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Executive Officer/Clerk of Court,
By D. Jackson Aubry, Deputy Clerk

Attorneys for Plaintiff
BARRY S. STEINHARDT, an individual

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

11 BARRY S. STEINHARDT, an individual, on)
12 behalf of himself, all others similarly)
13 situated, and the general public,)

14 Plaintiff,

15 v.

16 BLUE CROSS OF CALIFORNIA, a)
17 California corporation, ANTHEM BLUE)
18 CROSS LIFE AND HEALTH)
19 INSURANCE COMPANY, a California)
20 corporation, AMERICAN SPECIALTY)
21 HEALTH FITNESS, INC., a Delaware)
22 Corporation, AMERICAN SPECIALTY)
23 HEALTH INCORPORATED, a Delaware)
24 corporation, and DOES 1 through 100,)

25 Defendants.

Case No. **23STCV07649**
(Class Action, Cal Code Civ. Proc. §382)
COMPLAINT FOR DAMAGES
DEMAND FOR JURY TRIAL

1 1. BARRY S. STEINHARDT, on behalf of himself, all others similarly situated, and the
2 general public (hereinafter “Plaintiff”) files this Complaint against Defendants BLUE CROSS
3 OF CALIFORNIA, a California corporation, ANTHEM BLUE CROSS LIFE AND HEALTH
4 INSURANCE COMPANY, a California corporation (the two foregoing defendant may
5 collectively hereinafter at times be referred to as “the ANTHEM Defendants”), AMERICAN
6 SPECIALTY HEALTH FITNESS, INC., a Delaware corporation, AMERICAN SPECIALTY
7 HEALTH INCORPORATED, a Delaware corporation (the two foregoing entities hereinafter
8 may, at times, be collectively referred to as “AMERICAN SPECIALTY”), and DOES 1 to
9 100, inclusive (all defendants may hereinafter collectively be referred to as "Defendants").

10 2. The allegations set forth in this complaint are based upon the personal knowledge of
11 Plaintiff as to his own acts, and upon information and belief as to all other matters, based
12 upon, among other things, the investigation undertaken by his counsel from information that is
13 publicly available.

14 **I.**

15 **GENERAL ALLEGATIONS**

16 3. Pursuant to Code of Civ. Proc. (“CCP”) § 382, Bus. & Prof. Code ("B&PC") § 17200, et
17 seq., and other statutory and common law as set forth below, Plaintiff has filed this action,
18 seeking class action treatment, to recover damages, penalties and restitution from Defendants
19 for their violations of, *inter alia*, the aforementioned laws.

20 4. The acts complained of herein have occurred, are presently occurring, and are expected
21 to continue occurring, within the time period from four years preceding the filing of the
22 original Complaint herein plus such periods of time for tolling of the applicable statutes of
23 limitations, up to and through the time of trial for this matter (hereinafter, the "Relevant Time
24 Period").

25 5. Starting in or about March 2020 (and perhaps earlier), Defendants engaged in a pattern
26 of fraudulent, deceitful and intentionally harmful activity in violation of both statutory and
27 common law that have resulted in material losses to Plaintiff and the putative class.

28

1 6. During the nationwide Covid lockdowns, Defendants collected money from Plaintiff,
2 the Plaintiff Class and the Subclass in exchange for access to and use of fitness centers
3 throughout the United States.

4 7. Defendants, in turn, paid participating fitness centers throughout the United States to
5 provide said access and use to Plaintiff, the Plaintiff Class, and the Subclass.

6 8. However, the Covid lockdown orders prevented Plaintiff, the Plaintiff Class and the
7 Subclass from having access to and use of the fitness centers for which they had paid.

8 9. As a result, participating fitness centers ceased charging Defendants for the services
9 (i.e., access to and use of the fitness centers) they had previously provided to Plaintiff, the
10 Plaintiff Class, and the Subclass.

11 10. Nevertheless, in a remarkable showing of bad faith and truly sharp business practices
12 during the pandemic lockdowns, Defendants continued to collect money from Plaintiff and the
13 Plaintiff Class and Subclass, as if they were being charged by the fitness centers (when they
14 were not) and as if they were, in fact, providing access to and use of the fitness centers in
15 question (when they were not).

16 11. How did this play out with respect to these Defendants?

17 12. The ANTHEM Defendants operate as a health insurance provider.

18 13. Defendant AMERICAN SPECIALTY operates and administers fitness programs for
19 individuals and various companies, including the ANTHEM Defendants.

20 14. Subscribers to the ANTHEM Defendants' insurance policies (e.g., groups of over 100
21 employees) and subscribers' dependents, as part of their policies, were entitled to certain
22 additional benefits.

23 15. These additional benefits included, among others, a number of fitness and exercise
24 services such as a provision of a Fit Bit and, relevant to this action, membership in the
25 "Active&Fit Direct" program (hereinafter "the Program") operated by AMERICAN
26 SPECIALTY.

27 16. The Program was, in essence, a discounted gym membership program.
28

- 1 17. The ANTHEM Defendants represented in writing to its insureds and their dependents,
2 including Plaintiff herein, that, as part of the Program, they would receive discounted gym
3 membership benefits in consideration for the premiums paid to the ANTHEM Defendants.
- 4 18. The fees associated with the Program were generally (A) a twenty-five dollars (\$25.00)
5 enrollment fee plus (B) twenty-five dollars (\$25.00) per month.
- 6 19. Those insureds of the ANTHEM Defendants and their dependents who took advantage
7 of this offer are referred to herein as ANTHEM Program Members.
- 8 20. Persons who paid AMERICAN SPECIALTY, whether through other insurance carriers
9 or separately, will be referred to hereinafter as Program Members.
- 10 21. The ANTHEM DEFENDANTS promised Anthem Program Members in exchange for
11 their payment of the fees noted above, that they could use “11,000+ fitness centers
12 participating in [the Program] network nationwide...with no long-term contract!”
- 13 22. Program Members paid their enrollment and monthly membership fees to AMERICAN
14 SPECIALTY’s Program, rather than to fitness centers themselves.
- 15 23. The ANTHEM Defendants profited from this advertising scheme purporting to offer its
16 product with competitive benefits as compared to other insurers in the marketplace.
- 17 24. The ANTHEM Defendants’ advertising scheme was a ruse.
- 18 25. Plaintiff and the putative class herein did not receive the full benefit for which they
19 bargained with the Defendants.
- 20 26. Plaintiff and the putative class paid the full cost of their health insurance premiums and
21 “discounted” gym membership without being able to utilize those memberships during the
22 Covid-19 pandemic.
- 23 27. Once various state and local ordinances imposed gym closures in California, the
24 ANTHEM Defendants failed to notify its insureds that they were no longer able to utilize the
25 discounted gym membership for which they had paid.
- 26 28. The ANTHEM Defendants failed to notify its insureds that they would continue to be
27 charged for gym memberships through the Program, even though they would not be able to
28 use the gyms.

1 29. The ANTHEM Defendants failed to provide any compensation for the reduction in
2 services, for which Program Members had already paid.

3 30. The ANTHEM Defendants knew that AMERICAN SPECIALTY was charging the
4 Program Members during the Covid-19 lockdowns and that AMERICAN SPECIALTY was
5 not paying participating fitness centers, such as the one that Plaintiff attended, i.e., LA Fitness.

6 31. While the fitness centers appear to have acted honorably by not charging for services
7 that they were not providing, the ANTHEM Defendants and AMERICAN SPECIALTY did
8 not.

9 32. Instead, AMERICAN SPECIALTY conspired with the ANTHEM Defendants to
10 maintain the façade for public consumption that gyms, like LA Fitness, were still charging
11 AMERICAN SPECIALTY for the Program subscribers, thus justifying the continued debiting
12 of Program Members' accounts on a monthly basis for the ostensible, but nonetheless illusory
13 benefit of gym membership.

14 33. At least one of the ANTHEM Defendants' competitors, i.e., United Healthcare, in
15 contrast, apparently requires its insureds to regularly submit detailed evidence of gym
16 attendance to obtain reimbursement payments subsidizing their gym membership.

17 34. Knowing that submitting such evidence to a carrier is a cumbersome process and
18 surmising that imposing such an obligation on insureds would not be popular, the ANTHEM
19 Defendants strategically chose to offer discounted gym memberships through AMERICAN
20 SPECIALTY's Program, rather than requiring their insureds to provide documentation of gym
21 attendance to effectively reduce their insurance premiums.

22 35. The ANTHEM Defendants utilized the discounted gym membership Program through
23 AMERICAN SPECIALTY as a talking point in selling insurance, to make their insurance
24 product more attractive than that of its competitors.

25 36. With regard to Plaintiff, he signed up for his membership in the Program, in or about
26 June 2019 and paid a fifty-dollar (\$50.00) "Setup fee" to participate in the Program.

27 37. Plaintiff was a member of the Program during the entirety of the Covid lockdowns,
28 pursuant to which he was debited \$25/month from AMERICAN SPECIALTY.

1 38. In accordance with the Program, Plaintiff signed up to work out at LA Fitness, and he
2 paid all membership fees to the Defendants, rather than LA Fitness directly, so he could have
3 access to and use the LA Fitness facilities.

4 39. On or about March 16, 2020, Plaintiff received a notice that LA Fitness facilities would
5 be closed due to Covid-19 at least until April 1, 2020.

6 40. Gyms, like the LA Fitness facility that Plaintiff attended, were closed for approximately
7 one year, during which time Defendants improperly charged Plaintiff and Class Members for
8 services they did not provide.

9 **II.**

10 **JURISDICTION AND VENUE**

11 41. This Court is the proper court and this action is properly filed in the County of Los
12 Angeles and in this judicial district, because Defendants do business in the State of California
13 and the County of Los Angeles, and because a substantial portion of Defendants' obligations
14 and liability arise therein, including at 21215 Burbank Blvd., Woodland Hills, CA 91367.

15 **III.**

16 **PARTIES**

17 NAMED PLAINTIFF

18 42. Plaintiff Barry S. Steinhardt is a California resident that, at all relevant times mentioned
19 in this complaint, has been domiciled in the State of California.

20 DEFENDANT BLUE CROSS OF CALIFORNIA

21 43. BLUE CROSS OF CALIFORNIA, a California corporation is a California Corporation
22 and existing under the laws of the State of California with its principal place of business
23 located at 21215 Burbank Blvd., Woodland Hills, CA 91367.

24 DEFENDANT ANTHEM BLUE CROSS LIFE AND HEALTH INSURANCE COMPANY

25 44. ANTHEM BLUE CROSS LIFE AND HEALTH INSURANCE COMPANY is a
26 California Corporation and existing under the laws of the State of California with its principal
27 place of business located at 21215 Burbank Blvd., Woodland Hills, CA 91367.

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1 DEFENDANT AMERICAN SPECIALTY HEALTH FITNESS, INC.

2 45. Defendant American Specialty Health Fitness, Inc., is a corporation organized and
3 existing under the laws of the State of Delaware with its principal place of business located at
4 10221 Wateridge Circle, San Diego, California 92121, and it is a wholly owned subsidiary of
5 Defendant AMERICAN SPECIALTY HEALTH INCORPORATED.

6 DEFENDANT AMERICAN SPECIALTY HEALTH INCORPORATED.

7 46. Defendant AMERICAN SPECIALTY HEALTH INCORPORATED is a corporation
8 organized and in existence under the laws of the State of Delaware with its principal place of
9 business located at 10221 Wateridge Circle, San Diego, California 92121.

10 DOE DEFENDANTS

11 47. The true names and capacities of the defendants sued herein as DOES 1 through 100,
12 inclusive, are currently unknown to Plaintiffs, who therefore sue such defendants by such
13 fictitious names. Each of the defendants designated herein as a DOE is legally responsible in
14 some manner for the unlawful acts referred to herein. Plaintiffs will seek to add to this
15 Complaint the actual names, capacities and roles of the DOE defendants when such identities
16 become known. DOES 1 through 15 are insurance carriers similarly situated to DEFENDANT
17 BLUE CROSS OF CALIFORNIA and ANTHEM BLUE CROSS LIFE AND HEALTH
18 INSURANCE COMPANY

19 48. Excluded from the Class are the following: Defendants, any entity in which any
20 Defendant has a controlling interest, and each Defendants' officers, directors, affiliates, legal
21 representatives, employees, co-conspirators, successors, subsidiaries, and assigns;
22 governmental entities; and, any judge or magistrate presiding over this action, as well as their
23 immediate family members.

24 49. Defendant AMERICAN SPECIALTY HEALTH INCORPORATED exerts pervasive
25 operational control over Defendant AMERICAN SPECIALTY HEALTH FITNESS, INC.

26 50. AMERICAN SPECIALTY HEALTH INCORPORATED is the parent company of
27 AMERICAN SPECIALTY HEALTH FITNESS, INC. and that the Program is run by both
28 companies.

1 51. Upon information and belief, AMERICAN SPECIALTY HEALTH FITNESS, INC.
2 operates solely to administer and operate the Program for AMERICAN SPECIALTY
3 HEALTH INCORPORATED.

4 52. AMERICAN SPECIALTY HEALTH INCORPORATED and AMERICAN
5 SPECIALTY HEALTH FITNESS, INC. operate out of the same office and share the same
6 officers.

7 53. Moreover, in addition to AMERICAN SPECIALTY HEALTH INCORPORATED and
8 AMERICAN SPECIALTY HEALTH FITNESS, INC. having board members in common,
9 they also have numerous employees in common, including employees who are managing
10 agents, all of whom are co-employed by the defendants, and each of them.

11 54. As such, joint and several liability is appropriately asserted against AMERICAN
12 SPECIALTY HEALTH FITNESS, INC. states that AMERICAN SPECIALTY HEALTH
13 INCORPORATED in the causes of action set forth below.

14 55. Defendant BLUE CROSS OF CALIFORNIA, also, exerts pervasive operational control
15 over Defendant ANTHEM BLUE CROSS LIFE AND HEALTH INSURANCE COMPANY.

16 56. BLUE CROSS OF CALIFORNIA and ANTHEM BLUE CROSS LIFE AND HEALTH
17 INSURANCE COMPANY operate out of the same office and share the same officers.

18 57. Moreover, in addition to BLUE CROSS OF CALIFORNIA and ANTHEM BLUE
19 CROSS LIFE AND HEALTH INSURANCE COMPANY having board members in common,
20 they also have numerous employees in common, including employees who are managing
21 agents, all of whom are co-employed by the defendants, and each of them.

22 58. As such, joint and several liability is appropriately asserted against BLUE CROSS OF
23 CALIFORNIA and ANTHEM BLUE CROSS LIFE AND HEALTH INSURANCE
24 COMPANY in the causes of action set forth below.

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1 IV.

2 CLASS ACTION ALLEGATIONS

3 59. Pursuant to Calif. Civ. Proc. § 382 this action is brought and may be properly
4 maintained as a class action. This action satisfies the numerosity, commonality, typicality,
5 adequacy, predominance, and superiority requirements of those provisions.

6 **Class and Subclass Definitions:**

7 60. Plaintiff brings this suit as a proposed class action on behalf of a **Class defined as**
8 **follows:**

9 Any persons, whether individuals or business entities, that, at any time during the past
10 four years, plus such additional time as the statutes of limitations are deemed to have
11 been tolled, enrolled with AMERICAN SPECIALTY to participate in its Active&Fit
12 Direct program in California.

13 61. Plaintiff brings this suit as a proposed class action on behalf of a **Subclass defined as**
14 **follows:**

15 Any persons, whether individuals or business entities, that, at any time during the past
16 four years, plus such additional time as the statutes of limitations are deemed to have
17 been tolled, who were insureds or dependents of the insureds of the ANTHEM
18 Defendants, who enrolled with AMERICAN SPECIALTY to participate in its
19 Active&Fit Direct program in California.

20 62. Any person that is a member of the above-defined Class may hereinafter be referred to
21 as a Class Member, and any person that is a member of the above-defined Subclass may
22 hereinafter be referred to as a Subclass Member.

23 63. Numerosity: The potential membership in the Class and Subclass is so numerous that
24 joinder of all members is impractical. While the exact number of members in the class and
25 subclasses is presently unknown to Plaintiff, Plaintiff estimates membership in the Class to
26 exceed 5,000 and the subclasses to exceed 2,500. The exact number and specific identities of
27 the members of the Class and Subclass may be readily ascertained through inspection of
28 Defendants' business records.

1 64. Questions of Law or Fact Common to the Class: Numerous questions of law and/or fact
2 are common to all members of the Class (and that these common questions predominate over
3 any individual issues), including, without limitation:

- 4 a. Whether Defendants continuing to charge monthly fees for
5 memberships that could not be used pursuant to the Program
6 constitutes a violation of applicable statutory laws, including but not
7 limited to unlawful, unfair and fraudulent business acts as well as false
8 and misleading advertising, as set forth below;
- 9 b. Whether the Defendants herein unlawfully profited from Defendants
10 continuing to charge monthly fees for memberships that could not be
11 used pursuant to the Program;
- 12 c. Whether the wrongful conduct alleged herein is in violation of state
13 enacted consumer protection acts, state enacted unfair trade practices,
14 and/or common law; and,
- 15 d. Whether the members of the Class and Subclass are entitled to
16 payment of restitution or damages, plus interest thereon.

17 65. Typicality: Plaintiffs claims are typical of the claims of all members of the Class
18 and Subclass it seeks to represent. Defendants treated both Plaintiff and all members of the
19 Class and Subclass in a virtually identical manner with respect to the violations of law asserted
20 herein. These violations of law arise out of Defendants' common course of conduct in, *inter*
21 *alia*, Defendants' deceitful business practices with respect to the Program's membership
22 services. Plaintiffs and the other members of the Class and Subclass have sustained economic
23 injuries arising from the conduct of the Defendants, and the relief sought is common to each
24 member of the Class and Subclass.

25 66. Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
26 Class he seeks to represent. Plaintiff is an adequate representative of the Class because it is a
27 member of the Class and Subclass and his interests do not conflict with the interests of the
28 members of the Class he seeks to represent. Moreover, Plaintiff has retained counsel

1 competent and experienced in the prosecution of complex class actions, and Plaintiff and his
2 counsel intend to prosecute this action vigorously for the benefit of the Class. The interests of
3 the Plaintiff Class and Subclass will be fairly and adequately protected by Plaintiff and his
4 counsel.

5 67. Superiority: This action is properly brought as a class action not only because the
6 prerequisites of Cal. Code of Civ. Proc. §384 and common law related thereto are satisfied (as
7 outlined above), but also because of the following:

- 8 a. The prosecution of separate actions by or against individual members
9 of the Class would create risk of inconsistent or varying adjudications
10 with respect to individual members of the Class which would establish
11 incompatible standards of conduct for the party opposing the Class;
- 12 b. Adjudications with respect to individual members of the Class would,
13 as a practical matter, be dispositive of the interests of the other
14 members not parties to the adjudications or substantially impair or
15 impede their ability to protect their interests;
- 16 c. Defendants have acted or refused to act on grounds generally
17 applicable to all members of the Class, making declaratory relief
18 appropriate with respect to all of the Class;
- 19 d. Questions of law or fact common to the members of the Class
20 predominate over any questions affecting only individual members;
21 and,
- 22 e. Class action treatment is superior to other available methods for the
23 fair and efficient adjudication of the controversy.

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V.

INDIVIDUAL CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Breach of Implied Duty of Good Faith and Fair Dealing)

(By the Plaintiff, the Class, and the Subclass Against All Defendants)

68. Plaintiff incorporates herein by this reference all of the paragraphs previously set forth in this Complaint, as though the same were fully set forth herein.

69. Plaintiff and Defendants entered into a contract whereby Defendants promised, in exchange for a setup fee and monthly payments, Plaintiff would have access to and could utilize fitness center facilities throughout the United States.

70. Plaintiff paid in full for the services Defendants promised to provide.

71. During the Covid lockdowns, while fitness centers were closed, and thus inaccessible, Defendants continued to charge Plaintiff, the Plaintiff Class and the Subclass full monthly fees.

72. By doing so, Defendants did not act fairly and in good faith.

73. Plaintiff, the Class and the Subclass were harmed by Defendants' conduct.

74. Defendants' conduct exhibited malice, fraud, and/or oppression, thus warranting the imposition of punitive damages.

SECOND CAUSE OF ACTION

(Negligent Misrepresentation)

(By the Plaintiff, the Class, and the Subclass Against All Defendants)

75. Plaintiff incorporates herein by this reference all of the paragraphs previously set forth in this Complaint, as though the same were fully set forth herein.

76. During the relevant time period, Defendants herein represented on a continuous basis to Plaintiff, the Class and the Subclass that important facts were true, i.e., that Plaintiff's, the Class' and Subclass' Program membership would not be disrupted and that it would enable

1 them to use more than 11,000 fitness centers across the country and all that was required was
2 that they pay monthly fees in exchange for the same.

3 77. Defendants continued to make these representations in writing even during the Covid
4 lockdowns in California that resulted in the closure of fitness centers throughout the state.

5 78. Moreover, Plaintiff, the Class and the Subclass were informed that the Program
6 membership payments were still due, when they were not, in fact, being charged by
7 participating gyms due to Covid-19 lockdowns.

8 79. These representations were also false, and Defendants had no reasonable grounds for
9 believing these representations to be true, particularly when made during the Covid-19
10 lockdowns.

11 80. Defendants intended Plaintiff, the Class and the Subclass to rely on these
12 representations.

13 81. Plaintiff, the Class and the Subclass reasonably relied on these representations when
14 they entered into and/or when they maintained their memberships during the Covid-19
15 lockdowns.

16 82. Plaintiff, the Class and the Subclass were harmed.

17 83. Plaintiff's, the Class' and the Subclass' reliance on Defendants' false representations
18 was a substantial factor in causing the Plaintiff's, the Class' and the Subclass' harm.

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THIRD CAUSE OF ACTION

21

Violation of California's Health Studio Services

22

Contract Law Civil Code § 1812.80, *et seq.*

23

(By the Plaintiff, the Class, and the Subclass Against All Defendants)

24

84. Plaintiff incorporates herein by this reference all of the paragraphs previously set forth
25 in this Complaint, as though the same were fully set forth herein.

26

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

1 86. Here, PLAINTIFF and the Class Members signed up, paid for and continued to maintain
2 Plan membership based on Defendants’ false and misleading representation that Plaintiff, and
3 the Class Members would have access to participating fitness centers, when, in fact, they did
4 not have such access during the pandemic lockdowns.

5 87. Defendants represented that (A) Plaintiff, the Class and the Subclass would have access
6 to “11,000+ fitness centers participating in [the Program] network nationwide... All with no
7 long-term contract!” and that (B) Plaintiff, the Class and the Subclass would “continue to be
8 able to access LA Fitness Signature clubs and the aforementioned New York-based LA Fitness
9 clubs without disruption for the duration of ... [his] Active&Fit Direct™ program membership
10 (subject to the program's terms), as long as ... [he] remain[ed] an Active&Fit Direct member.”

11 88. Defendants intended Plaintiff, the Class and the Subclass to rely on these
12 representations.

13 89. Plaintiff, the Class and the Subclass did reasonably rely on these representations when
14 they entered into and/or maintained their memberships during the Covid-19 lockdowns.

15 90. Plaintiff, the Class and the Subclass were harmed.

16 91. Plaintiff’s, the Class’ and the Subclass’ reliance on Defendants’ false representations
17 was a substantial factor in causing the Plaintiff’s, the Class’ and the Subclass’ harm.

18

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FOURTH CAUSE OF ACTION

20

(California Unfair Competition Law

21

Cal. Bus. & Prof. Code § 17200, et seq.)

22

(By the Plaintiff, the Class, and the Subclass Against All Defendants)

23

92. Plaintiff incorporates herein by this reference all of the paragraphs previously set forth
24 in this Complaint, as though the same were fully set forth herein.

25

93. Cal. Bus. & Prof. Code § 17200, et seq. proscribes various acts, including unlawful,
26 unfair, fraudulent, deceptive, acts, which include untrue and/or misleading advertising.

27

94. The requirements to demonstrate that conduct is deemed “fraudulent” within the
28 meaning of § 17200 is far less rigorous than the requirements of common law fraud.

1 95. A business practice is “fraudulent” within the meaning of § 17200 if “members of the
2 public are likely to be deceived.” (*Committee on Children’s Television v. General Foods Corp.*
3 (1983) 35 C3d 197, 211; accord, *Kasky v. Nike, Inc.* (2002) 27 Cal. 4th 939; and *Prata v.*
4 *Superior Court* (2001) 91 Cal.App. 4th 1128, 1144.)

5 96. In contrast to common law fraud in California, “[u]nder the *Children’s Television* test, a
6 plaintiff can prove a *prima facie* case that a business practice is ‘fraudulent’ *without* having to
7 prove intent, scienter, actual reliance, or damage. *Even actual deception is not required.* All
8 that is required is proof that ‘members of the public are *likely* to be deceived.’” (“Fraudulent”
9 Business Practices, Bus. & Prof. C. 17200 Ch. 3-H (Rutter), *citing Schnall v. Hertz Corp.*
10 (2000) 78 CA4th 1144, 1167 and *People v. Orange County Charitable Servs.* (1999) 73 CA4th
11 1054, 1076; *italics* added).

12 97. Virtually any statement made in connection with the sale of a product or service is
13 considered “advertising.” (*Chern v. Bank of America* (1976) 15 Cal. 3d 866, 875-876, where
14 statements over the telephone by a loan officer regarding interest rates being charged were
15 found to be “advertising.”)

16 98. Bus. & Prof. Code, § 17200 “imposes strict liability. It is not necessary to show that the
17 defendant intended to injure anyone.” *South Bay Chevrolet v. General Motors Acceptance*
18 *Corp.* (1999) 72 Cal.App.4th 861, 877 (citation omitted).

19 99. In *South Bay*, the court held that “the statute [i.e., §17200] authorizes courts to order
20 restitution without individualized proof of deception, reliance, and injury if necessary to
21 prevent the use or employment of an unfair practice.” *South Bay Chevrolet, supra*, 72
22 Cal.App.4th at 862 (citation omitted).

23 100. Defendants here continued to charge Plaintiff, the Class and the Subclass with full
24 monthly fees for services that the Defendants were not providing, because the lockdown orders
25 had resulted in all or nearly all fitness centers closing throughout the entire state of California.

26 101. Defendants’ conduct hereinabove was illegal (i.e., in violation of, inter alia, Civ. Code.,
27 §1812.80 et seq.), dishonest, and “unfair” within the meaning of §17200, because, despite the
28

1 fact that the Defendants were not providing the services they promised, they did not offer any
2 discounts to Plaintiff, the Class, or the Subclass. *See e.g., Chern, supra*, 15 Cal. 3d at 876.

3 102. Defendants also falsely represented that (A) Plaintiff, the Class and the Subclass would
4 have access to “11,000+ fitness centers participating in [the Program] network nationwide...
5 All with no long-term contract!” and that (B) Plaintiff, the Class and the Subclass would
6 “continue to be able to access LA Fitness Signature clubs and the aforementioned New York-
7 based LA Fitness clubs without disruption for the duration of ... [his] Active&Fit Direct™
8 program membership (subject to the program's terms), as long as ... [he] remain[ed] an
9 Active&Fit Direct member.”

10 103. Defendants’ scheme operated to unlawfully and fraudulently extract revenue from
11 Plaintiff, the Class and the Subclass by requiring them to pay monthly membership fees for
12 services they could not use.

13 104. Plaintiff and Plaintiff California Subclass were deprived of the benefit of the original
14 Program membership agreement; thus, they are entitled to and thus seek restitution from
15 Defendants for fees paid during the life of Defendants’ fraudulent scheme.

16
17 **VI.**

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, Plaintiff BARRY S. STEINHARDT prays, for himself and on behalf
20 of the Plaintiff Class and Subclass:

- 21 a. That the Court issue an Order certifying the class and subclass herein, appointing the
22 named Plaintiff as the class representative of all others similarly situated, and
23 appointing the law firms representing the named Plaintiff as counsel for the
24 members of these classes;
- 25 b. For actual damages in a sum according to proof at trial;
- 26 c. For treble damages in a sum according to proof at trial pursuant to Civ. Code, §
27 1812.94;
- 28 d. For general damages in a sum according to proof at trial;

- 1 e. For special damages in a sum according to proof at trial;
- 2 f. For prejudgment interest;
- 3 g. For exemplary and punitive damages;
- 4 h. For injunctive relief, including a temporary and/or permanent injunction prohibiting
- 5 defendants from charging monthly fees for services its members cannot use;
- 6 i. For an accounting;
- 7 j. For a constructive trust and an order of full restitution;
- 8 k. For reasonable attorneys' fees pursuant to, *inter alia*, Civ. Code, § 1812.94;
- 9 l. For costs of suit incurred herein; and
- 10 m. For such other and further relief as the Court may deem just and proper.

11 Dated: April 6, 2023

The Cullen Law Firm, APC

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14 Paul T. Cullen, Esq.
15 Attorneys for Plaintiff
16 BARRY S. STEINHARDT
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Active&Fit Enrollees in Calif. Were Charged Gym Membership Fees Despite COVID-19 Closures, Class Action Alleges](#)
