month of membership dues, and 25,000 points can be redeemed for a $500 Visa Giftcard. *See* Exhibit B. In order to acquire enough points to obtain a massage, free month of membership dues, Visa Giftcard, and other goods and services, CAC Members have to remain a CAC Member and continue paying Defendants their monthly membership dues.

24. The value of the CAC Rewards Points can be calculated by using the actual cost of the service/product that is offered as a reward, divided by the amount of CAC Rewards Points required to obtain the service/product.

25. CAC Rewards Points can be redeemed "at any time" and there is no expiration date for the points set forth in Defendant's advertisements for the CAC Rewards Program. *See* Exhibit A; Exhibit B.

26. Neither Defendants' website nor the Perkville website inform CAC Rewards Members that Defendant may cancel the CAC Rewards Program without prior notice to CAC Rewards Members. *See* Exhibit A; Exhibit B.

27. Defendants created the CAC Rewards Program to attract new CAC Members, retain current CAC Members, receive free advertising by having CAC Members post on social media about Defendants' gyms, and encourage current CAC Members to spend money on Defendants' products and services, such as personal training sessions. Thus, Defendants obtain monetary and marketing benefits from CAC Rewards Members' participation in the CAC Rewards Program.

28. Plaintiffs and Class members continued to be CAC Members, spent time and energy posting on social media platforms about Defendants' gyms, referred others to become CAC Members, and purchased goods and services from Defendants in order to obtain CAC Rewards Points.

29. Defendants encouraged CAC Members to join the CAC Rewards Program by emailing CAC Members about the program, posting signs at Defendants' gyms regarding the program, and having their employees encourage CAC Members to enroll in the program.

30. On July 16, 2018, at approximately 12:11 a.m., Defendants sent an email to CAC Rewards Members abruptly and unilaterally terminating the CAC Rewards Program, effective immediately, and stating that CAC Members would not be able to redeem the accrued unused CAC Rewards Points that they had earned. (*See* CAC Rewards & Summer Perks email, dated

July 16, 2018, attached hereto as Exhibit C). Prior to sending the email to CAC Members announcing the termination of the CAC Rewards Program, Defendants did not provide any prior notice to CAC Rewards Members that Defendants would be terminating the CAC Rewards Program or that Defendants would no longer allow CAC Rewards Members to redeem the accrued unused CAC Rewards Points that they had already earned and paid for as part of their membership dues.

31. Prior to terminating the CAC Rewards Program, Defendants did not provide CAC Members with any advance notice so as to allow them an opportunity to earn additional CAC Rewards Points before the CAC Rewards Program ends or to redeem the accrued unused CAC Rewards Points that they had earned. Further, Defendants did not provide CAC Rewards Members with cash, credit, or any other form of compensation for the accrued unused CAC Rewards Points that Defendants unilaterally took from the CAC Members.

32. On information and belief, hundreds of consumers in Illinois who were CAC Rewards Members had accrued unused CAC Rewards Points as of July 16, 2018, but they are not able to use the points that they had earned because Defendants terminated the CAC Rewards Program without warning.

33. As a result of losing the ability to use accrued unused CAC Rewards Points when Defendants abruptly terminated the CAC Rewards Program, some CAC Rewards Members terminated their membership with Defendants' gyms.

34. After Defendants abruptly terminated the CAC Rewards Program, numerous CAC Members voiced their disappointment with Defendants' decision to terminate the CAC Rewards Program because they had earned thousands of points that were suddenly worthless. For example, one CAC Member stated, "I accumulated over 2,000 points and was given no

opportunity to redeem them before you all cancelled the program. You require 30 days notice to cancel membership yet you could not extend the same courtesy to your customers when cancelling the rewards program." (*See Chicago Athletic Club Faces Social Media Backlash Over Abruptly Canceled Points Program*, Book Club Chicago, July 17, 2018, *available at*: https://blockclubchicago.org/2018/07/17/chicago-athletic-club-faces-social-media-backlash-over-abruptly-canceled-points-program).

35. After Plaintiff Ambrosius initiated a lawsuit regarding Defendants' termination of the CAC Rewards Program, Defendants attempted to partially reinstate the CAC Rewards Program as a result of the filing of that action and discussions between the parties. However, the attempt to revive the CAC Rewards Program was insufficient because CAC Rewards Members are not able to earn more CAC Rewards Points, and therefore are not able to obtain the higher valued goods and services that require more points. Additionally, the lower valued goods and services that CAC Members may be able to obtain with the unused CAC Rewards Points that they accrued at the time Defendants terminated the CAC Rewards Program may not be desirable to Plaintiffs and Class members. Further, even if Plaintiffs and Class members were to redeem their accrued CAC Rewards Points for goods and services, they will still have additional CAC Rewards Points that cannot be used to obtain any of the goods or services offered through the CAC Rewards Program (*e.g.*, they would not have enough CAC Rewards Points remaining to obtain the product/service that "costs" the least amount of points to obtain), and those remaining points are worthless because Plaintiffs and Class members cannot earn additional CAC Rewards Points.

36. Moreover, former CAC Rewards Members who terminated their gym membership as a result of Defendants' termination of the CAC Rewards Program cannot use the

unused CAC Rewards Points that they had accrued as of July 16, 2018, as they are no longer CAC Members.

37. Defendants' attempts to placate Plaintiffs and Class members after Defendants' abrupt termination of the CAC Rewards Program do not compensate CAC Rewards Members for their damages they suffered. After Defendants terminated the CAC Rewards Program, had Plaintiffs and Class members selected a combination of products and services that would allow them to redeem the maximum possible number of their accrued CAC Rewards Points, they would still have additional CAC Rewards Points remaining that they could not use because the amount of remaining points would be less than the number of points needed to obtain the product/service that "costs" the least amount of points to obtain. At a minimum, Plaintiffs and Class members are entitled to the value of these remaining points.

Facts Related to Plaintiff Andy Ambrosius

38. Plaintiff Ambrosius became a member of Defendants' gym on February 9, 2016.

39. Prior to Plaintiff Ambrosius becoming a CAC Member, he was informed of the CAC Rewards Program through Defendants' advertising, in-gym signage, from Defendants' employees, and by viewing the *CAC Rewards* and *Chicago Athletic Clubs, Perkville* websites referenced above. Plaintiff Ambrosius decided to become a CAC Member, in part, because he could earn CAC Rewards Points, which he could then redeem for goods and services, such as guest passes for non-member friends, free massages, a free month of membership dues, etc. *See* Exhibits A and B.

40. When Plaintiff Ambrosius became a CAC Member in February 2016, he also enrolled in the CAC Rewards Program and began earning CAC Rewards Points.

41. On information and belief, Plaintiff Ambrosius was never presented with terms and conditions of service for the Perkville website that he was required to read and assent to before enrolling in the CAC Rewards Program, and Plaintiff Ambrosius did not read or assent to any such terms and conditions of service.

42. After the initial 12-month period of Plaintiff Ambrosius' membership agreement with Defendants, he continued his gym membership on a month-to-month basis. Plaintiff Ambrosius continued to be a CAC Member, in part, based on Defendants' representations that he could continue to earn additional CAC Rewards Points and redeem those points for goods and services pursuant to the terms of the CAC Rewards Program.

43. For example, Plaintiff Ambrosius occasionally used CAC Rewards Points for guest passes for non-member friends. However, at the time Defendants abruptly cancelled the CAC Rewards Program, Plaintiff Ambrosius had been accruing CAC Rewards Points with the intent and expectation that he would redeem them for other "higher priced" goods and services that require more points, such as personal training sessions, massages, or a free month of membership dues. Plaintiff Ambrosius believes that on July 16, 2018, he had accrued approximately 1,200 unused CAC Rewards Points. When the CAC Rewards Program was cancelled, Plaintiff Ambrosius was unable to use the CAC Rewards Points that he accrued, and he was not given any credit or compensation for his unused CAC Rewards Points.

44. After Defendants terminated the CAC Rewards Program, had Plaintiff Ambrosius selected a combination of products and services that would allow him to redeem the maximum possible number of his accrued CAC Rewards Points, he would still have additional CAC Rewards Points remaining that he could not use because the amount of remaining points would be less than the number of points needed to obtain the product/service that "costs" the least

amount of points to obtain. Defendants' attempts to offer certain rewards after terminating the CAC Rewards Program were not sufficient to fully compensate Plaintiff Ambrosius for his damages.

Facts Related to Plaintiff Dave Crabill

45. Plaintiff Crabill became a member of Defendants' gym on June 8, 2011.

46. Plaintiff Crabill was informed of the CAC Rewards Program through Defendants' advertising, in-gym signage, from Defendants' employees, and by viewing the *CAC Rewards* and *Chicago Athletic Clubs, Perkville* websites referenced above.

47. Plaintiff Crabill enrolled in the CAC Rewards program in December 2015, when the CAC Rewards Program began.

48. On information and belief, Plaintiff Crabill was never presented with terms and conditions of service on the Perkville website that he was required to read and assent to before enrolling in the CAC Rewards Program, and Plaintiff Crabill did not read or assent to any such terms and conditions of service.

49. On information and belief, after the initial 12-month period of Plaintiff Crabill's membership agreement, his gym membership continued on a month-to-month basis. Plaintiff Crabill continued to be a month-to-month CAC Member, in part, based on Defendants' representations that he could continue to earn additional CAC Rewards Points and redeem those points for goods and services pursuant to the terms of the CAC Rewards Program.

50. For example, Plaintiff Crabill occasionally used CAC Rewards Points for guest passes for non-member friends and t-shirts. However, at the time Defendants abruptly cancelled the CAC Rewards Program, Plaintiff Crabill had been accruing CAC Rewards Points with the intent and expectation that he would redeem them for "higher priced" goods and services that

require more points, such as personal training sessions, massages, or a free month of membership dues. Plaintiff Crabill believes that on July 16, 2018, he had accrued approximately 1,349 unused CAC Rewards Points. When the CAC Rewards Program was cancelled, Plaintiff Crabill was unable to use the CAC Rewards Points that he accrued, and he was not given any credit or compensation for his unused CAC Rewards Points.

51. After Defendants terminated the CAC Rewards Program, had Plaintiff Crabill selected a combination of products and services that would allow him to redeem the maximum possible number of his accrued CAC Rewards Points, he would still have additional CAC Rewards Points remaining that he could not use because the amount of remaining points would be less than the number of points needed to obtain the product/service that "costs" the least amount of points to obtain. Defendants' attempts to offer certain rewards after terminating the CAC Rewards Program were not sufficient to fully compensate Plaintiff Crabill for his damages.

Facts Related to Plaintiff Michelle Sobarnia

52. Plaintiff Sobarnia became a member of Defendants' gym in July 2015.

53. Plaintiff Sobarnia was informed of the CAC Rewards Program through Defendants' advertising, in-gym signage, from Defendants' employees, and by viewing the *CAC Rewards* and *Chicago Athletic Clubs, Perkville* websites referenced above.

54. Plaintiff Sobarnia enrolled in the CAC Rewards Program in December 2015, when the CAC Rewards Program began.

55. On information and belief, Plaintiff Sobarnia was never presented with terms and conditions of service on the Perkville website that she was required to read and assent to before enrolling in the CAC Rewards Program, and Plaintiff Sobarnia did not read or assent to any such terms and conditions of service.

56. On information and belief, after the initial 12-month period of Plaintiff Sobarnia's membership agreement, her gym membership continued on a month-to-month basis. Plaintiff Sobarnia continued to be a month-to-month CAC Member, in part, based on Defendants' representations that she could continue to earn additional CAC Rewards Points and redeem those points for goods and services pursuant to the terms of the CAC Rewards Program.

57. For example, Plaintiff Sobarnia occasionally used CAC Rewards Points for a free month of membership dues. However, at the time Defendants abruptly cancelled the CAC Rewards Program, Plaintiff Sobarnia had been accruing CAC Rewards Points with the intent and expectation that she would redeem them for other "higher priced" good and services that require more points, such as personal training sessions, massages, or an additional free month of membership dues. Plaintiff Sobarnia believes that on July 16, 2018, she had accrued approximately 1,644 unused CAC Rewards Points. When the CAC Rewards Program was cancelled, Plaintiff Sobarnia was unable to use the CAC Rewards Points that she accrued, and she was not given any credit or compensation for her unused CAC Rewards Points.

58. After Defendants terminated the CAC Rewards Program, had Plaintiff Sobarnia selected a combination of products and services that would allow her to redeem the maximum possible number of his accrued CAC Rewards Points, she would still have additional CAC Rewards Points remaining that she could not use because the amount of remaining points would be less than the number of points needed to obtain the product/service that "costs" the least amount of points to obtain. Plaintiff Sobarnia cancelled her membership with Defendants' gym on October 26, 2018, in part as a result of Defendants' termination of the CAC Rewards Program.

Class Allegations

59. **Class Definition**: Plaintiffs bring this action pursuant to 735 ILCS 5/2-801, on behalf of a class of similarly situated individuals and entities ("the Class"), defined as follows:

> All persons who were active members of one of Defendants' gyms on July 16, 2018, and who had accrued unused CAC Rewards Points.

Excluded from the Class are: (1) Defendants and Defendants' agents; (2) the Judge to whom this case is assigned and the Judge's immediate family; (3) any person who executes and files a timely request for exclusion from the Class; (4) any persons who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person.

60. **Subclass Definition**: Plaintiffs also bring this action on behalf of a subclass of similarly situated persons (the "Subclass"), defined as follows:

> All persons who were active members of one of Defendants' gyms on July 16, 2018, who had unused CAC Rewards Points that were accrued by purchasing Defendants' goods or services, posting about Defendants' gyms on social media, or by referring others to become a member of one of Defendants' gyms.

Excluded from the Subclass are: (1) Defendants and Defendants' agents; (2) the Judge to whom this case is assigned and the Judge's immediate family; (3) any person who executes and files a timely request for exclusion from the Subclass; (4) any persons who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person.

61. **Numerosity**: Upon information and belief, the Class is comprised of hundreds of individuals, and is so numerous that joinder of all members of the Class is impracticable. While the exact number of Class members is presently unknown and can only be ascertained through discovery, Plaintiffs believe there are hundreds of Class members based upon the fact that Defendants operate seven (7) gyms in and around Chicago, Illinois, and each gym has hundreds, if not thousands, of members. Class members can be easily identified through Defendants' records or by other means.

62. **Commonality and Predominance**: There are several questions of law and fact common to the claims of Plaintiffs and members of the Class, which predominate over any individual issues, including:

a. Whether Defendants violated the ICFA by abruptly terminating the CAC Rewards Program and refusing to allow CAC Members to redeem accrued unused CAC Rewards Points;

b. Whether Defendants failed to disclose to CAC Members that Defendants could terminate the CAC Rewards Program without prior notice to CAC Rewards Members;

c. Whether Defendants promised CAC Rewards Members that they would be able to redeem the CAC Rewards Points that they had accrued at any time;

d. Whether Defendants were unjustly enriched when they terminated the CAC Rewards Program without prior notice to CAC Rewards Members.

63. **Typicality**: Plaintiffs' claims are typical of the claims of the proposed Class. All claims are based on the same legal and factual issues. Plaintiffs and each of the Class members were members of Defendants' gyms, enrolled in the CAC Rewards Program, and had accrued unused CAC Rewards Points at the time Defendants unilaterally and abruptly terminated the CAC Rewards Program. Defendants engaged in the uniform conduct of terminating the CAC Rewards Program without any warning to Plaintiffs or any Class members, and refusing to allow Plaintiffs and Class members to redeem accrued unused CAC Rewards Points.

64. **Adequacy of Representation**: Plaintiffs will fairly and adequately represent and protect the interests of the Class, and have retained counsel competent and experienced in complex class actions. Plaintiffs have no interest antagonistic to those of the Class, and Defendants have no defenses unique to Plaintiffs. The questions of law and fact common to the proposed Class members predominate over any questions affecting only individual Class members.

65. **Superiority**: A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation would make it impracticable or impossible for proposed Class members to prosecute their claims individually. The trial and the litigation of Plaintiffs' claims are manageable.

COUNT I
Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act
815 ILCS 505/1, *et seq.*
(On behalf of the Class and Subclass)

66. Plaintiffs repeat and reallege Paragraphs 1-65 with the same force and effect as though fully set forth herein.

67. At all relevant times, there was in full force and effect the ICFA, 815 ILCS 505/1, *et seq.*

68. The ICFA prohibits any deceptive, unlawful, unfair, or fraudulent business acts or practices including using deception, fraud, false pretenses, false promises, false advertising, misrepresentation, or the concealment, suppression, or omission of any material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act". 815 ILCS 505/2.

69. Each Defendant is a "person," as defined by 815 ILCS 505/1(c).

70. Plaintiffs and Class members are "consumers," as defined by 815 ILCS 505/1(e), because they entered into Contracts with Defendants for membership in Defendants' gyms for personal use.

71. Defendants' conduct constitutes unfair, deceptive, and oppressive acts or practices when Defendants (a) intentionally induced Plaintiffs and Class members into becoming and remaining CAC Members by advertising, offering and promising Plaintiffs and Class members that they would receive CAC Rewards Points, (b) intentionally induced Plaintiffs and Class

members to spend their time, energy, and money to earn CAC Rewards Points, (c) intentionally failed to disclose to Plaintiffs and Class members that Defendants could terminate the CAC Rewards Program without prior notice, and (d) abruptly terminated the CAC Rewards Program without notice to Plaintiffs and Class members, which did not to allow Plaintiffs and Class members to redeem their accrued unused CAC Rewards Points.

72. Defendants made a false representation when they represented to members that "You can redeem points at any time . . ." *See* Exhibit A. Defendants omitted material facts when they did not disclose that the CAC Rewards Program could be terminated without prior notice, and the CAC Rewards Points could be revoked without notice. *See* Exhibit A; Exhibit B.

73. Defendants' conduct described herein also constitutes unfair, deceptive, and oppressive acts or practices under the ICFA because it offends public policy; it is immoral, unethical, oppressive, and unscrupulous; and it causes substantial injury to consumers.

74. Plaintiffs and Class members relied on Defendants' representations, acts and omissions related to the CAC Rewards Program when deciding to (a) become CAC Members, (b) remain CAC Members, (c) pay membership dues to Defendants, (d) perform the required acts to earn CAC Rewards Points, (e) refrain from redeeming CAC Rewards Points in order to accrue sufficient points to obtain better rewards.

75. Defendants intended for Plaintiffs and Class members to rely on their misrepresentations, acts, and omissions related to the CAC Rewards Program and pay gym dues to Defendants in order to become a CAC Member and/or continue to be a CAC Member.

76. The above-described deceptive and unfair acts and practices were used or employed in the conduct of trade or commerce.

77. As a direct and proximate result of Defendants' conduct, Plaintiffs and the Class have suffered damages.

WHEREFORE, Plaintiffs ANDY AMBROSIUS, DAVE CRABILL, and MICHELLE SOBARNIA, individually, and on behalf of the Class, pray for an Order as follows:

A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class defined herein;

B. Designating Plaintiffs as representatives of the Class and their undersigned counsel as Class Counsel;

C. Entering judgment in favor of Plaintiffs and the Class, and against Defendants;

D. Awarding Plaintiffs and the Class damages equal to the amount of actual damages that they sustained;

E. Awarding Plaintiffs and the Class attorneys' fees and costs, including interest thereon, as allowed or required by law; and

F. Granting all such further and other relief as the Court deems just and appropriate.

COUNT II
Promissory Estoppel
(On Behalf of the Cass and Subclass)

78. Plaintiffs repeat and reallege Paragraphs 1-65 with the same force and effect as though fully set forth herein.

79. Defendants unambiguously promised Plaintiffs and Class members that they would be able to earn CAC Rewards Points that never expire, that they could "redeem points at any time" while they are active CAC Members, and they could redeem the points on certain enumerated goods and services, as set forth in Exhibits A and B.

80. Plaintiffs and Class members saw Defendants' representations regarding the CAC Rewards Program and reasonably relied on Defendants' promises by becoming CAC Members,

continuing to be CAC Members, paying membership dues, checking in at gyms, referring friends to Defendants' gyms, joining various challenges, sharing and promoting the gyms on social media platforms, purchasing personal training sessions from Defendants, and spending money on Defendants' products and services in order to earn CAC Rewards Points. Further, Plaintiffs and Class members reasonably relied on Defendants' representations by refraining from redeeming accrued unused CAC Rewards Points in order to accrue enough points to obtain "higher priced" goods and services as outlined in Exhibit B.

81. Plaintiffs' and Class members' reliance on Defendants' representations, and their refraining from redeeming accrued unused CAC Rewards Points, was reasonable and foreseeable by Defendants, as Defendants constructed the CAC Rewards Program to enable CAC Members to earn CAC Rewards Points that never expire, and to accrue unused points and redeem those points for certain goods and services—such as personal training sessions, massages, free months of membership, and gift cards—that require significantly more points to obtain.

82. Plaintiffs and Class members relied on Defendants' representations to their detriment by (a) spending money to remain active CAC Members, (b) performing the required acts to earn CAC Rewards Points, and (c) refraining from redeeming the unused points that they had accrued in order to redeem them on "higher priced" goods and services.

83. As a direct and proximate result of Defendants' conduct, Plaintiffs and Class members suffered damages.

WHEREFORE, Plaintiffs ANDY AMBROSIUS, DAVE CRABILL, and MICHELLE SOBARNIA, individually, and on behalf of the Class, pray for an Order as follows:

A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class defined herein;

B. Designating Plaintiffs as representatives of the Class and their undersigned counsel as Class Counsel;

C. Entering judgment in favor of Plaintiffs and the Class, and against Defendants;

D. Awarding Plaintiffs and the Class damages equal to the amount of actual damages that they sustained;

E. Awarding Plaintiffs and the Class attorneys' fees and costs, including interest thereon, as allowed or required by law; and

F. Granting all such further and other relief as the Court deems just and appropriate.

COUNT III
Unjust Enrichment
(On Behalf of the Subclass)

84. Plaintiffs repeat and reallege Paragraphs 1-65 with the same force and effect as though fully set forth herein.

85. Unjust enrichment "is a condition that may be brought about by unlawful or improper conduct as defined by law[.]" *See, e.g., Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 25 (quoting *Martis v. Grinnell Mutual Reinsurance Co.*, 388 Ill.App.3d 1017, 1024 (3rd Dist. 2009); *Alliance Acceptance Co. v. Yale Insurance Agency, Inc.*, 271 Ill.App.3d 483, 492 (1st Dist. 1995)).

86. To prevail on a claim of unjust enrichment, a plaintiff must prove: (1) "that the defendant has unjustly retained a benefit to the plaintiff's detriment," and (2) "that defendant's retention of the benefit violates the fundamental principles of justice, equity, and good conscience." *See, e.g., Cleary v. Philip Morris Inc.*, 656 F.3d 511, 518 (7th Cir.2011) (quoting *HPI Health Care Servs., Inc. v. Mt. Vernon Hosp., Inc.*, 131 Ill.2d 145, 160 (1989)).

87. Plaintiffs and members of the Subclass purchased goods and services from Defendants, discussed and posted about Defendants on social media, and encouraged others to

become members of Defendants' gyms in order to obtain CAC Rewards Points. However, Plaintiffs and Subclass members were not able to redeem the CAC Rewards Points that they obtained from purchasing Defendants' good and services, posting about Defendants on social media, or referring friends to join Defendants' gyms because Defendants terminated the CAC Rewards Program and refused to allow CAC Rewards Members to redeem their accrued, unused CAC Rewards Points.

88. Plaintiffs and members of the Subclass conferred a benefit on Defendants in the form of money that Plaintiffs and Subclass members spent on Defendants' goods and services, advertising for Defendants by discussing Defendants' gyms on social media and in person with non-CAC Members, and convincing non-CAC Members to become members of Defendants' gyms.

89. Defendants have unjustly benefitted from the termination of the CAC Rewards Program because they have acquired and retained money belonging to Plaintiffs and the Subclass as a result of their wrongful conduct, received advertising about Defendants' gyms, and have acquired new CAC Members who pay Defendants' monthly dues, without allowing Subclass members to redeem the CAC Rewards Points that they accrued for those actions.

90. Acting as reasonable consumers, Plaintiffs and Subclass members would not have spent the time, energy, or money to purchase goods and services from Defendants, post on social media about Defendants, or refer others to become members of Defendants' gyms if Plaintiffs and Subclass members had known that Defendants would terminate the CAC Rewards Program without prior notice and refuse to allow CAC Rewards Members to redeem the unused CAC Rewards Points they had accrued.

91. Plaintiffs and the members of the Subclass have suffered damages as a direct result of Defendants' conduct.

92. Defendants' retention of the benefit violates the fundamental principles of justice, equity, and good conscience because Defendants misled Plaintiffs and the Subclass into falsely believing that they would be able to redeem the CAC Rewards Points that they had earned through purchasing goods or services from Defendants, posting on social media about Defendants, or referring others to join Defendants' gyms.

93. Under the principles of equity, Defendants should not be allowed to keep the money belonging to Plaintiffs and the members of the Subclass because Defendants have unjustly received it as a result of Defendants' unlawful actions described herein. Further, Defendants should not be allowed to benefit from value of the advertising by Plaintiffs and Subclass members that Defendants received as a result of Defendants' unlawful actions described herein.

94. Plaintiffs, individually and on behalf of the Subclass, seek restitution for Defendants' unlawful conduct, as well as interest and attorneys' fees and costs.

WHEREFORE, Plaintiffs ANDY AMBROSIUS, DAVE CRABILL, and MICHELLE SOBARNIA, individually, and on behalf of the Class, pray for an Order as follows:

A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Subclass defined herein;

B. Designating Plaintiffs as representatives of the Subclass and their undersigned counsel as Subclass Counsel;

C. Entering judgment in favor of Plaintiffs and the Subclass, and against Defendants;

D. Ordering disgorgement of any of Defendants' ill-gotten gains and awarding those amounts to Plaintiffs and the Subclass as compensatory damages;

E. Awarding Plaintiffs and the Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and

F. Granting all such further and other relief as the Court deems just and appropriate.

JURY DEMAND

Plaintiffs demand a trial by jury on all counts so triable.

Plaintiffs ANDY AMBROSIUS, DAVE CRABILL, and MICHELLE SOBARNIA, individually, and on behalf of all others similarly situated,

By: /s/ Thomas A. Zimmerman, Jr.

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