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WW INTERNATIONAL, INC.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

SANDRA QUINTANILLA individually)
and on behalf of all others similarly)
situated,)

Plaintiff,)

v.)

WW INTERNATIONAL, INC., dba)
WEIGHT WATCHERS, a Virginia)
Corporation, and DOES 1 through 50,)
inclusive,)

Defendants.)

CASE NO.: 2:20-cv-06843

**NOTICE OF REMOVAL OF
ACTION BY DEFENDANT WW
INTERNATIONAL, INC.
PURSUANT TO 28 U.S.C. §§ 1332
1441**

**TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO PLAINTIFF
AND HER COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332 and 1441, defendant WW International, Inc. (“WW”) removes to the United States District Court for the Central District of California, Western Division, the state court action described below. Removal is based upon the following grounds.

I. PROCEDURAL BACKGROUND.

1. On June 10, 2020, Plaintiff Sandra Quintanilla filed a class action complaint against WW in the Superior Court of the State of California for Ventura County. The complaint is captioned *Quintanilla v. WW International, Inc.*, Case No. 56-2020-00542259-CU-MC-VTA, and has been assigned to the Honorable Vincent J. O’Neill in Department 41. On June 25, 2020, Plaintiff filed her First Amended Complaint (“FAC”), accompanied with an affidavit of venue by Plaintiff. (*See* Ex. 4). On June 25, 2020, Plaintiff sent by certified regular mail to WW a copy of the FAC and affidavit. A true and correct copy of the FAC is included in Exhibit 4, which is attached hereto this Notice.¹

2. WW’s agent for service of process received a copy the FAC, without a summons, on June 29, 2020 by regular United States mail. (Kaplan Decl. ¶ 4). On July 7, 2020, WW’s agent for service of process received a copy of the FAC, with a summons, by personal service. (*Id.*; *See* Exs. 5-6.)

3. On July 8, 2020, the case was designated as a complex case and was assigned to the Ventura Superior Court Complex Track. (*See* Ex. 7).

4. At the time of removal, WW had not answered or otherwise responded to the FAC. There is a case management conference scheduled for September 28, 2020,

¹ Exhibit Nos. 1-10 consists of true and correct copies of all process, pleadings, and orders served on WW in the *Quintanilla* action. (Declaration of Seth Kaplan (“Kaplan Decl.”) ¶ 6).

1 regarding the Complex Case designation. WW does not believe that any further
2 proceedings have occurred in the state court action.

3 II. JURISDICTIONAL STATEMENT.

4 5. This is a civil class action of which this Court has original jurisdiction
5 pursuant to 28 U.S.C. § 1332. WW is authorized to remove this action pursuant to 28
6 U.S.C. § 1441(a) and 28 U.S.C. § 1453.

7 6. As set forth in greater detail below, this action satisfies each of the
8 requirements for jurisdiction set forth in 28 U.S.C. § 1332(d): (a) there are over 100
9 alleged class members in Plaintiff's proposed class (*id.* § 1332(d)(5)(B)); (b) the
10 combined alleged claims of all potential class members, in the aggregate, exceed
11 \$5,000,000 (*id.* § 1332(d)(2));² and (c) the requisite diversity exists (*id.* §
12 1332(d)(2)(A)).

13 7. "A plaintiff's allegations may satisfy [the Class Action Fairness Act's
14 ("CAFA")] numerosity requirement." *See Clay v. Chobani LLC*, No. 14-cv-2258-
15 BEN-DBH, 2015 WL 4743891, at *3 (S.D. Cal. Aug. 10, 2015) (citing *Kuxhausen v.*
16 *BMW Fin. Servs. NA LLC*, 707 F.3d 1136, 1140 (9th Cir. 2013)).

17 8. Plaintiff purports to bring claims on behalf of "[a]ll individuals in the
18 United States who paid monthly membership fees" from March 17, 2020 "to a date to
19 be determined." (FAC ¶ 17). Plaintiff further purports to bring a claim on behalf of a
20 subclass of "[a]ll individuals in California who paid monthly membership fees" from
21 March 17, 2020 "to a date to be determined." (*Id.*). Plaintiff asserts that "[t]he Class
22 members consists of thousands, if not hundreds of thousands of [WW] customers."

23 ² WW disputes that Plaintiff and the purported class members are entitled to any
24 relief. Of course, for the purposes of this removal analysis, "[t]he question is not what
25 damages the plaintiff will recover, but what amount is 'in controversy' between the
26 parties." *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 448 (7th Cir. 2005);
27 *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008). "The
28 jurisdictional requirement is satisfied if either party can gain or lose the jurisdictional
amount." *Nelson v. Bic USA, Inc.*, No. 07-cv-2367-LAB (RBB), 2008 WL 906049, at
*4 (S.D. Cal. Apr. 1, 2008).

(*Id.* at ¶ 19). Thus, on the face of the FAC, the proposed class exceeds 100 members as required by 28 U.S.C. § 1332(d)(5)(B).

9. The requisite minimal diversity also exists. *See* 28 U.S.C. § 1332(d)(2)(A). WW was, at the time the lawsuit was filed, and is currently a Virginia corporation with its principal place of business in New York, NY. (Kaplan Decl. ¶ 5; FAC ¶ 8). Plaintiff alleges that she is a citizen and resident of California. (FAC ¶ 7). Minimal diversity therefore exists.

10. The amount in controversy exceeds \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2). Under CAFA, “the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interests and costs.” 28 U.S.C. § 1332(d)(6).

11. To determine the amount in controversy, the Court assumes that the allegations in the operative pleading are true and that a jury will return a verdict for the Plaintiff on all such claims. *See Cain v. Hartford Life & Accident Ins. Co.*, 890 F. Supp. 2d 1246, 1249 (C.D. Cal. 2012) (“The ultimate inquiry is what amount is put ‘in controversy’ by the plaintiff’s complaint, not what a defendant will actually owe.”) (emphasis and internal quotation marks omitted).

12. Here, as set forth under the FAC’s Prayer for Relief (FAC § VII) it is clear that the amount in controversy exceeds \$5 million. Plaintiff seeks relief of an “unlimited”³ monetary value, including:

- a. compensatory damages in amounts to be determined by the Court and/or jury;
- b. restitution and all other forms of equitable monetary relief;
- c. injunctive relief as pleaded or as the Court may deem proper;
- d. reasonable attorneys’ fees; and
- e. other and further relief as the Court deems just and proper.

³ (*See* Ex. 2, Civil Cover Sheet).

13. Plaintiff herself alleges that WW has allegedly unlawfully and unfairly profited “tens of millions of dollars” (FAC ¶ 16), demonstrating on the face of the FAC that the amount in controversy substantially exceeds the \$5 million threshold. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 83-84 (2014) (explaining that “[i]f the plaintiff’s complaint, filed in state court, demands monetary relief of a stated sum, that sum, if asserted in good faith, is ‘deemed to be the amount in controversy’”) (citing 28 U.S.C. § 1446(c)(2); *Clay*, 2015 WL 4743891, at * 2 (finding the amount of controversy met where “[a]ssuming the allegations of the Complaint are true, the putative class is entitled to the ‘tens of millions of dollars’ that Defendants have collected”); *Cain*, 890 F. Supp. 2d at 1249 (finding defendant met the amount in controversy requirement “based on the damages for breach of contract and bad faith asserted in the Complaint”).

14. Plaintiff’s request for reasonable attorneys’ fees must also be considered part of the amount in controversy. *See Gibson v. Chrysler Corp.*, 261 F.3d 927, 946 (9th Cir. 2001); *see also See Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007) (noting that “Section 1332(a)’s amount-in-controversy required excludes only ‘interest and costs’ and therefore includes attorneys’ fees); *Yeroushalmi v. Blockbuster Inc.*, Case No. 05-cv-2550-AHM(RCX), 2005 WL 2083008, at *5 (C.D. Cal. July 1, 2005) (holding that “it is proper [under the Class Action Fairness Act] to consider the cost of injunctive relief, potential punitive damages, and attorney’s fees”).

15. Venue is proper in the United States District Court for the Central District of California, Western Division, as this is the District and division embracing the place where the State Court Action is pending (*i.e.*, Ventura County). (*See Ex. 4*); 28 U.S.C. § 1441(a).

IV. REMOVAL PROCEDURE

16. WW has complied with 28 U.S.C. § 1446(a) by attaching hereto as Exhibit Nos. 1-10 all process, pleadings, and orders it received in the state court action.

17. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b) because it is filed within 30 days of WW's receipt of the initial pleading. "Receipt" means proper service as required by state law. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999). Plaintiff served WW with the summons and FAC via personal service on July 7, 2020. *See Exs. 6, 9; Murphy Bros., Inc.*, 526 U.S. at 347-48 (holding a "defendant's time to remove is triggered by simultaneous service of the summons and complaint"); *see also Anderson v. State Farm Mut. Auto. Ins. Co.*, 917 F.3d 1126, 1129-30 (9th Cir. 2019); Cal. Code Civ. Proc. § 415.10.⁴ WW filed this Notice of Removal on July 29, 2020, well within the 30-day deadline provided by 28 U.S.C. § 1446(b).

18. WW will promptly give written notice of this Notice to Plaintiff and will file a copy of this notice with the clerk of the Superior Court for the County of Ventura, as required by 28 U.S.C. § 1446(d).

WHEREFORE, WW prays that the above action, formerly pending against it in the Superior Court of the State of California for the County of Ventura, be removed to this Court.

Respectfully submitted,

Dated: July 30, 2020

KATTEN MUCHIN ROSENMAN LLP

By: /s/ Tami Kameda Sims

Tami Kameda Sims
Attorneys for Defendant,
WW INTERNATIONAL, INC.

⁴ Because the FAC received on June 29, 2020, by mail was not accompanied with a summons, this was not effective service. Even if a summons had been included, pursuant to California law, the FAC would have been deemed served on WW on July 5, 2020, ten (10) days after it was mailed. *See* Cal. Code Civ. Proc. § 415.40.

PROOF OF SERVICE

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 2029 Century Park East, Suite 2600, Los Angeles, California 90067.

On July 30, 2020, I served the following document: **NOTICE OF REMOVAL OF ACTION BY DEFENDANT WW INTERNATIONAL, INC. PURSUANT TO 28 U.S.C. §§ 1332 1441** on the interested parties in this action by placing a true and correct copy of each document thereof, enclosed in a sealed envelope, addressed as follows:

James R. Hawkins, Esq.
Gregory Mauro, Esq.
Michael Calvo, Esq.
JAMES HAWKINS APLC
9880 Research Drive, Ste. 200
Irvine, CA 92618
james@jameshawkinsaplc.com
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(X) (BY OVERNIGHT COURIER) I caused the above-referenced document(s) to be delivered to an overnight courier service (Federal Express), for delivery to the above address(es).

Executed on July 30, 2020 at Los Angeles, California.

(X) (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

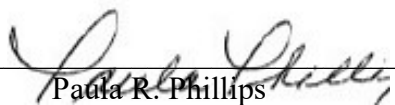

Paula R. Phillips

Exhibit 1

Complaint

Filed June 10, 2020

RECEIVED FOR SCANNING
VENTURA SUPERIOR COURT

JUN 10 2020

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Attorneys for Plaintiff, SANDRA QUINTANILLA
on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF VENTURA

SANDRA QUINTANILLA individually and on
behalf of all others similarly situated

Plaintiff,

vs.

WW INTERNATIONAL, INC., dba WEIGHT
WATCHERS, a Virginia Corporation, and
DOES 1 through 50, inclusive,

Defendants.

Case No.

CLASS ACTION COMPLAINT

- 1) Violation of California Consumer Legal Remedies Act, California Civil Code §§ 1750, *et. seq.* (injunctive relief only);
- 2) Violation of California's Unfair Competition Law, California Business & Professions Code §§ 17200, *et. seq.*;
- 3) Violation of California's False Advertising Law, California Business & Professions Code §§ 17500, *et. seq.*;
- 4) Money Had and Received;
- 5) Unjust Enrichment; and
- 6) Breach of Contract

JURY TRIAL DEMANDED

- 1 -

QUINTANILLA CLASS ACTION COMPLAINT

Exhibit 1

1 Plaintiff SANDRA QUINTANILLA (hereinafter "Plaintiff") individually and on behalf
 2 of all others similarly situated assert claims against Defendants WW INTERNATIONAL, INC.,
 3 dba WEIGHT WATCHERS and DOES 1 through 50 (hereinafter "WEIGHT WATCHERS" or
 4 "Defendants") as follows:

5 I.

6 **INTRODUCTION**

7 1. This is a consumer protection class action, pursuant to Code of Civil Procedure
 8 section 382, brought against Defendants and any subsidiaries and affiliated companies on behalf
 9 of Plaintiff and all others similarly situated.

10 2. Defendants charge a monthly fee to use WEIGHT WATCHERS, a global company
 11 specializing in providing services to assist in healthy habits, including weight loss and
 12 maintenance, and fitness. WEIGHT WATCHERS has locations across the United States, including
 13 in California. On March 16, 2020, as the Coronavirus pandemic grew throughout the world,
 14 Defendants closed all of its WEIGHT WATCHERS locations throughout the country, preventing
 15 Plaintiff and others from using all the services covered by the monthly fee. Plaintiff seeks to
 16 recover monies of loss of use.

17 3. Plaintiff seeks relief in this action individually and on behalf of all of consumers
 18 nationwide who paid Defendants' monthly membership fees after Defendants closed access to its
 19 WEIGHT WATCHERS locations.

20 II.

21 **JURISDICTION AND VENUE**

22 4. This Court has jurisdiction over this action pursuant to the California Constitution,
 23 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
 24 given by statutes to other courts. The statutes under which this action is brought do not specify
 25 any other basis for jurisdiction.

26 5. This Court has jurisdiction over all Defendants because, upon information and
 27 belief, they sufficient minimum contacts in California or otherwise intentionally avail themselves
 28

1 of the California market so as to render the exercise of jurisdiction over them by the California
2 courts consistent with traditional notions of fair play and substantial justice.

3 6. Venue as to each defendant is proper in this judicial district, pursuant to California
4 Code of Civil Procedure section 395. On information and belief, Defendants distribute, market
5 and sell their products/services in Ventura County and throughout California, and each defendant
6 is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged
7 herein have a direct effect on Plaintiff and those similarly situated within the State of California
8 and the United States.

9 III.

10 PARTIES

11 7. Plaintiff is a citizen of California, residing in Santa Paula, California. At all
12 relevant times, Plaintiff was enrolled in a WEIGHT WATCHERS' program and has been paying
13 a monthly fee.

14 8. Defendant WEIGHT WATCHERS is a Virginia corporation with its
15 headquarters, upon information and belief, located at 675 Avenue of the Americas, New York,
16 NY. Defendant operates and maintains over 3,000 brick and mortar locations across the United
17 States, including California.

18 9. The true names and capacities of Defendants, whether individual, corporate,
19 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
20 Plaintiff, who therefore sues Defendants by such fictitious names. Plaintiff is informed and
21 believes and based thereon alleges that each of the Defendants designated herein as a DOE is
22 legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek
23 leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
24 designated hereinafter as DOES when such identities become known.

25 10. Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
27 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
28

1 Defendant are legally attributable to the other Defendants.

2 IV.

3 FACTUAL BACKGROUND

4 11. Defendants operate programs and have a website
5 (<https://www.weightwatchers.com/us/>) to enroll. On its website, WEIGHT WATCHERS touts
6 that it holds more than 40,000 meetings each week where members receive group support and
7 learn about healthy eating patterns, behavior modification and physical activity.
8 (<https://www.weightwatchers.com/about/crp/index.aspx>).

9 12. On March 16, 2020, as the coronavirus pandemic spread throughout the United
10 States, Defendants closed all of its locations and prevented members from accessing these
11 locations.

12 13. Despite closing its locations after March 16, 2020, WEIGHT WATCHERS
13 continued charging its members monthly membership fees. For example, Plaintiff's monthly fee
14 is \$44.95 per month, and Defendants debited Plaintiff's account for the full monthly fee for the
15 months of March, April and May, 2020 while Defendants' locations were closed.

16 14. Upon information and belief, Defendants have imposed, and continue to impose,
17 monthly charges to Plaintiff and Class Members after the March 16, 2020 closing.

18 15. After the closure of its physical locations, Defendants started providing less than
19 equivalent online alternatives to its services originally provided via its brick and mortar
20 locations, such as in-person group meetings, weigh-ins, and product purchasing. Despite these
21 drastic changes to the membership services, Defendants continue to charge its members full
22 monthly membership fees even though Defendants continue to deny its members access to and
23 usage of its physical locations and all in-person services provided by Defendants' physical
24 locations.
25

26 16. As of date, Defendants have not issued/offered refunds or any other type of credit.
27 By not doing so, Defendants are able to unlawfully and unfairly profit tens of millions of dollars.
28

IV.

CLASS DEFINITION AND ALLEGATIONS

17. Pursuant to California Code of Civil Procedure 382, Plaintiff brings this action on behalf of herself and on behalf of all members of the following class and subclass of similarly situated individuals (hereinafter collectively "Class members"):

Class:

All individuals in the United States who paid monthly membership fees to Defendants for the WEIGHT WATCHERS program from March 17, 2020 to a date to be determined.

California Subclass:

All individuals in California who paid monthly membership fees to Defendants for the WEIGHT WATCHERS program from March 17, 2020 to a date to be determined.

18. Excluded from the Class members are (1) Defendants, each of its corporate parents subsidiaries and affiliates, officers and directors, and any entity in which Defendants have a controlling interest; (2) persons who properly and timely request to be excluded; and (3) the legal representatives, successors, or assigns of any such excluded person or entities.

19. **Numerosity.** The Class members consists of thousands, if not hundreds of thousands, of WEIGHT WATCHERS customers and is thus so numerous that joinder of all members is impractical. Although the exact number of members is currently unknown to Plaintiff, the identities and addresses of the Class members can be readily determined from business records maintained by Defendants.

20. **Typicality.** Plaintiff's claims are typical of those belonging to Class members and stem from Defendants' improper and illegal practices as alleged in this complaint. Plaintiff is advancing the same claims and legal theories on behalf of herself and all members of the Class.

21. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the

1 interests of the members of the Class members. Plaintiff has retained highly competent counsel
 2 and experienced class action attorneys to represent her interests and that of the Class members.
 3 Plaintiff and her counsel have the financial resources to adequately and vigorously litigate this
 4 class action. Plaintiff has no adverse or antagonistic interests to those of the Class. Plaintiff is
 5 willing and prepared to serve the Court and the Class members in a representative capacity with
 6 all of the obligations and duties material thereto and is determined to diligently discharge those
 7 duties by vigorously seeking the maximum possible recovery for Class members.

8 **22. Common questions of law and fact predominate** over any individualized
 9 questions affecting Class members. Such questions include, but are not limited to:

- 10 a. Whether Defendants should refund or credit Plaintiff and Class members
 11 for monthly membership fees paid after March 17, 2020;
- 12 b. Whether Plaintiff and Class members are entitled to declaratory relief;
- 13 c. Whether Plaintiff and Class members are entitled to preliminary or
 14 permanent injunctive relief, or other equitable relief, against Defendants;
- 15 d. Whether Defendants' alleged conduct violates public policy;
- 16 e. Whether a breach of contract including a breach of the implied covenant of
 17 good faith and fair dealing occurred; and
- 18 f. Whether the alleged conduct constitutes violations of the laws asserted.

19 **23. Superiority.** A class action is superior to other available methods for the fair and
 20 efficient adjudication of this controversy since individual joinder of all Class members is
 21 impractical. The injuries suffered by individual Class members are, though important to them,
 22 relatively small compared to the burden and expense of individual prosecution needed to address
 23 Defendants' conduct. Furthermore, even if Class members could afford such individualized
 24 litigation, the court system could not. Individualized litigation would create the danger of
 25 inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation
 26 would also increase the delay and expense to all parties and the court system from the issues raised
 27 by this action. By contrast, the class action device provides the benefits of adjudication of these
 28

1 issues in a single proceeding, economies of scale, and comprehensive supervision by a single court,
2 and presents no unusual management difficulties under the circumstances here.

3 24. Plaintiff cannot be certain of the form and manner of a proposed notice to Class
4 members until the Class is finally defined and discovery is completed regarding the identity of
5 Class members. Plaintiff anticipates, however, that notice by mail or email will be given to Class
6 members who can be identified specifically. In addition, notice may be published in appropriate
7 publications, on the Internet, in press releases and in similar communications in a way that is
8 targeted to reach class members. The cost of notice, after class certification, trial, or settlement
9 before trial, should be borne by Defendants.

10 25. Unless a Class is certified, Defendants will retain monies received as a result of its
11 conduct that were taken from Plaintiff and Class members. Unless a Class-wide injunction is
12 issued, Defendants will continue to commit the violations alleged, and the members of the Class
13 and the general public will continue to be deceived

14 26. Plaintiff reserves the right to modify or amend the definition of the proposed Class
15 at any time before the Class is certified by the Court.

16 VI.

17 CAUSES OF ACTION

18 First Cause of Action

19 **Violation of California Consumer Legal Remedies Act ("CLRA"),**

20 **California Civil Code §§ 1750 (injunctive relief only)**

21 27. Plaintiff repeats and incorporates herein by reference every allegation set forth
22 above, as though fully set forth herein.

23 28. Plaintiff brings this claim individually and on behalf of the proposed Class
24 members against Defendants.

25 29. Plaintiff and Class members are consumers, as defined by California Civil Code
26 §1761(d), who paid fees for use of Defendants' services for personal purposes. Defendants'
27 program is a "service" within the meaning of defined by California Civil Code §1761(b).
28

30. Defendants' retention of Plaintiff's and Class members' monthly membership fees without providing all promised benefits of the membership, including full in-person access to services, is an unfair business practice in violation of CLRA.

31. Defendants violated and continue to violate the CLRA by engaging in the following practices, proscribed by California Civil Code § 1770(a), in transactions with Plaintiff and the Class which were intended to result in, and did result in, the sale of Defendants' monthly membership program:

(5) Representing that goods or services have...characteristics...uses, benefits...that they do not have...

(7) Representing that goods or services are if a particular standard, quality or grade...if they are of another.

(9) Advertising goods or services with the intent not to sell them as advertised.

(16) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.

32. Defendants violated the CLRA by representing and failing to disclose material facts regarding its monthly membership program, as described above, when they knew, or should have known, that the representations were false and misleading and that the omissions were of material facts they were obligated to disclose.

33. Plaintiff and the Class members acted reasonably when they purchased and paid for a WEIGHT WATCHERS program expecting continued use of its original promised services. Plaintiff and the Class suffered injuries caused by Defendants because they have paid for and been deprived of the full value of Defendants' services.

34. Plaintiff and the other Class members' injuries were proximately caused by Defendants' fraudulent and deceptive business practices. However, Plaintiff and the other Class members reserve any claim for damages under the CLRA and by this Complaint bring only an action for injunctive relief under the CLRA pursuant to § 1782(d) of the Act.

35. Pursuant to California Civil Code §1782(d), Plaintiff and the Class seek a Court

1 order enjoining the above-described wrongful acts and practices of Defendants.

2 36. Pursuant to § 1782 of the Act, Plaintiff provided Defendants with written notice of
3 its violations of the CLRA on May 21, 2020, attached hereto as **Exhibit A**, demanding that
4 Defendants rectify the problems associated with the actions detailed above and give notice to all
5 affected consumers of Defendants' intent to so act.

6 37. If Defendants fail to rectify or agree to rectify the problems associated with the
7 actions detailed above and give notice to all affected consumers within 30 days of the date of
8 written notice pursuant to § 1782 of the Act, Plaintiff will amend this Complaint to add claims for
9 damages, restitution, and disgorgement under the CLRA as appropriate, under the California Civil
10 Code § 1780, pursuant to California Civil Code § 1782(d) ("Not less than 30 days after the
11 commencement of an action for injunctive relief, and after compliance with subdivision (a), the
12 consumer may amend his or her complaint without leave of court to include a request for
13 damages.").

14 38. Pursuant to §1780(d) of the Act, attached hereto as **Exhibit B** is the affidavit
15 showing that this action has been commenced in the proper forum.

16 39. WHEREFORE, Plaintiff, and the Class members she seeks to represent, request
17 relief as described herein and below.

18
19 **Second Cause of Action**

20 **Violation of Unfair Competition Law**

21 **(Bus. & Prof. Code, §§ 17200-17208)**

22 40. Plaintiff repeats and incorporates herein by reference every allegation set forth
23 above, as though fully set forth herein.

24 41. Plaintiff brings this claim individually and on behalf of the Class members.

25 42. Business & Professions Code Section 17200 provides:

26 As used in this chapter, unfair competition shall mean and include any unlawful,
27 unfair, or fraudulent . . . business act . . .

28 43. Defendants' retention of the monthly fees without providing the full services

1 promised, as set forth above, constitutes unlawful and/or unfair business acts or practices.

2 44. A business act or practice is “unlawful” if it violates any established state or federal
3 law.

4 45. In the course of conducting business, Defendants committed unlawful business
5 practices by making the misrepresentation and omissions described herein. Defendants violated
6 Cal. Civ. Code §§ 1572, 1573, 1709, 1711, 1770(a)(5), (7), (9) and (16); California Business &
7 Professions Code §§ 17500 *et seq.*; and the common law, including breach of contract. Defendants’
8 above-described wrongful acts and practices constitute actual and constructive fraud within the
9 meaning of Civil Code §§ 1572 and 1573, as well as deceit, which is prohibited under Civil Code
10 §§ 1709 and 1711.

11 46. Plaintiff and the Class reserve the right to allege other violations of law, which
12 constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this
13 date.

14 47. A business act or practice is “unfair” under the Unfair Competition Law if the
15 reasons, justifications and motives of the alleged wrongdoer are outweighed by the gravity of the
16 harm to the alleged victims.

17 48. Defendants’ acts and practices, as described above, has the effect of misleading
18 consumers into believing they will have access to all of the program benefits by paying the monthly
19 fee.
20

21 49. As a result of the conduct described above, Defendants have been, and will continue
22 to be, unjustly enriched at the expense of Plaintiff and members of the proposed Class.
23 Specifically, Defendants have been unjustly enriched by the profits it has obtained from Plaintiff
24 and the Class from the purchases of Defendants’ monthly membership program.

25 50. Through its unlawful, unfair, and fraudulent acts and practices, Defendants have
26 obtained, and continue to unfairly obtain, money from members of the Class. As such, Plaintiff
27 requests that this Court cause Defendants to restore this money to Plaintiff and all Class members,
28 to disgorge the profits Defendants made on these transactions, and to enjoin Defendants from

1 continuing to violate the Unfair Competition Law as discussed herein. Otherwise, the Class may
 2 be irreparably harmed and/or denied an effective and complete remedy if such an order is not
 3 granted.

4 51. WHEREFORE, Plaintiff and the Class members she seeks to represent request
 5 relief as described herein and below.

6 **Third Cause of Action**

7 **Violation of California's False Advertising Law,**
 8 **California Business & Professions Code §§17500, *et. Seq***

9 52. Plaintiff repeats and incorporates herein by reference every allegation set forth
 10 above, as though fully set forth herein.

11 53. Plaintiff brings this claim individually and on behalf of the Class members.

12 54. California's False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*,
 13 makes it "unlawful for any person to make or disseminate or cause to be made or disseminated
 14 before the public in this state, ... in any advertising device ... or in any other manner or means
 15 whatever, including over the Internet, any statement, concerning ... personal property or services,
 16 professional or otherwise, or performance or disposition thereof, which is untrue or misleading
 17 and which is known, or which by the exercise of reasonable care should be known, to be untrue or
 18 misleading."
 19

20 55. Defendants engaged in a scheme of charging customers the monthly membership
 21 fee even after they closed their WEIGHT WATCHERS locations, consequently, denying the full
 22 benefits of the membership to Plaintiff and the Class members.

23 56. Defendants' advertisements and inducements were made in California and come
 24 within the definition of advertising as contained in Bus. & Prof. Code § 17500, *et seq.* in that the
 25 promotional materials were intended as inducements to enroll in WEIGHT WATCHERS
 26 programs, and are statements disseminated by Defendants to Plaintiff and Class members.
 27 Defendants knew that these statements were inaccurate and misleading.

28 57. Defendants' advertising that the WEIGHT WATCHERS programs are accessible,

1 and that its customers would have access to its various locations and services upon paying a
 2 monthly membership fee is false and misleading to reasonable consumers, including Plaintiff,
 3 because Defendants in fact closed its WEIGHT WATCHERS locations while continuing to charge
 4 customers for access.

5 58. Defendants violated § 17500, *et seq.* by misleading Plaintiff and Class members to
 6 believe that they would be charged fees only when they have access to WEIGHT WATCHERS.

7 59. Defendants knew or should have known, through the exercise of reasonable care
 8 that its advertising of WEIGHT WATCHERS as being accessible is false and misleading. Further,
 9 Defendants knew or should have known that it was breaching its contracts with its customers and
 10 fraudulently charging fees when it continued charging fees while WEIGHT WATCHERS'
 11 locations were closed.

12 60. Plaintiff and Class members lost money or property as a result of Defendants'
 13 violation because (a) they would not have purchased or paid for WEIGHT WATCHERS absent
 14 Defendants' representations and omission of a warning that it would continue charging customers'
 15 credit cards and debit cards while WEIGHT WATCHERS locations nationwide are closed; (b)
 16 they would not have purchased or paid for a WEIGHT WATCHERS program on the same terms
 17 absent Defendants' representations and omissions; (c) they paid a price premium for a WEIGHT
 18 WATCHERS' program based on Defendants' misrepresentations and omissions; and (d)
 19 WEIGHT WATCHERS programs did not have the characteristics, benefits, or quantities as
 20 promised.
 21

22 Fourth Cause of Action

23 **Money Had and Received**

24 61. Plaintiff repeats and incorporates herein by reference every allegation set forth
 25 above, as though fully set forth herein.

26 62. Plaintiff brings this claim individually and on behalf of the Class members.

27 63. Defendants received and continue to receive monthly membership fees that were
 28 intended to be used for the benefit of Plaintiff and the Class members. Defendants did not use

1 those membership fees for the benefit of Plaintiff and the Class members and has not returned any
2 of the wrongfully obtained money.

3 64. WHEREFORE, Plaintiff, and the Class members she seeks to represent, request
4 relief as described herein and below.

5 **Fifth Cause of Action**

6 **Unjust Enrichment**

7 65. Plaintiff repeats and incorporates herein by reference every allegation set forth
8 above, as though fully set forth herein.

9 66. Plaintiff brings this claim individually and on behalf of the Class members.

10 67. Plaintiff and Class members conferred benefits on Defendants by paying its
11 monthly membership fees.

12 68. Defendants have knowledge of such benefits.

13 69. Defendants have been unjustly enriched in retaining the revenues derived from
14 Plaintiff and Class members' monthly membership fees without providing the expected full
15 services.

16 70. Retention of Plaintiff's and Class members monthly membership fees under these
17 circumstances is unjust and inequitable because Defendants are not providing all of the
18 membership benefits they represented to Plaintiff and Class members, including access to its
19 physical locations.

20 71. Defendants retaining the monthly membership fee injures Plaintiff and Class
21 members because they are not receiving the full benefits of Defendants' monthly service.

22 72. Because Defendants' retention of the non-gratuitous benefits conferred on it by
23 Plaintiff and Class members is unjust and inequitable, Defendants must pay restitution to Plaintiff
24 and members of the Class for Defendants' unjust enrichment, in an amount to be determined at
25 trial.

26 73. WHEREFORE, Plaintiff, and the Class she seeks to represent, request relief as
27 described herein and below.
28

Sixth Cause of Action

Breach of Contract, Including Breach of the Implied Covenant of Good Faith and Fair Dealing

74. Plaintiff repeats and incorporates herein by reference every allegation set forth above, as though fully set forth herein.

75. At all relevant times, Plaintiff and the Class paid monthly membership fees to Defendants and have otherwise performed all obligations under the contract.

76. As alleged above, Defendants owed duties and obligations to Plaintiff including the duty to only charge Plaintiff and the Class membership fees if Defendants provided the membership benefits to Plaintiff and the Class.

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

78. Defendants breached the covenant of good faith and fair dealing because, to the extent Defendants had the discretion to bill the monthly membership rate, that discretion was sufficiently constrained under the terms of the contract to support an implied obligation of good faith and fair dealing.

79. Defendants exercised its discretion in bad faith and breached the implied covenant of good faith and fair dealing by, among other things charging Plaintiff and the Class membership and usage fees even after Defendant closed its physical locations and by not refunding the full amount of the charges.

80. Defendant's contractual breaches, including its breach of the implied covenant of good faith and fair dealing, caused Plaintiff and the Class to suffer damages in an amount to be determined at trial.

PRAYER FOR RELIEF

1. Certifying the Class and California Subclass as requested and naming Plaintiff as representative of the Class and Plaintiff's attorneys as Class Counsel to represent the Class members;
2. Award declaring that Defendants' conduct violates the statutes and laws referenced herein;
3. For an award finding in favor of Plaintiff and the Class members on all counts asserted herein;
4. For compensatory damages in amounts to be determined by the Court and/or jury;
5. For prejudgment interest on all amounts awarded;
6. For an order of restitution and all other forms of equitable monetary relief;
7. For injunctive relief as pleaded or as the Court may deem proper;
8. For an order awarding Plaintiff and the Class their reasonable attorneys' fees and expenses and costs of suit; and
9. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: May 21, 2020

JAMES HAWKINS APLC

By: _____


JAMES HAWKINS
GREGORY MAURO
MICHAEL CALVO

Attorneys for Plaintiff
SANDRA QUINTANILLA, individually and
on behalf of all others similarly situated

ClassAction.org

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