

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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CHIN TUAN, HANNAH ALBUM, MAYA BRAXTON,
MONIQUE HORTON, ROBERT KNORR, EVELISSE
LUCIANO, RYAN McCARTHY, SEAN MILLER, EVA
MITCHELL and NICOLE TRUDEAU,

Plaintiffs,

-against-

TOWN SPORTS INTERNATIONAL, LLC and TOWN
SPORTS INTERNATIONAL HOLDINGS, INC. d/b/a
NEW YORK SPORTS CLUBS, BOSTON SPORTS
CLUBS, WASHINGTON SPORTS CLUBS and
PHILADELPHIA SPORTS CLUBS,

Defendants.
----- X

Civil Action No.

COMPLAINT

Plaintiffs allege as follows:

PRELIMINARY STATEMENT

1. Town Sports International LLC (“TSI”) is a publicly-traded company which operates gyms throughout the Northeast including New York Sports Clubs (“NYSC”), Boston Sports Clubs (“BSC”), Philadelphia Sports Clubs (“PSC”) and Washington Sports Clubs (“WSC”). TSI boasts more than 600,000 gym members and annual revenues of almost \$500 million. NYSC is TSI’s flagship brand with more than 98 gyms in the New York City area.

2. It is not hyperbole to say that TSI engages in deceptive, dishonest and fraudulent conduct that amounts to stealing from the pockets of its customers. Despite both a legal and ethical obligation to be candid in the way it conducts business, TSI rips-off its gym members when they attempt to cancel their gym memberships. As many New Yorkers know, cancelling a gym membership at NYSC can feel like a Herculean task. TSI routinely refuses to accept or

process cancellation requests on no grounds or utterly specious grounds, and, as a result, TSI will continue to charge the members' credit cards without authorization.

3. Moreover, at the time of enrollment, TSI has its customers sign an electronic pad to complete the enrollment process. Little do customers know, but TSI uses these electronic pads to "capture" the customer's signature and then "paste" it onto an electronic contract which has numerous terms the customer was never informed about, let alone ever agreed to. Among these terms are provisions that make cancellation extremely difficult and permit TSI to continue charging fees even after the member has cancelled his or her membership.

4. This is far from the first time TSI has been faced with these allegations – yet it refuses to take action or responsibility for this conduct. In November 2016, the Washington D.C. Attorney General's Office (the "DC AG") announced a settlement with TSI following an investigation into its fraudulent cancellation practices. The DC AG issued a press release stating:

Consumers should not be on the hook when companies mislead them with unclear and inconsistent cancellation policies. Washington Sports Club members who made a good-faith effort to end their membership deserve the restitution that this settlement provides . . . Although the membership agreements stated that consumers must cancel in writing and give 30 days' notice, club employees routinely told consumers that they could cancel at any time by informing a desk employee or manager at the club. The company then continued to charge consumers who canceled in this manner.¹

5. As part of the settlement, TSI agreed that it would not "engage in any unlawful practice prohibited by [DC consumer protection laws]," that it would not "make any oral or written statements that have the capacity, tendency, or effect of deceiving or misleading consumers concerning their ability to cancel their fitness center memberships," and that it would "clearly and conspicuously inform consumers of its cancellation policies, both at the time

¹ Available at: <https://oag.dc.gov/release/attorney-general-obtains-settlement-washington>

consumers enter into or renew any membership agreement(s), or at the time they seek to cancel their memberships, if such cancellation request is made in any manner inconsistent with TSI's operative cancellation policies." Numerous additional terms were included as well. See Ex. A.

6. Following this settlement, TSI appears to have made no genuine changes and continued to operate with a "business as usual" approach. Accordingly, it should have come as no surprise that in 2018, 55 individuals – TSI gyms members from six different states – filed a class action against TSI claiming that they were subject to nearly identical fraudulent business practices as what had been investigated by the DC AG. See Lehnert, et al. v. Town Sports International, LLC, et al., No. 18-cv-02705 (Second Amended Complaint with 55 plaintiffs filed December 7, 2018). The Lehnert action details the horrific treatment suffered by TSI's gym members who were paying customers and were not able to cancel their memberships.

7. Moreover, although TSI is doubtlessly aware of this, the complaint in the Lehnert action cited numerous complaints that are readily available on the internet in which consumers have complained vociferously about being deceived and misled by TSI's cancellation practices. The Lehnert complaint direct-quoted approximately 14 of these publicly available complaints and stated that many, many others exist. Below is just a small sampling of additional consumer complaints available online on Yelp!:

Paul D.
Jersey City, NJ
0 friends
1 review

★★★★★ 4/11/2019

These guys are criminals. I have been trying to cancel my membership now for four months. They continue to bill my credit card regardless. This is how they operate. Even my Amex card sided with them because I did not have a six digit code, which NYSC refused to give me and said was not needed to cancel. Thieves pure and simple....

William R.
New York, NY
1 friend
8 reviews

★★★★★ 7/31/2017

I enjoyed working out here until a closer gym opened near my apartment. But this review isn't about that, it's mostly about how after doing their tedious written mailed cancellation 3 months ago, they are emailing me telling me about how I'll be going to collections soon. Like another reviewer here, the card I used was coincidentally deactivated from fraud around the same time, so I didn't see charges on my statement. Fast forward to now, I looked and not only did they create bills for me the last 3 months, they raised the rate \$15 on top of what I had been paying.

I start searching around to see who I should call email at NYSC for help only to find out that this is apparently the only way to quit this gym, to eventually pay off a bill collector \$240 to protect your credit, because they are known for ignoring your cancellation requests and just charging you anyway.

I've quit gyms before and it's usually somewhat tedious but I've never seen anything quite this egregiously hostile.

Xiomara H.
Brooklyn, NY
4 friends
69 reviews
16 photos

★★★★★ 3/10/2019

The gym itself is pretty small with a worn out locker room. I used to go here many years ago and I enjoyed my time so I decided to return. After one day back here, I felt I'd rather pay a bit more money for a better quality gym in the neighborhood, ie more space and better/more equipment. When I canceled, I was told I needed to email the manager, ok no problem, all I got in response was an emailed receipt showing I was charged the cancellation fee, as expected. Since I canceled before the 15th that should've been the end of that but no they continued to charge my card next month. I emailed the manager again, got no response so I had to dispute the charge with my bank. This place and its customer service has truly deteriorated over the years. Take your money elsewhere.

Shanae B.
Philadelphia, PA
0 friends
3 reviews
1 photo

★★★★★ 1/17/2019

If I could give zero stars, I would. In my opinion, the TSI Sports Club brand has the worst billing & cancellation practices in the industry. Numerous Sports Clubs under this umbrella have been sued for their cancellation practices (NYSC, WSC), and no wonder. At this trend, I'm counting the days until PSC is sued by the AG, and I'll provide details about my harrowing encounters at their request.

PSC refused to cancel my training sessions even after receiving a certified letter, as outlined in their contract. They put me through the ringer on three separate occasions and only stopped receiving my funds after my card company blocked them. I believe that their common practice is to refuse cancellations and milk as much money out of people as they can until they are FORCED to stop by law or forced through personal credit card companies. That's been my experience every step of the way.

To all those looking for a gym, look elsewhere. They refuse to cancel memberships, don't maintain the property well, and have a serious issue with customer service and price leaps. If that hasn't changed your mind, I suggest giving them a pre-paid card that you can load and control.

Like I said, counting the days until PSC follows suit with its sisters, WSC & NYSC. In the meantime, taking my coin over to a reliable gym.

Rachel S.
Philadelphia, PA
0 friends
2 reviews

★★★★★ 3/1/2019

This place has told me twice that my membership was canceled but they continue to charge me monthly (it's been four months now) and have now started charging me from a club in BOSTON?!

Denis H.
Brooklyn, NY
0 friends
2 reviews

★★★★★ 7/21/2018

I signed up for this gym a few years ago and it was great before the machines began failing. Naturally, I canceled my membership and signed up for another gym. My membership canceled in January.

5 months later, NYSC began charging my card again. I called them and they agreed it was an error and they would issue a charge back. The following month, they charged my card again and never processed the initial chargeback so I called my credit card company to dispute both charges and change my credit card number so they couldn't charge me again.

They sent in an unsigned contract from 5/2018 and my initial NYSC signup photo from 2013 to Citi stating that I signed up for the gym again.

There are some sleazy operations going on there.

Maggi D.
Hudson, NY
124 friends
1 review

★★★★★ 11/28/2018

Nysc is a racket. I attempted to cancel my membership in August and was subsequently charged not only for September, but October, and an annual fee in October. When I called to follow up, they claimed they had no documentation of my phone call. So now the burden of proof is on me, a consumer, when nysc failed to do their job in cancelling and documenting my membership when I requested. I've spent over 2 hours on hold between nysc and my bank attempting to resolve this. This is only the start. Suffice it to say that this establishment is disorganized and exploitative of their clients. And you'll never get free from their financial abuse.

Rishita R.
Philadelphia, PA
127 friends
2 reviews

★★★★★ 8/16/2018

Absolutely the worst management. I was sold a membership by a sales guy who gave the wrong information. When I requested to cancel or called to cancel they did not process the request. I was charged for membership for June, July and August. I have never even stepped into this place and I have going through medical condition due to which I can not workout.

Call made in May : I was not given the direction and told the manager will reach out.

Calls made in June: the same. No direction. This time one of the person took notes and said i will see to that some will call back. But still no calls.

Calls made in July: i made a call and said i will report to the corporate. I get and email and a call. the manager argued and said i would be charged. just to stop i agreed. Keep my money and i thought this would be the end of it.

I was charged again in August! In total i was charged about \$200 intotal.

Most ridiculous management who do not repond to any request. They just made about \$200 out of a fake deal they were running. Disappointing! The final resort is i called up my credit card company asked them to block them as a fraud transaction.

Even after mentioning the surgery i went through the manager i spoke to said "since you are charged, you should have used the services!". Umepathetic staff and management.

Scott A.
 Washington, DC
 5 friends
 6 reviews
 10/13/2017
 That shut down the F Street location, and transferred all of the memberships to this location without telling anyone. And I have been trying to cancel my membership for the last three months, but they have not answered me....and they keep charging me.
 Looks like I might actually have to take them to court....so I would avoid signing any type of lengthy membership contract with them.

Denise W.
 Manhattan, NY
 1 friend
 5 reviews
 1 photo
 8/6/2018
 Watch out if you ever want to cancel your membership at this club. Their attitude changes from being friendly to hostile in an instant (the manager Johana Ulloa hung up the phone on me before I had even finished speaking). Not only that, but I was told I would be able to cancel via email - I was given two wrong email addresses which bounced back.
 Update:
 After freezing my account for 4 months, they told me I just needed to send them an email to cancel. After I sent them two emails at the end of July, they then went ahead and charged me for August even though I cancelled. Need to now call them to reverse the charge.

Anita Y.
 Brooklyn, NY
 0 friends
 13 reviews
 1/24/2019
 Just adding to the chorus of people accurately characterizing this company as crooks. My husband cancelled his membership months ago and they have charged us every month since. He has either called or showed up in person (or both) every other week for three months and every time he is told that it is their mistake, they're so sorry, we will get our refund in a week. So far, no refund in sight and no signs that they will stop fraudulently charging us. Planning to bring this to small claims court if we get charged next month again. I am now on a mission to make sure no one I care about entrusts their health or credit card number to this company ever again. And to the company/manager/whoever monitors these posts, please do not comment and tell us to email some generic customer service inbox, we've already been given the run around by enough NYSC customer service emails and phone lines. If you have an actual solution, we would love to hear from you, but otherwise please just scroll on by.

Collena C.
 Queens, NY
 0 friends
 4 reviews
 1/27/2017
 If I could give them zero stars then I would!!! Overall the facilities are not bad but once you try to end your membership there's all kinds of shenanigans!!! For that reason alone I will never join NYSC again nor will I encourage anyone else to!!! Stay clear.. they will rip you off!

Merve H.
 Berkeley, CA
 216 friends
 4 reviews
 10/1/2017
 They will charge you for forever after you cancel and will not refund your money even if you call everyday for 2 months. Would give 0 stars if I could. This happened at the Court Street location. Would NOT recommend.

R B.
 New York, NY
 24 friends
 69 reviews
 9 photos
 5/13/2018
 Can I please give less than 1 star.
 This place was once a good location for me, but having moved out of state, they would not ever cancel my membership or stop billing me. They are literally thieves. This company SUCKS!
 You can NEVER get out of your contract, and when you try to fight the charges through your credit card company you cannot and you will lose, cause the credit card company claims they have some BS legal leg to stand on having bought out the right of any person to contest their charges. I have not lived in NY for over a year, and they are still billing me (*while simultaneously sending me emails about trying to get me back as a customer!)
 This is outrageous.

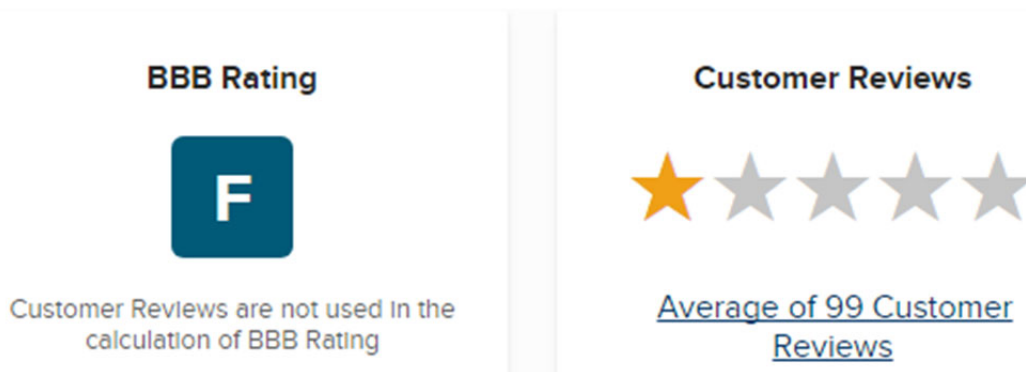
Postelle B.
 Washington, DC
 164 friends
 36 reviews
 20 photos
 5/18/2018
 DECEPTIVE AND SHADY. If I could rate this place a negative 1, I would. I signed up for the gym so that I could take advantage of the classes. After I signing up and then showing up for my first class, there was no instructor. I informed Tara who signed me up of my disappointment and she said she would look into it. The next time I was there, the restroom was filthy and the class I attended was jam packed and disorganized. Soon after I decided to cancel my membership. I was charged a fee for the next month AND then charged an annual fee. Tara made no mention of this during my sign up and no contract was sent to me. As a matter of fact she told me that I had until the end of the month to cancel without the annual fee. I signed up for another gym and I would like the annual fee refunded. The tactics used to sign customers up are dishonest and deceptive.

Abe S.
 New York, NY
 0 friends
 13 reviews
 3/29/2019
 Club itself was OK and 'got the job done' but not much more. As others have mentioned, locker rooms/showers are not clean so I never bothered to shower there.
 Big reason for one star is -- I have seen this in other reviews as well -- they are either highly incompetent or purposefully crooked when it comes to billing / cancellation etc... I was moving out of state last summer, they did not process my cancellation at the first request - I had to follow up multiple times, and they continued to bill me monthly charges + some annual fee. I refused to pay those, and now they have transferred the outstanding amount to a collection agency which has been harrassing me daily for the past 6 months! UGH!!! Beware!!

8. Similarly, the Better Business Bureau (“BBB”) has received an outrageous number of complaints from consumers regarding TSI’s conduct. While complaints regarding cancellation-related issues are not the only type of complaint, over the last three years the BBB has received almost 1,000 consumer complaints from TSI’s gym members. Just last month, a consumer complained to the BBB as follows:



9. Not surprisingly, based on TSI’s conduct, the BBB gives the company an overall “F” grade and customer reviews yield a score of one-star out of five-stars:²



10. TSI’s “F” rating with the BBB is not the result of one “bad apple” that brings down the rest of the company. To the contrary, each NYSC gym location represented on the BBB website has been given the same failing grade:

² Available at: <https://www.bbb.org/us/ny/new-york/profile/health-club/new-york-sports-clubs-0121-554#overview>

New York Sports Clubs (212) 246-6700 888 7th Ave Ste 1801, New York, NY 10106-0001	F	New York Sports Clubs (212) 246-6700 131 E 31st St, New York, NY 10016-6803	F
New York Sports Clubs (212) 246-6700 1657 Broadway, New York, NY 10019-6700	F	New York Sports Clubs (212) 246-6700 2162 Broadway, New York, NY 10024-6620	F
New York Sports Clubs (212) 246-6700 1601 Broadway, New York, NY 10019-7434	F	New York Sports Clubs (212) 246-6700 248 W 80th St, New York, NY 10024-7608	F
New York Sports Clubs (212) 246-6700 502 Park Ave, New York, NY 10022-1108	F	New York Sports Clubs (212) 246-6700 303 Park Ave S, New York, NY 10010-3601	F
New York Sports Clubs (212) 246-6700 575 Lexington Ave, New York, NY 10022-6102	F	New York Sports Clubs (212) 246-6700 151 E 86th St, New York, NY 10028-2106	F
New York Sports Clubs (212) 682-4440 200 Park Avenue 3rd floor, New York, NY 10166	F	New York Sports Clubs (212) 246-6700 1637 3rd Ave, New York, NY 10128-3637	F
New York Sports Clubs (212) 246-6700 633 3rd Ave, New York, NY 10017-6706	F	New York Sports Clubs (212) 246-6700 10 Irving Pl, New York, NY 10003-3551	F
New York Sports Clubs (212) 246-6700 404 5th Ave, New York, NY 10018-2797	F	New York Sports Clubs (212) 246-6700 34 W 14th St, New York, NY 10011-7508	F
New York Sports Clubs (212) 246-6700 61 W 62nd St, New York, NY 10023-7015	F	New York Sports Clubs (212) 246-6700 5 Penn Plz Fl 4, New York, NY 10001-1843	F
New York Sports Clubs (212) 246-6700 50 W 34th St, New York, NY 10001-3097	F	New York Sports Clubs (212) 246-6700 151 Reede St, New York, NY 10013-3826	F
New York Sports Clubs (212) 246-6700 614 2nd Ave, New York, NY 10016-4889	F	New York Sports Clubs (212) 246-6700 125 7th Ave, New York, NY 10011-1802	F
New York Sports Clubs (212) 246-6700 270 8th Ave, New York, NY 10011-1619	F	New York Sports Clubs (212) 246-6700 217 Broadway, New York, NY 10007-2909	F
New York Sports Clubs (212) 246-6700 30 Well St, New York, NY 10005-2201	F	New York Sports Clubs (212) 246-6700 30 Cliff St, New York, NY 10038-2825	F

11. But that is hardly the end of the story. On January 8, 2019, the DC AG filed a new lawsuit against TSI captioned as District of Columbia v. Town Sports International, LLC, No. 2019 CA 000126 (D.C. Sup. Ct. Jan. 8, 2019), this time alleging that:

[S]ince entering into the [settlement agreement], TSI has continued to engage in cancellation practices in violation of both the [settlement agreement] as well as the [consumer protection laws]. In particular, TSI makes misrepresentations about its cancellation policies and fees to lure consumers to purchase memberships. For example, consumers are told that they may cancel at any time for free, when, in fact, TSI requires approximately six weeks' notice

and charges cancellation fees. TSI also maintains policies that make it extremely difficult for consumers to cancel their memberships and TSI fails to inform consumers of these policies. As a result, consumers believe that they have taken the appropriate steps to cancel their memberships, but TSI continues to charge consumers for months (and sometimes years). In some cases, consumers have continued being charged even after receiving emails confirming their cancellation or being verbally assured by TSI representatives that their memberships had been effectively cancelled. Adding to this confusion, TSI does not provide written membership contracts to consumers that include its cancellation policies, even after consumers request copies.

See Ex. B at ¶3. The DC AG also alleged – identically to the Lehnert plaintiffs – that:

TSI uses an electronic signing pad when signing up consumers for memberships at its facilities. TSI representatives verbally communicate the terms of membership to consumers. As described above, however, TSI representatives make false and misleading statements about consumers’ membership terms that contradict the terms in TSI's membership contracts. TSI does not allow consumers to view the terms of membership when signing up. Instead, consumers are asked to sign an electronic pad without having the opportunity to read or review the terms of their membership agreements.

Id. at ¶18.

12. The DC AG seeks to “stop TSI from engaging in the unlawful trade practices” including making deceiving or misleading statements to consumers about the cancellation of their memberships and/or making untrue or misleading representations regarding its cancellation policies. The DC AG has also issued a press release stating:

It’s clear that Washington Sports Club is still making money by deceiving consumers, and that is not acceptable . . . We are filing this lawsuit to protect District consumers and to warn businesses that if they profit by misleading or hiding information, we will hold them accountable for breaking the law . . . TSI is violating both consumer protection laws and a 2016 settlement agreement by misleading consumers about the terms of membership agreements, failing to inform them of the gym’s cancellation policies, and continuing to charge them even after they attempt to cancel their gym memberships, among other deceptive business practices. [We

are] seeking to stop TSI's illegal conduct, provide relief for consumers who were harmed, and impose civil penalties.³

13. Incredibly, after all of these legal actions – an enforcement action by the DC AG, a 55-plaintiff federal class action lawsuit, and a second enforcement action by the DC AG (not to mention hundreds of consumer complaints through online and other channels) – TSI *still* refuses to take any action to change its cancellation practices, thus, necessitating this action as well. Plaintiffs in this action continue to be defrauded by TSI's deceptive and misleading conduct and seek relief to ensure that it changes once and for all – the public simply should not stand for a company that behaves in this manner.⁴

14. Plaintiffs bring this action seeking declaratory, injunctive and monetary relief due to TSI's unlawful conduct in violation of New York General Business Law (“GBL”) §349; D.C. Consumer Protection Procedures Act §28-3901, *et seq.* (“DCCPPA”); Connecticut Unfair Trade Practices Act, §42-110, *et seq.* (“CUTPA”); and Mass. Consumer Protection Act, M.G.L.A. c. 93A §§1, *et seq.* (“MGL 93A”) (the “Consumer Fraud and Protection Statutes”); and/or for engaging in conversion.

³ Available at: <https://oag.dc.gov/release/ag-racine-sues-washington-sports-club-misleading>

⁴ TSI has even refused to disclose the existence of these actions to its shareholders. Pursuant to Securities and Exchange Commission (“SEC”) rules, all publicly-traded companies are obligated to provide an annual report using Form 10-K. Item 3 of a Form 10-K requires disclosure of relevant legal proceedings. Companies submitting a Form 10-K are obligated to disclose “any material pending legal proceedings, other than ordinary routine litigation incidental to the business.” While companies are not generally required to disclose lawsuits unless they pose a threat to up to 10 percent of its assets, clearly this litigation is not “routine” or “incidental” as TSI continues to be repeatedly investigated and sued for these issues by both private individuals and public entities, and similar actions will almost certainly continue to be filed and pose liability unless TSI changes its conduct.

JURISDICTION AND VENUE

15. The Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because there is diversity of residence of the named parties and this action is related to Lehnert, et al. v. Town Sports International, LLC, et al., No. 18-cv-02705 over which this court has jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d).

16. The Court has personal jurisdiction over Defendants because Defendants are authorized to, and do, conduct business in New York and in this District.

17. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) because a substantial part of the events giving rise to this action occurred in this District.

18. On May 9, 2018, three individuals served TSI with a demand pursuant to MGL 93A, and such letter was served on behalf of themselves and “all other similarly situated persons.” The Second Amended Complaint in the Lehnert action reflected this at Paragraph 9. This satisfied any administrative pre-requisite in this action as well. On April 2, 2019 and April 15, 2019, Plaintiffs Knorr and Mitchell sent Defendants a demand letter pursuant to MGL 93A, further satisfying any administrative pre-requisite.

19. Following the commencement of this action, Plaintiffs will deliver a copy of the Complaint to the Connecticut Attorney General and Commissioner of Consumer Protection pursuant to CUTPA § 42-110g(c).

20. Plaintiffs’ claims are properly asserted together as a single consolidated action as their claims arise from a similar nexus of facts and circumstances and will be established using similar and overlapping evidence.

PARTIES

21. Plaintiff Chin Tuan is an adult resident of New York. Mr. Tuan became a member of NYSC on or about July 29, 2018.

22. Plaintiff Hannah Album is an adult resident of New York. Ms. Album became a member of NYSC in or around 2014.

23. Plaintiff Maya Braxton is an adult resident of Washington, D.C. Ms. Braxton became a member of WSC on or about June 5, 2018.

24. Plaintiff Monique Horton is an adult resident of New York. Ms. Horton became a member of NYSC in or around 2018.

25. Plaintiff Robert Knorr is an adult resident of Massachusetts. Mr. Knorr became a member of BSC in or around 2010.

26. Plaintiff Evelisse Luciano is an adult resident of New York. Ms. Luciano became a member of NYSC in or around late 2015/early 2016.

27. Plaintiff Ryan McCarthy is an adult resident of Stamford, Connecticut. Mr. McCarthy became a member of NYSC in or around 2017.

28. Plaintiff Sean Miller is an adult resident of New York. Mr. Miller became a member of NYSC in or around 2012.

29. Plaintiff Eva Mitchell is an adult resident of Massachusetts. Ms. Mitchell became a member of BSC on or about September 1, 2018.

30. Plaintiff Nicole Trudeau is an adult resident of New York. Ms. Trudeau became a member of NYSC on or about October 14, 2018.

31. Defendant Town Sports International, LLC is a limited liability company with its primary business being the running and operating of gyms under the brands New York Sports

Clubs, Boston Sports Clubs, Washington Sports Clubs and Philadelphia Sports Clubs, and which is a wholly subsidiary of Town Sports International Holdings, Inc., a foreign corporation incorporated in Delaware which has a principal place of business located at 1001 US North Highway 1, Suite 201, Juniper, Florida 33477.

32. Defendant Town Sports International Holdings, Inc. (for all purposes herein included in the defined term “TSI”) is a foreign corporation incorporated in Delaware with its primary business being the running and operating of gyms under the brands New York Sports Clubs, Boston Sports Clubs, Washington Sports Clubs and Philadelphia Sports Clubs, and which has a principal place of business located at 1001 US North Highway 1, Suite 201, Juniper, Florida 33477.

FACTS

Factual Allegations

33. Town Sports International, LLC is one of the largest owners/operators of fitness clubs in the country, with approximately 145 gyms located in New York, Massachusetts, Washington D.C., Pennsylvania, Connecticut, Maryland, New Jersey, Rhode Island and Virginia.

34. Among other properties and brands, TSI owns and operates approximately 98 gyms under the brand “New York Sports Clubs,” 33 gyms under the brand “Boston Sports Clubs,” 10 gyms under the brand “Washington Sports Clubs” and five gyms under the brand “Philadelphia Sports Clubs.” Certain of these gym locations are in the neighboring states of Connecticut, Maryland, New Jersey, Rhode Island and Virginia.

35. TSI requires consumers to become a TSI gym member (“TSI Gym Member”) in order to gain access to use its gym locations. In order to obtain a TSI gym membership,

customers enter into agreements whereby they agree to pay a sum of money in exchange for access to one or more TSI gym locations.

36. However, TSI holds customers to additional terms never agreed upon. For instance, when potential customers go to a TSI location to become a member, generally TSI does not present them with written contracts to sign in order to become a TSI Gym Member, or at least only does so very rarely or in atypical situations.

37. As a matter of practice, TSI staff will verbally present to potential customers the monthly rate for the type of gym access the customer is interested in purchasing. Then, potential customers become members pursuant to the terms verbally presented to them by either verbally assenting to the terms or by signing an electronic pad presented to them by a TSI staff member (and providing a form of payment, usually a credit or debit card for automatic monthly charges).

38. Once a customer signs the electronic pad, TSI has in its possession an electronic image of the customer's signature, which is saved to TSI's electronic records database. Upon information and belief, the electronic pads that capture customer signatures are created by Topaz Systems, Inc., though TSI may also use other devices such as iPads.

39. TSI will then superimpose a TSI Gym Member's signature on a document containing various terms and conditions for membership at TSI ("Fraudulent Membership Contract") and retain that document internally as a supposedly agreed-upon contract. TSI unlawfully acts as though the Fraudulent Membership Contracts are legitimate agreements.

40. However, TSI Gym Members are never informed of the vast majority of these contractual terms, never informed that their signatures will be superimposed onto a contract and never informed that there are any membership terms other than those verbally presented to them.

41. Upon information and belief, the reason TSI engages in these practices is that the terms of the Fraudulent Membership Contracts are completely unreasonable and the company is concerned that customers would not agree to the terms if actually presented to them, including the term: “By signing this Agreement, the member grants the Clubs the right to use their photographic likeness for promotional purposes, including, without limitation, for online usage and marketing materials.”

42. Many of TSI’s written membership contracts also contain the following or substantially similar language with respect to cancellation of memberships:

You may cancel your Month-to-Month at any time by (1) giving notice at the club and obtaining a cancellation receipt, or (2) sending a written notification by certified or registered mail to the club at the address set forth above. ***Your cancellation will be effective 45 days after you provide proper notice of cancellation, and you will continue to have the services provided under this agreement and be billed accordingly until the end of the 45 day notice period.***

(emphasis added).

43. In sum, according to this provision, TSI Gym Members must pay for an additional 45 days of membership once they inform TSI that they desire to cancel their memberships.

44. Moreover, according to this provision, to cancel a membership, TSI Gym Members must obtain a “cancellation receipt” or send TSI “a written notification by certified or registered mail.”

45. TSI attempts to hold TSI Gym Members who try to cancel their TSI gym memberships to these supposed “policies” or “contract terms” – whether TSI has a Fraudulent Membership Contract on file or not.

46. Moreover, TSI often does not even honor customer cancellation requests in the first place and continues to charge TSI Gym Members with additional membership and other fees even long after they have cancelled their memberships.

47. Accordingly, TSI Gym Members never authorized TSI to charge their credit or debit cards for any charges following notice of cancellation.

48. Moreover, upon information and belief, TSI has refused to honor TSI Gym Members' attempts to cancel their memberships either because TSI has taken the position that the TSI Gym Member failed to comply with the technicalities of purported policies or terms related to the cancellation of his or her TSI membership or because TSI has otherwise simply refused to process a TSI Gym Member's request for cancellation.

49. In those situations, upon information and belief, TSI Gym Members are continually charged membership dues even though the TSI Gym Members attempted to cancel their TSI gym memberships.

Plaintiff Chin Tuan

50. On or about July 29, 2018, Plaintiff Chin Tuan enrolled to become a trial member of the Forest Hills location of NYSC. Mr. Tuan was told the membership rate would be \$26.99 per month. Mr. Tuan was told by a sales consultant, Stephen Kissi, that he could cancel his membership at any time, and that he would get all his money back if he cancelled within 10 days.

51. On August 1, 2018, Mr. Tuan was charged a \$26.99 monthly membership fee (and on July 29, 2018 he was also strangely charged an additional fee of \$3.61).

52. Within the next 10 days, Mr. Tuan decided to cancel his membership because the gym did not come close to the quality and cleanliness that he expected as a customer. Mr. Tuan told the NYSC employee behind the entry desk that he wanted to cancel his membership.

53. The employee told Mr. Tuan he had to fill out a cancellation form, which he did on the spot. Mr. Tuan was then told there was nothing else he had to do and that his membership would be cancelled effective immediately.

54. Despite having cancelled his membership, TSI never refunded Mr. Tuan's initial charge and then continued to charge him fees. On or about August 15, 2018, TSI charged a \$59.99 annual membership fee to Mr. Tuan's credit card. Mr. Tuan never authorized this charge, as he cancelled his membership the previous day.

55. Then, on or about September 1, 2018, TSI charged Mr. Tuan again – this time a monthly membership charge for \$26.99. Mr. Tuan never authorized this charge either.

56. Upon reviewing his credit card statement, Mr. Tuan noticed these unauthorized charges and contacted the Forest Hills NYSC location. Mr. Tuan spoke to an employee, complained about these charges and stated that he wanted to cancel his account and get a refund. Mr. Tuan was told he had to speak to a manager and that a general manager was not available each time he called. Several calls to the Forest Hills location proved useless in attempting to reach the manager, and Mr. Tuan never received a return call.

57. On or about September 7, 2018, Mr. Tuan went back to the Forest Hills location to attempt to resolve this matter in-person given the troubles he had had reaching anyone who could help over the phone. However, Mr. Tuan was told he needed to speak to a manager and that no manager was present at that time.

58. On October 1, 2018, Mr. Tuan emailed Mr. Kissi and stated that he had called the Forest Hills location several times attempting to resolve this issue and had left several messages that had not been returned. Mr. Tuan stated:

I was billed 8/01 and 9/01 for the monthly charge of \$26.99 and \$59.99 on 9/15 for the annual fee. I had requested for a termination of my account multiple times.

However, Mr. Kissi never responded to Mr. Tuan's inquiry.

59. Also on October 1, 2018, TSI again charged Mr. Tuan another monthly membership fee of \$26.99. Mr. Tuan never authorized this charge.

60. Mr. Tuan was eventually able to get the Forest Hills location's General Manager, Jeffry Cajas, on the phone. Mr. Cajas told Mr. Tuan that he would look through a "pile of cancellation papers" to see if Mr. Tuan's was there and get back to him.

61. Mr. Cajas did not get back to Mr. Tuan. Thereafter, Mr. Tuan emailed Mr. Cajas to follow up on the status given that he seemed to be continually ignored. Mr. Tuan stated:

Jeffrey,

I'm not sure if you guys are too busy or that there's a tendency at your sports club to not respond to a customers inquiry but can you please provide an update to my case? You said that you were going to look through the pile of cancellation and see if mine was there. We're you able to locate it? I would like to know asap if I will be receiving my money back or I have to take alternate routes such as small claims cause the service here is truly unacceptable.

62. To this email, Mr. Cajas finally responded. However, Mr. Cajas simply stated "I was unable to find any cancellation form of yours," and that "[a]s of right now know [sic] refund will be processed unless there is proof of cancel." Of course, the TSI employee with whom Mr. Tuan had cancelled never provided him with any paperwork confirming his cancellation.

63. In total, due to its deceptive practices, TSI stole from Mr. Tuan approximately \$120 and forced Mr. Tuan to ensure significant time and effort to (unsuccessfully) resolve these issues. To date, no refund has been issued to Mr. Tuan.

64. Despite the fact that Mr. Tuan paid these unauthorized charges after he attempted to cancel his membership, he has been receiving telephone calls from Radius Global Solutions, a collections agency, to collect some supposed additional outstanding debts.

Plaintiff Hannah Album

65. Plaintiff Hannah Album became a TSI Gym Member in or around 2014.

66. Ms. Album met with a TSI sales representative at a NYSC gym located on 28-30 Avenue A, New York, NY 10009.

67. The TSI sales representative told Ms. Album that she would be charged a monthly fee for her membership but that she could cancel her membership at any time.

68. Ms. Album was not told she needed to cancel in any particularly prescribed manner or her cancellation would be ineffective.

69. In or about November 2017, Ms. Album called the Avenue A location and notified a TSI agent that she was cancelling her membership. The TSI agent told Ms. Album that she could not cancel her membership over the phone and needed to visit the Avenue A location in person to cancel.

70. Over the next few weeks, Ms. Album visited the Avenue A location several times and asked to speak with a manager, but Ms. Album was told each time that a manager was not available to speak with her.

71. Subsequently, Ms. Album visited a NYSC location in Brooklyn and notified a TSI agent that she was cancelling her membership. However, the TSI agent told Ms. Album that she could not cancel her membership at the Brooklyn location and that she needed to visit her “home gym” to cancel.

72. Ms. Album then called TSI's corporate offices and informed a TSI representative that she was cancelling her membership. The TSI representative told Ms. Album that she could not cancel her membership by contacting the corporate office and that she needed to visit her home gym to cancel.

73. TSI continued to charge Ms. Album additional fees after she first provided notice of cancellation, and Ms. Album never agreed to or authorized these charges.

Plaintiff Maya Braxton

74. On or about June 5, 2018, Plaintiff Maya Braxton enrolled to become a WSC member at the Columbia Heights location. WSC advertised that customers, such as Ms. Braxton, could join for \$1.00 and receive two months of free membership.

75. Ms. Braxton was also told she could cancel her membership at any time without penalty, and that there would be no charges at all if she cancelled within 10 days.

76. Despite the advertisement of \$1.00 for two free months of membership, Ms. Braxton initially paid \$30.67 to join the Columbia Heights location.

77. Within a few days, Ms. Braxton called the Columbia Heights gym and stated that she was cancelling her membership because she found a better gym. The TSI employee with whom Ms. Braxton spoke assured her that her account was closed and that she would receive a refund for all charges.

78. However, Ms. Braxton did not receive a cancellation confirmation. Ms. Braxton did receive, on June 19, 2018, an email from WSC saying "We Want You Back. Rejoin And Get An Exclusive Offer." As such, Ms. Braxton assumed her cancellation had been processed as promised by the TSI employee.

79. On July 16, 2018, despite having cancelled her membership, Ms. Braxton received another charge from WSC, this time for \$74.01. Ms. Braxton called the Columbia Heights location to ask for a refund for the \$74.01 charge as well as for the \$30.67 that had never been refunded.

80. The TSI employee with whom Ms. Braxton spoke said he was unable to issue a refund as it could only be done by a manager.

81. Ms. Braxton left her contact information and was told that a manager would call her back.

82. After not receiving a call for several days, Ms. Braxton called the Columbia Heights location yet again and talked to another TSI associate.

83. This associate told Ms. Braxton that there was no record of her having submitted a cancellation request, and that the only way she could get a refund would be if they could confirm her story with the associate who Ms. Braxton spoke to when she said she wanted to cancel her membership.

84. Ms. Braxton explained that she received an email to “rejoin” after cancelling which was proof that she had cancelled, but the associate said that Ms. Braxton would have to speak to a manager to resolve the issue. The TSI associate further informed Ms. Braxton that there were no managers available to speak with her.

85. Ms. Braxton called the Columbia Heights location again and left another message with the manager, but she never received any response. After not hearing from WSC for another week, Ms. Braxton called yet again and asked a TSI associate to speak to a manager. The TSI associate put Ms. Braxton on hold and came back a few minutes later to inform her that the manager was not available.

86. On or about July 31, 2018 and August 2, 2018, Ms. Braxton received two separate cancellation confirmations with the incorrect cancellation date and no refund. Ms. Braxton called the Columbia Heights location and spoke to the general manager, who said that she was too busy to process her request. The general manager informed Ms. Braxton that the sales manager would call her back to address the situation.

87. Ms. Braxton complained about this to the Better Business Bureau, and in response TSI said that it had been trying to confirm that Ms. Braxton cancelled in June but had been unable to do so. Of course, the reason TSI had been unable to confirm Ms. Braxton's cancellation is that TSI failed to process Ms. Braxton's membership cancellation despite her request, and refused to believe Ms. Braxton's claim that she had cancelled.

88. Even thereafter, in August 2018, TSI charged Ms. Braxton yet again for another month of gym membership, despite the fact that she had not only cancelled months previously, but also had been engaging in numerous additional communications and complaints to the BBB to ensure that the cancellation was processed.

89. Ms. Braxton cancelled her credit card to avoid any further charges.

90. In total, TSI stole approximately \$178.69 from Ms. Braxton.

Plaintiff Robert Knorr

91. Plaintiff Robert Knorr has been a member of BSC since approximately 2010.

92. Mr. Knorr was initially an "all-access" or "Passport" member, meaning he was told he was permitted to use any TSI gym at any time. However, Mr. Knorr later changed his membership to a single-location membership.

93. In November 2018, Mr. Knorr sent an email request to TSI to cancel his membership. Mr. Knorr was told via telephone that cancellation requests were "no longer

accepted via email, letter, or over the phone” and he would have to cancel in person with a manager.

94. Thereafter, Mr. Knorr made several failed attempts to schedule a meeting with the 1 Beacon Street gym’s General Manager, Joel Bowen. Mr. Knorr was eventually able to meet with Mr. Bowen in December 2018. Mr. Bowen completed the necessary cancellation paperwork in his computer (or so he told Ms. Knorr) and subsequently (in December) informed Mr. Knorr that his membership would be cancelled. Mr. Bowen did not provide Mr. Knorr with any paperwork or tell him that he needed any proof of cancellation.

95. During this meeting, Mr. Bowen attempted to convince Mr. Knorr not to cancel his membership. Mr. Knorr agreed that before processing the cancellation, he would be interested to see if Mr. Bowen could get him the same monthly membership rate at the BSC located at 140 Great Plain Avenue in Wellesley. Mr. Bowen told Mr. Knorr that he would get back to him shortly.

96. Approximately one week later, Mr. Bowen called Mr. Knorr and (via telephone message) informed him that the rate for the Wellesley location was higher than what he had been paying for Beacon Hill. Accordingly, Mr. Knorr informed Mr. Bowen (via telephone message) prior to December 14, 2018 that he should proceed with the cancellation as discussed during their in-person meeting.

97. Mr. Knorr received no other communication from Mr. Bowen other than asking him to rejoin the club. These emails started on January 24th. In January 2019, Mr. Knorr noticed another charge on his American Express credit card from BSC for \$59.94. Mr. Knorr called American Express to dispute the charges and to put a stop payment on his account for any

additional charges from TSI. The dispute was rejected because TSI falsely informed American Express that Mr. Knorr did not cancel his membership effectively until February 3, 2019.

98. But, that was still not then end. On March 14, 2019, Mr. Bowen emailed Mr. Knorr as stated as follows:

From: Joel.Bowen@bostonsportsclubs.com
To: mbknorr@verizon.net
Sent: Thu, Mar 14, 2019 12:53 pm
Subject: Past Due Balance
Hello Bob,

We are reaching out to you because currently your account is past due. We have made multiple attempts to contact you in order to update the billing status on file. After 90 days of past due balances we will send your account information to the credit bureau. This will deeply impact your credit score and future endeavors. . .

99. The supposed “past due” amount referred to by Mr. Bowen was presumably the membership dues for the period of February 1, 2019 through February 3, 2019, totalling approximately \$4.28.

100. Of course, Mr. Knorr had been attempting to cancel his membership since November 2018 and had already paid several additional charges after that date which he had not authorized. Yet, TSI was threatening to impact his credit score if he did not accede to even more unauthorized charges.

101. Mr. Knorr responded, in part, by stating that:

I ask that you correct this error, since you and I met about my cancellation prior to Dec 14th (not Jan 3rd) and I confirmed my request to cancel via phone also prior to Dec 14th. This is true because I left Boston on Dec 15th and was not available for any communication until after January 3rd.

Please confirm in writing that the overdue amount was in error and has been removed.

102. However, Mr. Knorr never received any response. The unauthorized charges have never been removed or refunded. Upon information and belief, TSI has contacted a debt collection agency to further harass Mr. Knorr and is attempting to lower his credit score.

Plaintiff Evelisse Luciano

103. Plaintiff Evelisse Luciano became a TSI Gym Member in or around late 2015/early 2016 after agreeing to membership terms with a TSI agent at one of Defendants' NYSC gyms located on 86th Street in Manhattan, New York.

104. Ms. Luciano was told that she had a one-year contract and that after she had been a member for a year she could cancel her membership at any time.

105. Ms. Luciano was never told of any additional charges or fees she would be obligated to pay after providing notice of cancellation.

106. Ms. Luciano was instructed to sign an electronic pad in order to become a TSI Gym Member and was never told that her signature would be superimposed onto any contract or used for any purpose such as to say she agreed to any other terms.

107. The electronic pad Ms. Luciano signed did not display any contract terms and only contained a small area for Ms. Luciano to place her signature.

108. Ms. Luciano never agreed, nor was she ever notified, that she had to pay for any additional days of membership, or any other charges or fees, once she cancelled her TSI gym membership.

109. On January 12, 2019, Ms. Luciano visited 91st Street location and informed a TSI employee that she wanted to cancel her membership. The TSI employee instructed Ms. Luciano to sign a cancellation form, which she did. The TSI employee then informed Ms. Luciano that a

general manager would contact her within 24 to 48 hours to discuss her cancellation. However, Ms. Luciano was never contacted by any TSI employee.

110. The following week, Ms. Luciano visited 91st Street location and informed a TSI representative working at the front desk that she had cancelled her membership but was never contacted by a General Manager as she was told she would be. The TSI representative responded by providing Ms. Luciano with a phone number – (212) 987-7200 – for Marvin Perez, a TSI guest services representative. Ms. Luciano called the guest services number several times and left voice messages but never received a response.

111. On January 23, 2019, Ms. Luciano posted a message on Twitter regarding her efforts to cancel her gym membership. Ms. Luciano stated:



112. A TSI employee responded from the Twitter handle @NYSC and stated:



113. On January 24, 2019, Ms. Luciano emailed heretohelp@tsiclubs.com and wrote:

Good Afternoon,

My name is Evelisse Luciano. My ID number is #3639253. I have an elite membership. I have been trying to cancel my account. I filled out the necessary form at my club on January 12. This form states that I would be contacted by a manger within 24-48 hours. I was not. I followed up in person a week later and was told no manger was on duty but was provided with the name and number of someone in the club's guest services who could help me. I left that person a voicemail since they did not answer and have not heard back. It should not be this difficult to cancel a membership. I have been trying now for weeks. This is unacceptable. Please cancel my membership already.

If you'd like to know why I'm canceling, the closet location to me on 91st and 3rd has outdated equipment and for an elite club, the

studios are filthy. There are constant dust bunnies on the floor every time I go to a class. It's disgusting.

Please assist in cancelling my account. Thank you.

Best,
Evelisse

114. Later that day, Gabe, a TSI employee, responded from the email account heretohelp@tsiclubs.com and stated:

Hi Evie
We apologize for this.
I've cc'ed the Business Manager on this email of our 91/3rd location.
She will be able to assist you.
Best
Gabe

115. On January 26, 2019, Ms. Luciano emailed Patricia Curran, a General Manager at the 91st Street location, and stated:

Hello,

I have not yet heard back from anyone at NYSC regarding the cancellation of my membership. Not a response to the prior email, nor a call back from the messages I have left earlier this week, nor have I gotten a call in response to the cancellation form I filled out **weeks** ago, despite the form promising in writing a response from management within 24-48 hours. I have been trying to cancel for **WEEKS** now. The lack of communication from NYSC is unacceptable and frankly ridiculous. Especially in light of the class action suit against the club for this exact reason. You would think that would be an issue you'd have addressed. I am cancelling my membership. Someone from NYSC's management needs to acknowledge the cancellation of my membership and get back to me. The lack of action on this matter is highly unprofessional and is a very poor reflection on the company as a whole. I ask that you address this matter already as I have given NYSC more than enough time to process my request.

Evelisse

116. On January 28, 2019, Ms. Luciano visited the 91st Street location and asked to speak with Mr. Perez to confirm that her membership had been cancelled, but a TSI employee informed Ms. Luciano that Mr. Perez had left for the day.

117. On January 29, 2019, Ms. Luciano called the 91st Street location and stated that she wanted to confirm that her membership was cancelled. However, a TSI employee responded that Ms. Luciano could only cancel her membership in person with a general manager. Ms. Luciano then explained that she had visited the 91st location in person several times, but a General Manager was never available. The TSI employee then placed the call with Ms. Luciano on hold, and when the TSI employee returned to the call, Ms. Luciano was informed that her membership would be cancelled.

118. Later that day, Ms. Curran responded to Ms. Luciano's January 26, 2019 email and stated:

Hi Evelissa,

I just looked into your account and see that your cancellation request was submitted by Jalessa. I apologize if this has been a frustrating process as it shouldn't be for you.

Please let me know if there is anything else I can do for you.

Best,

Patricia Curran | Business Manager
Town Sports International
e: patricia.curran@tsiclubs.com
NASDAQ:CLUB

Download our SportsClubs app here: [App Store](#) | [Google Play](#)

119. However, TSI continued to charge Ms. Luciano additional fees after she first provided notice of cancellation, and Ms. Luciano never agreed to or authorized these charges.

Plaintiff Ryan McCarthy

120. Plaintiff Ryan McCarthy joined NYSC in or around 2017. Mr. McCarthy was a member of the NYSC gym in Stamford, Connecticut located at 106 Commerce Road.

121. Mr. McCarthy enrolled in-person through a salesperson. Mr. McCarthy was told that he could cancel at any time and that it was “easy to cancel” as all he had to was “just tell someone.” This was a deceptive, false and misleading representation.

122. Mr. McCarthy was never told he was required to follow any other particular procedure or practice for a cancellation request to be effective. This was a deceptive, false and misleading omission.

123. Mr. McCarthy was instructed to sign an electronic pad in order to become a TSI Gym Member and was never told that his signature would be superimposed onto any contract or used for any purpose such as to say he agreed to any other terms. The electronic pad Mr. McCarthy signed did not display any contract terms and only contained a small area for a signature. TSI never provided Mr. McCarthy with any purported written membership contract. This was a deceptive, false and misleading practice.

124. In or around April/May 2018, Mr. McCarthy hurt his back. Mr. McCarthy called his NYSC location and informed a TSI employee that he wanted to cancel his membership as well as his personal training sessions. Mr. McCarthy was told he could not cancel his membership and he could only put his membership on “hold” while he was injured. This was a deceptive, false and misleading practice.

125. Having no choice, Mr. McCarthy told the employee to put his membership on “hold” so that he would not be not charged while he was unable to use the gym. Thereafter, Mr.

McCarthy noticed that TSI was continuing to charge him, both for membership dues and for personal training. Mr. McCarthy never authorized these charges.

126. To the contrary, Mr. McCarthy had attempted to cancel his membership to avoid these charges and was told he could not. As a result, Mr. McCarthy made numerous phone calls to the Stamford NYSC location repeatedly asking for his membership to be cancelled and received the same repeated response that someone would “get back to him,” but no one ever did.

127. Despite these efforts, Mr. McCarthy continued to be charged unauthorized fees to his American Express credit card. As such, Mr. McCarthy contacted American Express and put a stop payment on any additional charges from TSI. TSI continued to charge Mr. McCarthy, but TSI was not paid for these charges.

128. On December 31, 2018, Mr. McCarthy received an email from Steve Hendry, the Fitness Manager at the Stamford NYSC, stating that the “freeze” on his membership ended on October 18, 2018 and that his account had been charged from that date going forward. Mr. Hendry also informed Mr. McCarthy that in two days, on January 2, 2019, his account would be “sent to a collections agency.” In early January, Mr. McCarthy responded:

I have tried to cancel this membership numerous times with no success. Every time someone says they will call me back and I never get one. I had to take matters into my own hands and alert my Credit card company to NOT allow any charges from NYSC for this EXACT reason. Please give me a call to discuss this further so I can close this out[.]

129. Mr. Hendry responded by asking whether Mr. McCarthy had any “proof” of cancellation, and Mr. McCarthy informed him that he had cancelled via phone several times and that additional proof corroborating this was the fact that he had not been to visit the NYSC in a very long time.

130. On or about February 20, 2019, Mr. McCarthy received an email from Gary Carver, a Customer Service Manager at the Stamford gym, which copied Karen Catuogno, the gym's General Manager. The email recognized that Mr. McCarthy had cancelled his membership and offered a special promotion deal for him to re-join. Mr. McCarthy responded:

Thanks for the e-mail - I just want to make sure I am cancelled in all aspects of NYSC - can you please confirm this? Thanks again -

131. On or about February 20, 2019, Mr. Hendry again threatened Mr. McCarthy that he had a past due balance of \$1,697.56 and if he did not pay the amount it would be sent to collections. Mr. McCarthy responded (copying Ms. Catuogno) as follows:

This is the exact thing I have been trying to address with someone @ the club and I NEVER hear back - If someone can please call me regarding this that would be great [].

At no time once I tried to cancel originally should my account been taken off "a hold" or not cancelled - ESP no training sessions should have been charged since I was NOT ABLE to train and my trainer Malik was aware of this.

So if you can please call me back to go over all this that will be great - if I do not hear from anyone by EOD tomorrow I will stop in @ the club to try and talk in person.

132. Mr. Hendry simply stated that it was "unfortunate" but that TSI "can't do anything" because Mr. McCarthy did not have written proof of cancellation. Mr. McCarthy responded by offering to pay "something" due to the threat that TSI would send his account to collections and hurt his credit score.

133. Ultimately, TSI refused to release Mr. McCarthy from any of these fraudulent payment obligations. Despite the fact that Mr. McCarthy had tried to cancel his membership numerous times over the phone and had not used the gym in many months (establishing further

that he had been attempting to cancel), Mr. Hendry informed him that after speaking to his supervisor there was “no wiggle room on the amount owed.”

134. On or about February 27, 2019, Mr. McCarthy made a first installment payment of \$504.84 on the fraudulent charges which he should not have needed to pay in the first place. Mr. McCarthy informed Mr. Hendry that the payment was made. Incredibly, Mr. Hendry responded as follows: “Thanks for letting me know. And the only charges that will occur going forward would be for your general membership.”

135. Naturally, Mr. McCarthy was livid that TSI still refused to cancel his membership and was planning to still charge him “going forward.” Mr. McCarthy responded:

I was told that was cancelled and I would not be charged ANYTHING in addition. I do not want a general membership - can you please confirm that EVERYTHING is closed out.

136. On or about February 28, 2019, Mr. McCarthy and Mr. Hendry spoke over the phone and Mr. Hendry confirmed to Mr. McCarthy that he would not be charged anything else at all going forward. This too would turn out to be a lie.

137. On March 1, 2019, TSI charged Mr. McCarthy two additional charges – \$53.16 and \$15.00. Mr. McCarthy immediately emailed Mr. Hendry:

Per our conversation this week I was told my membership would be cancelled and I did not have to worry about getting charged anything else.

Today @ 6:20pm I was charged
- \$53.16 for I do not know what
- \$15.00 for I do not know what

I am really unsure why I am still getting charged since you assured me this would not happen and my membership with you guys would be terminated ASAP.

Can you please get back to me and let me know when you can rectify this? I have tried to be patient here but it just seems this

continues to be an issue - Please get back to me as soon as possible.

138. Mr. Hendry stated that he would “look into this today and find out what went wrong.” But, Mr. Hendry did not “look into this today” and two days passed without any communication. When Mr. Hendry finally did respond, he only stated that he was “still waiting to hear back from my corporate offices.” Again, several days passed without any update.

139. On March 11, 2019, Mr. McCarthy followed up again asking whether he would get reimbursed for the unauthorized charges. Mr. Hendry finally responded that somehow these charges were for a “previous month of general membership and a late fee,” a dubious explanation that was more likely trying to cover for TSI’s continued mistakes.

140. To date, Mr. McCarthy has paid substantial amounts that he never authorized, and TSI continues to threaten to send Mr. McCarthy to a collections agency and harm his credit score if he refuses to pay amounts that never should have been charged to him if TSI had simply honored his cancellation requests.

Plaintiffs Sean Miller and Monique Horton

141. Plaintiff Sean Miller became a TSI Gym Member in 2012 after meeting with a TSI sales representative at a NYSC gym located at 2527 Broadway, New York, New York 11211.

142. In 2018, Mr. Miller enrolled his wife, Monique Horton, to become a TSI Gym Member after meeting with a TSI sales representative at a NYSC gym located at 833-835 Franklin Avenue, Garden City, New York 11530. The TSI representative informed Mr. Miller that Ms. Horton would be added to his account and that any charges regarding Ms. Horton’s membership would be made to his credit card.

143. At the time of his enrollment and the enrollment of Mr. Horton, Mr. Miller was informed by TSI sales representatives that he and Ms. Horton would be able to cancel their memberships at any time.

144. Mr. Miller was not told that he or Ms. Horton needed to cancel in any particularly prescribed manner or their cancellations would be ineffective.

145. Mr. Miller was not told about any additional charges or fees that would be due or owed at the time of cancellation or thereafter.

146. In 2012, Mr. Miller was told to sign an electronic pad to complete his membership enrollment. The electronic pad did not contain any terms or conditions and only had a small space for Mr. Miller to place his signature. Mr. Miller was not instructed to sign an electronic pad when he enrolled Ms. Horton.

147. Mr. Miller was never told, nor did he ever agree, that TSI could capture his signature and place it on a contract or any other document.

148. In or about January 2019, Mr. Miller called the Garden City location and told a TSI employee that he was cancelling his and Ms. Horton's memberships. The TSI employee responded that Mr. Miller could not cancel over the phone and that he needed to visit the gym in person to cancel.

149. Later that day, Mr. Miller visited the Garden City location and told a General Manager, Peter Karikas, that he was cancelling his and Ms. Horton's memberships. Mr. Karikas instructed Mr. Miller to complete a cancellation form and stated that their memberships would be cancelled in 45 days.

150. In or around February 2019, Mr. Miller noticed that TSI was continuing to charge his credit card even though he had cancelled his and Ms. Horton's memberships.

151. On February 1, 2019, Mr. Miller sent an email to Mr. Karikas regarding charges made to his credit card after he provided notice of cancellation. Mr. Karikas responded to Mr. Miller that his and Ms. Horton's memberships were subject to a supposed "cancellation notice" period and that the charges made to his credit card were correct.

152. Subsequently, TSI continued to charge Mr. Miller's credit card without his authorization.

153. In or around late April 2019, Mr. Miller called the Garden City location regarding the unauthorized charges made to his credit card and spoke with a TSI representative. The TSI representative told Mr. Miller that a general manager would contact him regarding the unauthorized charges.

154. On April 26, 2019, Fanny Santamaria, a TSI General Manager, sent Mr. Miller an email stating that she would look into his complaint and would call him on Sunday, April 28, 2019.

155. On April 28, 2019, Ms. Santamaria called Mr. Miller and explained that she contacted TSI's corporate office regarding the unauthorized charges made to his credit card. Ms. Santamaria stated that she would contact Mr. Miller after the TSI's corporate office responded.

156. Over the next few days, Mr. Miller contacted Ms. Santamaria several times regarding the unauthorized charges, but Ms. Santamaria claimed that TSI's corporate office had not responded to her regarding Mr. Miller's complaint.

Plaintiff Eva Mitchell

157. Plaintiff Eva Mitchell became a TSI member on or about September 1, 2018.

158. Ms. Mitchell enrolled at the BSC location in Government Center.

159. When she enrolled, Ms. Mitchell met with a TSI representative who informed her of the membership rate for her access to use the gym facilities.

160. Ms. Mitchell was told she could cancel her membership at any time.

161. Ms. Mitchell was not told that there would be any particular process or procedure she had to follow in order to cancel her membership.

162. Ms. Mitchell was not told about any additional charges or fees that would be due or owed when she cancelled her membership or after she cancelled her membership.

163. Ms. Mitchell was told to sign an electronic pad to complete her membership enrollment. The electronic pad did not contain any terms or conditions and only had a small space for Ms. Mitchell to place her signature.

164. Ms. Mitchell was never told, nor did she ever agree, that TSI could capture her signature and place it on a contract or any other document.

165. In early October 2018, Ms. Mitchell called her TSI location and informed the TSI representative that she wanted to cancel her membership, and she was told she needed to be at the gym in person to cancel her membership.

166. Ms. Mitchell then went to the Government Center TSI location and was told that she needed to speak to a manager if she wanted to cancel her membership, but there was no manager present and she left.

167. Ms. Mitchell then called the Government Center TSI location to find out when a manager would be present. The TSI employee informed Ms. Mitchell that someone would call her back to provide the dates and times.

168. However, no one from TSI called Ms. Mitchell to provide this information. Ms. Mitchell went back to the Government Center TSI location several times, hoping that a manager

would be available to process her cancellation, but was repeatedly told there was no manager available to assist with her cancellation.

169. Eventually, Ms. Mitchell went back to the Government Center TSI location and ended up having a horrific experience in which a TSI employee not only refused to cancel her membership, but also insulted and degraded her. Ms. Mitchell told a front desk employee that she needed to cancel her membership whether a manager was present or not because she was going on vacation and would be unable to return for some time. The TSI employee said the reason a manager needed to handle the cancellation request was because his manager had said she liked to try to convince people who want to cancel their memberships not to cancel.

170. Ms. Mitchell protested to this TSI employee that she had a right to cancel her membership, but the TSI employee would not help. Ms. Mitchell asked for the manager's contact information, but the TSI employee would not help with that request either. Ms. Mitchell asked for his name, but he refused that request as well. The TSI employee handling Ms. Mitchell's request then proceeded to mock her because of her frustration and also disparaged her because of her age. Ms. Mitchell located the manager's card on the front desk, took one and left.

171. On November 6, 2018, Ms. Mitchell then emailed the Government Center TSI location's manager, Jessica Baxter, complained about the entire exchange and requested that her membership be cancelled. Ms. Mitchell's email is verbatim as follows:

Ms. Baxter,

I came in tonight to cancel my membership and locker. I write to ask you to fill my request, and also inform you of the way he represented you and the BSC.

The man at the front desk told me only a manager could cancel, so I told him to please do what he could to help me since I was going out of town and would not be able to come in person soon.

He told me I had no choice but to come back, and that the reason was the manager wants to try to convince customers not to cancel, therefore not authorizing front desk staff. He talked about it as if it was funny. I saw nothing funny about having my cancellation delayed so I could be “convinced” otherwise.

So, I asked for his name and the name of the manager so I could work this out. Somehow he seemed to be offended by my wanting to contact you directly, as he “was noting the system.” He did not give me an idea how long this might take, and indicated I would have to return during your office hours. I asked about other options but he kept repeating he could not cancel and why. I understood that but needed an option to make sure I was able to communicate in a timely fashion.

I did not understand why he refused his name or your information when asked. He seemed to take offense and began insulting me. He mocked me, mimicked my voice, called me an “elder”, condescended with sarcasm “well soooo sorry about your vacation but you have to understand how the manager will try to convince you to stay. I noted the system. You don’t need my name or hers.” He made faces at me and guffawed when I said “please don’t speak to me like that.”

I went to get the things from my locker and came back up. That’s when I noticed your cards on the front desk, which I took, resulting in him hurling more insults at me. His colleague arrived as I reached my tipping point. I asked him for the name of that man at the front desk. He refused to provide the name of his scoffing colleague, saying he was just a trainer. Although the front desk man continued to be disrespectful he toned down considerably (but still compared me to his mom, and joked that “Halloween is over” when I told him I was horrified by his behavior). I told him to please never speak to me again should I return to the club and I don’t wish to be treated so rudely. He continued to talk to me, mocking me as I gathered my belongings (many bags from shopping) “well do you have alllll your things? Have a (sarcastically) niiiiice day,” etc. As I left I saw him trying to engage a customer pointing at me and laughing. Although the customer ignored him, and so did his colleague, I was humiliated by his attitude. I said to both of them after that, I will mention to my friends referred how BSC treats customers. He laughed harder.

Obviously I would like to cancel my membership to BSC. I was thinking about joining a more convenient location, but I have never

had any experience like this and worry about the expectations for BSC staff after this awful experience.

Could you please cancel my membership and locker?

Also, might you provide me information for the corporate headquarters? I may be reached at 617-990-2028, but I may not be able to be reached while traveling.

Thank you for your follow-up,

Eva Mitchell

172. Ms. Baxter responded only by leaving Ms. Mitchell a voicemail to call her back.

Ms. Mitchell responded to Ms. Baster as follows:

Jessica,

Please provide a written response to my email above dated November 6, almost 2 weeks ago.

I received a voicemail from you as a follow-up to my email and visit to your office, but as we discussed, I was leaving the country and need a written response. I am asking again for your response in writing.

No one has provided a written response yet on the membership cancellation, and restoral of fees for the two months since I initially asked for a membership cancellation in person and via phone in early October.

Meanwhile I have made multiple attempts to cancel my unused membership with multiple office visits, phone calls, and this email-and ask please for a written response.

Please send me a response and also provide contact information for the corporate office as previously requested.

Eva

173. TSI never responded to this email. While TSI does seem to have stopped charging Ms. Mitchell recurring membership fees, it has still not refunded her the additional

charges that continued after she first provided notification that she wanted to cancel her membership.

Plaintiff Nicole Trudeau

174. Plaintiff Nicole Trudeau became a TSI Gym Member on or around October 14, 2018 after meeting with a TSI sales representative at a NYSC gym located on 502 Park Avenue, New York, New York 10022.

175. The TSI sales representative told Ms. Trudeau that she would be charged a monthly fee for her membership, but that she could cancel her membership at any time. The TSI representative also informed Ms. Trudeau that she had a 10-day trial period where she would be able to cancel her membership without being subjected to any fees.

176. Ms. Trudeau was not told she needed to cancel in any particularly prescribed manner or her cancellation would be ineffective.

177. Ms. Trudeau was not told about any additional charges or fees that would be due or owed when she cancelled her membership or after she cancelled her membership.

178. Ms. Trudeau was told to sign an electronic pad to complete her membership enrollment. The electronic pad did not contain any terms or conditions and only had a small space for Ms. Trudeau to place her signature.

179. Ms. Trudeau was never told, nor did she ever agree, that TSI could capture her signature and place it on a contract or any other document.

180. In or about October 2018, Ms. Trudeau learned that she would be moving for work and, as a result, she would not be able to utilize her membership.

181. Within 10 days of becoming a TSI Gym Member, Ms. Trudeau called the Park Avenue location and informed a TSI representative that she was cancelling her membership. The

TSI representative responded that he would cancel her membership and stated that she was still within TSI's trial period so she would not incur any charges related to her cancellation.

182. Subsequently, Ms. Trudeau visited the Park Avenue location to confirm her cancellation. While at the Park Avenue location, a TSI representative had Ms. Trudeau sign paperwork related to her cancellation. The TSI representative also stated to Ms. Trudeau that her membership was cancelled and that she would not be charged any fees.

183. In or around late January 2019, Ms. Trudeau noticed that TSI was continuing to charge her even though she had cancelled her membership.

184. On February 4, 2019, Ms. Trudeau emailed Robert Ciaccio, a TSI General Manager, to complain about TSI's continued charges. Specifically, Ms. Trudeau stated:

Dear Mr. Robert Ciaccio,

I hope this finds you well.

I am contacting you in regards to a membership which was cancelled at the end of October of 2018. In October I joined the NYSC located at the corner [sic] of 59/Park Avenue. A few days after joining, I changed my accommodation and moved quite far from your location. Upon learning that I was moving, I contacted your club via telephone which informed me that I was still within the allotted cancellation period (7 or 10 days) and should not incur any charges. I appeared at the club [within the allotted period] toward mid to late October to confirm my cancellation in person and sign paperwork. Although I do not remember the exact date, it was a day where they were giving free promotional massages near the entrance. Again I was told that my membership was cancelled and no fee would be incurred. At that time, I was assisted by two individuals. One was named Lex and another, much shorter, whose name I do not have. Last week, while I was reviewing my bank account statements for tax purposes, I was shocked to see continuing charges from your facility.

I realize that this error on your facility's part occurred some months ago, however, I expect that you can remedy the situation. I thank you kindly for your attention and anticipated assistance with this matter.

Regards,

Nicole Trudeau

185. However, Mr. Ciaccio did not respond to Ms. Trudeau's email.
186. On February 5, 2019, Ms. Trudeau again emailed Mr. Ciaccio and stated:

Dear Mr. Robert Ciaccio,

Following my email and phone call yesterday, which is included below, my card had two additional charges from your facility. One was once again a \$89.99 membership fee and another was a \$10.00 cancellation fee, simultaneously sent. As evidenced in my credit card statement, I have incurred \$439.95 in fraudulent charges. I am requesting that I be refunded immediately. Here you can find a list of unauthorized charges listed on my account:

02/04/2019 NYSCEAST 59TH 2123081010 /NY PURCHASE
-\$10.00

02/04/2019 NYSCEAST 59TH 2123081010 /NY US CARD
PURCHASE \$ -89.99

01/02/2019 NYSCEAST 59TH 2123081010 /NY US CARD
PURCHASE \$ -89.99

12/03/2018 NYSCEAST 59TH 2123081010 /NY US CARD
PURCHASE \$ -89.99

11/21/2018 NYSCEAST 59TH 2123081010 /NY US CARD
PURCHASE \$ -69.99

11/02/2018 NYSCEAST 59TH 2123081010 /NY US CARD
PURCHASE \$ -89.99

I look forward to your prompt resolution of this matter.

Regards,

Nicole Trudeau

187. Ms. Trudeau also forwarded this email to memberservices@tsiclubs.com and HereToHelp@tsiclubs.com.

188. Later that day, Mr. Ciaccio responded to Ms. Trudeau and said “Can you check your email for a cancel confirmation to make sure that there was not a mistake on our end? It would have been sent within 72 hours of your cancellation.” However, Ms. Trudeau responded to Mr. Ciaccio that she had not received an email from TSI related to her cancellation.

189. Mr. Ciaccio then accused Ms. Trudeau of using the TSI gym location after her 10-day trial period had expired. Specifically, Mr. Ciaccio stated:

Nicole,

You used the gym on 10/30/2018. This was 16 days after your original sign up date (10/14/2018) which would put you outside of the 10 day money back guarantee window. Unless you have a cancel receipt or some sort of proof that you attempted to put in your cancel in October, all I will be able to do for you is put in your cancellation as of your original email to me.

Robert Ciaccio | General Manager
New York Sports Clubs
502 Park Avenue
New York, NY 10022
p:(212)308-1010
e:Robert.Ciaccio@tsiclubs.com
Download our SportsClubs app here: [App Store](#) | [Google Play](#)

190. Ms. Trudeau responded:

Hello,

I did not use the gym on the 30th of October. Please show me proof of such. And as I told you, I cancelled it with your associate Lex on the same day in October when you had free massages in your entrance. Please schedule an appointment with him, I and yourself to discuss this in person this week.

Thank you,
Nicole Trudeau

191. Ms. Trudeau also sent an email to Wayne Richards, a TSI employee, stating:

Dear Mr. Richards,

I am contacting you in regards to one of the NYSC gyms which you manage located at 59/Park. I was in correspondence with your colleague, Robert Ciaccio, this week about an account issue, as well as with associates at the TSI corporate offices. I have been recommended to discuss my account issue with you.

To summarize, I signed up for a gym membership in October. Following this, I quickly learned that I would not remain in the housing location and cancelled my membership within the allotted cancellation time, in person, with an associate at your gym named Lex. This was in October, I was told that I would be all set without further fees. Due to my work at the UN, I have been in and out of missions since that time in war zones and other humanitarian crisis areas. I came back to New York last week and reviewed some documentation for tax purposes to find that I had been continuously billed by your company following my cancellation. Between the dates that I cancelled until now I have been charged \$439.95, the last charge being yesterday. After calling your gym twice (Friday the 1st and Monday the 4th), I began emailing your colleague, Robert Ciaccio. Robert has been unwilling to further look into this issue past the fact that he does not have the cancellation marked in his system.

I would kindly ask that you facilitate resolution of this matter.

Thank you for any assistance you may be able to provide

Regards,
Nicole Trudeau

192. Mr. Richards never responded to Ms. Trudeau's email.

193. Later that day, Mr. Ciaccio sent Ms. Trudeau an email attaching a "usage report" supposedly showing that Ms. Trudeau entered the Park Avenue location on October 30, 2018, which Mr. Ciaccio claimed was outside of her 10-day trial period.

194. In response, Trudeau provided Mr. Ciaccio with a detailed explanation as to why Mr. Ciaccio's claim that she visited the Park Avenue location on October 30, 2018 is false.

Specifically, Ms. Trudeau stated:

Dear Robert,

Thank you for sending the member usage report as it confirms my suspicions.

On October 16th, just a few days after moving to Manhattan, I began working in my newly appointed position at the United Nations Headquarters. My work hours range from 8:30-5/5:30, Monday through Friday. You can see on the other gym attendances, following the start of my position, I was in only after 6pm. On the day in question, October 30th 2018, I was in the office from 8:30am until after 5pm. I had a full schedule of morning meetings, including with the assistant of Prince William. Although I thank you kindly for sending you report, it is inaccurate. I have many high ranking UN staff who will attest to my whereabouts at the time in question (as well as many emails sent from the same time from my desktop computer). The fault of your "system" on this day further adds to the questionability of your system in general and/or staff abilities.

As previously stated, I am requesting the full refund of amounts mistakenly charged to my account.

Regards,
Nicole Trudeau

195. In his response to Ms. Trudeau's explanation, Mr. Ciaccio simply responded "Unfortunately at this time all I can do is put in your cancellation as of your original email."

196. TSI continued to charge Ms. Trudeau additional fees after she first provided notice of cancellation, and Ms. Trudeau never agreed to or authorized these charges.

FIRST CLAIM FOR RELIEF

(New York General Business Law §349)

On Behalf of Plaintiffs Tuan, Album, Horton, Luciano, Miller and Trudeau

197. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if they were set forth again herein.

198. As alleged herein, Defendants have been engaged, and continue to engage, in consumer-oriented conduct towards Plaintiffs that was and continues to be false, misleading and deceptive in a material way.

199. Plaintiffs have suffered, and continue to suffer, damages as a result of the deceptive conduct alleged herein, including, but not limited to, being unlawfully charged fees in connection with the cancellation of their TSI memberships.

200. Defendants' conduct constitutes a willful violation of GBL §349.

SECOND CLAIM FOR RELIEF
(D.C. Consumer Protection Procedures Act §§28-3901, *et seq.*)
On Behalf of Plaintiff Braxton

201. Plaintiff Maya Braxton realleges and incorporates by reference all preceding paragraphs as if they were set forth again herein.

202. As alleged herein, Defendants have been engaged, and continue to engage, in consumer-oriented conduct towards Plaintiff that was and continues to be false, misleading and deceptive in a material way.

203. Additionally, Defendants have: (i) stated a material fact which misled Plaintiff and (ii) failed to supply Plaintiff with copies of service contracts for her to execute.

204. Plaintiff suffered, and continues to suffer, damages as a result of the deceptive conduct alleged herein, including, but not limited to, being unlawfully charged fees in connection with the cancellation of her TSI membership.

205. Defendants' conduct constitutes a willful violation of D.C. Consumer Protection Procedures Act §§28-3901, *et seq.*

THIRD CLAIM FOR RELIEF
(Connecticut Unfair Trade Practices Act §42-110, *et seq.*)
On Behalf of Plaintiff McCarthy

206. Plaintiff Ryan McCarthy realleges and incorporates by reference all preceding paragraphs as if they were set forth again herein.

207. As alleged herein, Defendants have been engaged in unfair and/or deceptive acts or practices or misrepresentations towards Plaintiff that were misleading and deceptive in a material way.

208. Plaintiff suffered, and continue to suffer, damages as a result of the deceptive conduct alleged herein, including, but not limited to, being unlawfully charged fees in connection with the cancellation of his TSI membership.

209. Defendants' conduct constitutes a willful violation of Connecticut Unfair Trade Practices Act, §42-110, *et seq.*

FOURTH CLAIM FOR RELIEF
(Mass. Consumer Protection Act, M.G.L.A. c. 93A §§1 *et seq.*)
On Behalf of Plaintiffs Knorr and Mitchell

210. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if they were set forth again herein.

211. As alleged herein, Defendants have been engaged, and continue to engage, in unfair and/or deceptive acts or practices or misrepresentations towards Plaintiffs that were and continue to be false, misleading and deceptive in a material way.

212. Plaintiffs have suffered, and continue to suffer, damages as a result of the deceptive conduct alleged herein, including, but not limited to, being unlawfully charged fees in connection with the cancellation of their TSI memberships.

213. Defendants' conduct constitutes a willful violation of MGL 93A §§1, *et seq.*

FIFTH CLAIM FOR RELIEF
(Conversion)
On Behalf of Plaintiffs

214. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if they were set forth again herein.

215. As alleged herein, Defendants have interfered with Plaintiffs' possessory right or interest in money by unlawfully charging and receiving payments in connection with the cancellation of the Plaintiffs' memberships.

216. As a result of Defendants' conduct, Plaintiffs have suffered damages for which they are entitled to injunctive relief and damages to the greatest extent permitted by law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that this Court:

- A. Declare that the practices complained of herein are unlawful;
- B. Enjoin Defendants from continuing to engage in unlawful practices;
- C. Determine the damages sustained by Plaintiffs as a result of Defendants' unlawful conduct, and award those damages against Defendants and in favor of Plaintiffs, plus such pre-judgment and post-judgment interest as may be allowed;
- D. Award Plaintiffs any applicable statutory damages;
- E. Award Plaintiffs any and all other applicable damages;
- F. Award Plaintiffs their reasonable attorneys' fees and costs; and
- G. Grant Plaintiffs such other and further relief that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues of fact and damages.

Dated: May 13, 2019
New York, New York

Respectfully submitted,

WIGDOR LLP

By:

A handwritten signature in blue ink, appearing to be "David E. Gottlieb" and "Taylor J. Crabill", written over a horizontal line.

David E. Gottlieb
Taylor J. Crabill

85 Fifth Avenue
New York, NY 10003
Telephone: (212) 257-6800
Facsimile: (212) 257-6845
dgottlieb@wigdorlaw.com
tcrabill@wigdorlaw.com

Attorneys for Plaintiffs

Exhibit A

OFFICE OF CONSUMER PROTECTION OF
THE OFFICE OF THE ATTORNEY
GENERAL FOR THE DISTRICT OF
COLUMBIA
441 4th Street, NW
Washington, DC 20001,

Proponent,

v.

TOWN SPORTS, INTERNATIONAL, LLC
d/b/a WASHINGTON SPORTS CLUBS
5 Penn Plaza, 4th Floor
New York, NY 10001,

Respondent.

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance (“Assurance”) is being entered into between the Office of Consumer Protection of the Office of the Attorney General for the District of Columbia (the “Office of Consumer Protection”) and Town Sports International, LLC, doing business as Washington Sports Clubs (hereinafter referred to as “TSI”). The Office of Consumer Protection and TSI agree as follows:

THE PARTIES

1. The Office of Consumer Protection is authorized to bring legal actions seeking injunctive relief, consumer restitution, civil penalties, costs, and attorneys’ fees for violations of the District of Columbia consumer protection laws, including the Consumer Protection Procedures Act (CPPA), D.C. Code §§ 28-3901, *et seq.*

2. TSI owns and operates fitness centers on the eastern coast of the United States under various trade names, including eight clubs in the District of Columbia under the name Washington Sports Club.

THE OFFICE OF CONSUMER PROTECTION'S ALLEGATIONS

3. In order to become members at one of TSI's Washington Sports Clubs, TSI requires consumers to enter into membership agreements that generally contain one year terms. Although TSI's membership agreements state that consumers must terminate their memberships in writing with thirty days' notice, TSI's employees have told consumers at the time they enter into their memberships and/or during the term of their memberships that they can cancel their memberships at any time by simply informing the desk manager at their clubs. The net impression these representations have had on consumers is that they have the flexibility to end their memberships at any time and that TSI's cancellation practices are informal.

4. At various times pertinent hereto, TSI has accepted consumers' oral and written requests to cancel their memberships, but continued to bill and collect amounts from consumers for their memberships, notwithstanding the consumers' prior cancellation.

5. The Office of Consumer Protection alleges that TSI's representations that consumers could cancel their memberships and practice of accepting such cancellation requests while continuing to bill consumers for their fitness center memberships, are unlawful practices that are prohibited by the CPPA.

6. The Office of Consumer Protection alleges that TSI's representations that consumers owed payments for their cancelled gym memberships violated the District's Debt Collection Law, D.C. Code § 28-3814.

TSI'S DENIAL

7. TSI denies it has committed any unlawful practices or violated any laws, including the CPPA and Debt Collection Law.

INJUNCTIVE TERMS

8. For purposes of resolving disputes concerning the above allegations, TSI agrees to do as is set forth below.

9. The provisions of this Assurance shall apply to TSI and its officers, employees, agents, successors, assignees, affiliates, merged or acquired entities, parent or controlling entities, wholly owned subsidiaries, and all other persons acting in concert with TSI.

10. The provisions of this Assurance shall apply to TSI's conduct in connection with its offer and sale of consumer goods and services in the District of Columbia.

11. TSI shall not engage in any unlawful practice prohibited by the Consumer Protection Procedures Act (CPPA), D.C. Code §§ 28-3901, *et seq.*

12. TSI shall not collect any debts in violation of the Debt Collection Law, D.C. Code § 28-3814.

13. TSI shall not make any oral or written statements that have the capacity, tendency, or effect of deceiving or misleading consumers concerning their ability to cancel their fitness center memberships.

14. TSI shall clearly and conspicuously inform consumers of its cancellation policies, both at the time consumers enter into or renew any membership agreement(s), or at the time they seek to cancel their memberships, if such cancellation request is made in any manner inconsistent with TSI's operative cancellation policies. For purposes of this paragraph, a clear and conspicuous disclosure when referring to a written disclosure shall mean that such statement

or disclosure be in a type, size and location sufficiently noticeable for a consumer to read and comprehend it, and in a print that contrasts with the background against which it appears. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, in a manner that is likely to be noticed, readable, and understandable, and it must not be obscured in any manner. An oral disclosure shall be delivered in a volume and cadence sufficient for a consumer to hear and comprehend it and shall not be inconsistent with any previously made statements.

15. TSI shall not make any misleading or contradictory representations to consumers concerning its cancellation policies.

16. TSI shall not represent that consumers owe it any monies for any fitness club memberships that have been previously cancelled consistent with TSI's cancellation policies.

17. TSI shall not collect or attempt to collect any amounts from consumers that are not legally chargeable or otherwise owed by consumers.

PAYMENT TERMS

Restitution Payments

18. TSI shall pay restitution to the District equal to the amounts that TSI has collected from consumers residing in the District who were charged amounts for fitness center memberships after they cancelled the memberships. For purposes of calculating restitution owed, a consumer's membership was canceled effective the date the consumer complied with either oral cancellation instructions of a TSI employee or agent or with any applicable written cancellation policy, whichever date is earlier.

19. After a review of its business records, TSI represents and affirms that it is unable to identify the entire class of consumers for whom restitution can be calculated based on the company's available business records. The Office of Consumer Protection agrees to enter into this Assurance based on its acceptance of TSI's representation that, from its available business records, it cannot reasonably identify all of the consumers who were charged amounts after they cancelled their memberships, either consistent with a then-TSI policy or with instructions provided by a TSI employee or agent. If the Office of Consumer Protection receives information that establishes this representation as untrue, the Office of Consumer Protection may set aside this Assurance. In light of this representation, TSI shall pay restitution based on consumer complaints, as described in paragraphs 20 through 24 below.

20. The Office of Consumer Protection shall provide TSI information concerning any consumers it has identified as having complaints regarding TSI's collection of any amounts from those consumers for fitness club memberships after the consumers cancelled their memberships. Within thirty (30) days of receiving the consumer complaint information provided by the Office of Consumer Protection, and based on this information, as well a reasonable review of its own business records to identify any other consumers owed restitution under this Assurance, TSI shall provide the Office of Consumer Protection a list of consumers it is aware of as having complaints regarding TSI's collection of any amounts from those consumers for fitness club memberships after the consumers cancelled their memberships (the "Consumer Complaint List"). TSI shall produce the Consumer Complaint List in both electronic and paper form. For each consumer whose name is contained on the Consumer Complaint List, TSI shall provide the following information in the form of a spreadsheet, with each item below contained in a separate field:

- a. the consumer's name;
- b. the consumer's street address;
- c. the city, state and zip code;
- d. the date on which the consumer claims to have cancelled his or her membership;
- e. the amount the consumer paid for his or her membership following the date on which the consumer claims to have canceled his or her membership; and
- f. the amount of any membership fees already refunded to the consumer based on his or her claim that they were billed for membership fees after cancelling his or her membership.

21. For a period of three (3) years following the date of this Assurance, TSI shall maintain all of its records in its possession concerning consumers identified in the Consumer Complaint List, as well as all other billing and cancellation records it maintains concerning consumers. TSI shall provide the Office of Consumer Protection access to such documents upon request.

22. TSI shall pay restitution within thirty (30) days of providing the Consumer Complaint List to the Office of Consumer Protection by sending a refund check to each consumer listed on the Consumer Complaint List in the amount that the consumer claims he or she paid for his or her membership following the date on which the consumer claims to have canceled his or her membership, which amounts will be set forth in the Consumer Complaints List. TSI may credit against these payments any amounts it has already refunded to a consumer in connection with his or her complaint. Each refund check shall be valid for ninety (90) days.

At the same time each refund check is delivered to any consumer, TSI shall deliver a copy of the check to the Office of Consumer Protection.

23. No later than one hundred twenty (120) days following its payment of the restitution amounts pursuant to paragraph 22, TSI shall deliver to the Office of Consumer Protection:

- a. a copy of each cancelled check deposited by a consumer reflecting a payment to a consumer pursuant to paragraph 22;
- b. a list of all consumers who did not deposit a refund check sent pursuant to paragraph 22; and
- c. a check for the total amount of un-deposited refund checks sent pursuant to paragraph 22. Any part of these restitution amounts may, at the discretion of the Attorney General, be (a) held in trust for, or paid over to, consumers by the District or (b) used in accordance with District law for any other lawful purpose.

24. For a period of three (3) years from the date of this Assurance, TSI shall resolve any further complaints it receives by paying restitution to consumers who claim they were charged any amount for fitness club memberships after cancelling their memberships, either consistent with (i) a then-TSI policy or (ii) instructions provided by a TSI employee. To be eligible for restitution, consumers must have cancelled their memberships before this Assurance was signed. TSI shall resolve complaints pursuant to this paragraph either by (i) paying restitution to complaining consumers within thirty (30) days of their receipt of the consumers' complaint and documenting the payment of restitution pursuant to this paragraph by providing

the District a copy of any cancelled check evidencing such payment or (ii) challenging any such complaints consistent with the procedures set out in this Assurance at paragraphs 25-32 below.

Claims Procedure

25. If TSI contends that any consumer claim submitted pursuant to paragraphs 18 through 24 of this Assurance is not eligible for a restitution payment, TSI shall, within thirty (30) days of receiving the claim, provide the Office of Consumer Protection with a written explanation of the basis for TSI's denial of the claim. Within fifteen (15) days of the Office of Consumer Protection notifying TSI that it agrees with TSI's reasons for declining payment to any consumer, TSI shall send a letter to the consumer notifying the consumer of the denial of the claim.

26. If the Office of Consumer Protection disagrees with TSI's reasons for declining to pay restitution to any consumer, TSI must resolve the disputed claim using the following claim resolution procedure:

- a. Within thirty (30) days of the first instance of the Office of Consumer Protection notifying TSI of a dispute over a claim pursuant to this Assurance, TSI shall hire a neutral third party (the "Claims Administrator") to resolve disputed consumer claims under this Assurance. TSI shall hire and pay for the Claims Administrator, but the selection of the Claims Administrator shall be subject to approval by the Office of Consumer Protection. To be eligible for appointment, the Claims Administrator must agree to remain available to resolve disputed claims for the entire period of time remaining under paragraph 24 of this Assurance.

- b. Within ten (10) days of the Claims Administrator being appointed, or, once appointed, within ten (10) days of being notified by the Office of Consumer Protection that it disagrees with TSI's decision to deny paying restitution for a claim, TSI shall (i) mail consumers the Claim Form attached hereto as Exhibit A and (ii) provide the Claims Administrator a copy of the following: (A) the consumer's complaint, (B) all documents provided by the consumer concerning the complaint, (C) all other documents or information relied upon by TSI in declining to pay restitution to the consumer, and (D) any other relevant information to the claim in the possession of TSI.
- c. The Claims Administrator shall request from TSI and the consumer any additional information the Claims Administrator deems necessary to make a full and fair decision regarding any consumer claim challenged by TSI.
- d. The Claims Administrator may resolve a claim solely based on the information provided pursuant subparagraphs (b) and (c).
- e. The Claims Administrator may conduct hearings on challenged claims by telephone when requested by either party or when the Claims Administrator deems it necessary. The consumer shall be informed in writing of the option for a telephone hearing. No state or federal rule of evidence shall apply to the Claims Administrator's review, including any telephonic hearing conducted pursuant to this paragraph. However, no *ex parte* communications with the Claims Administrator shall occur in connection with any challenged claim other than for purposes of the Claim Administrator requesting and receiving information from TSI or a consumer.

- f. The Claims Administrator shall issue a written decision regarding the review of any challenged claim within a reasonable period of time, but in no event later than sixty (60) days following receipt of the challenged claim or any supporting documentation without good cause. The Claims Administrator's decision shall be binding only as to the District and TSI.
- g. The Claims Administrator shall deliver the decision to TSI, the Office of Consumer Protection and the consumer. In the event a decision issued by the Claims Administrator requires TSI to provide restitution to a consumer, TSI shall pay that amount to the consumer within thirty (30) days of receiving the decision.
- h. At the request of TSI or the Office of Consumer Protection, the Claims Administrator or his or her designee shall meet and confer with TSI and the Office of Consumer Protection for any purpose relating to the administration of the claims review process, including, but not limited to, monitoring and auditing the claims review process.

Payments to the District

27. Within thirty (30) days of the date of this Assurance, TSI shall pay to the District the sum of Five Thousand (\$5,000.00) for costs the District has incurred investigating this matter or that may be incurred by the Agency in administering the terms of this Assurance.

28. Within thirty (30) days of the date of this Assurance, TSI shall pay to the District the sum of Fifteen Thousand (\$15,000.00) as a civil penalty.

29. TSI understands that this Assurance is enforceable by the Office of Consumer Protection and agrees that any violations of this Assurance shall be considered an unlawful

practice that violates the Consumer Protection Procedures Act subjecting TSI to all available legal and equitable remedies.


**FOR THE OFFICE OF THE ATTORNEY GENERAL
FOR THE DISTRICT OF COLUMBIA:**

KARLA A. RACINE
Attorney General for the District of Columbia

NATALIE LUDAWAY
Deputy Attorney General for the District of Columbia



PHILIP ZIPERMAN
Director, Office of Consumer Protection



JIMMY R. ROCK
Deputy Director, Office of Consumer Protection
441 4th Street, N.W., Suite 630 South
Washington, D.C. 20001
(202) 741-0770
Jimmy.rock@dc.gov

Dated: 11-21-2016

FOR TOWN SPORTS INTERNATIONAL, INC.:



Carolyn Spatalora
Chief Financial Officer
Town Sports International, Inc.

Dated: 11-1-2016

EXHIBIT A – CLAIMS FORM

[Date]

Re: Town Sports International, LLC (operating the Washington Sports Clubs)
[Consumer Name]

Dear [Consumer]:

Pursuant to a settlement that Town Sports International, LLC (TSI) recently reached with the Office of the Attorney General for the District of Columbia concerning cancellation and billing issues at the Washington Sports Clubs, we have reviewed your complaint that you were billed monthly membership charges after canceling your membership. TSI is denying your complaint because [state reason].

You have the right to have your complaint reconsidered by [Insert Name of Claims Administrator], who is a neutral third-party serving as the Claims Administrator in connection with the settlement. If you wish to have your complaint reconsidered, please return the Claim Form attached to this letter to:

[Name of Claims Administrator]
[Address of Claims Administrator]
[Fax # of Claims Administrator]

TSI will provide the Claims Administrator with your complaint and all supporting documents it has or that you provided to TSI. You may provide additional information on the space provided in the attached Claim Form. Under the settlement, the Claims Administrator may contact you for more information. Otherwise, the Claims Administrator will notify you of the decision on your complaint within approximately sixty (60) days.

If you have any questions about this process, you may contact the Office of the Attorney General for the District of Columbia at (202) 442-9828.

[Signature block]

Return to:

[Name of Claims Administrator]
[Address of Claims Administrator]
[Fax # of Claims Administrator]

WASHINGTON SPORTS CLUB CLAIM FORM

Consumer's Name: _____

Street Address: _____

City, State, Zip Code: _____

Do you want to have your complaint against Town Sports International, LLC (operating the Washington Sport Clubs) reviewed by [Name of Claims Administrator], a neutral third-party claims administrator?

Yes _____ No _____

If you want to provide more information concerning your complaint to [Name of Claims Administrator], please use the space provided below.

PLEASE CALL THE OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA AT (202) 442-9828 IF YOU HAVE ANY QUESTIONS CONCERNING YOUR CLAIM.

Exhibit B

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division**

DISTRICT OF COLUMBIA,
a municipal corporation
441 4th Street, N.W.
Washington, D.C. 20001,

Plaintiff,

v.

TOWN SPORTS INTERNATIONAL, LLC,
d/b/a WASHINGTON SPORTS CLUBS
399 Executive Boulevard
Elmsford, NY 10523,

Serve On:
CT Corporation System
Registered Agent
1015 15th Street, N.W., Suite 1000
Washington, D.C. 20005

Defendant.

Case No.:

JURY TRIAL DEMANDED

**COMPLAINT FOR VIOLATIONS OF THE CONSUMER PROTECTION
PROCEDURES ACT**

Plaintiff District of Columbia (“District”), by the Office of the Attorney General, brings this action against Defendant Town Sports International, LLC (“TSI”), doing business as Washington Sports Clubs, for violations of the District’s Consumer Protection Procedures Act (“CPPA”), D.C. Code §§ 28-3901, *et seq.* In support of its claims, the District states as follows:

1. TSI is a subsidiary of Town Sports International Holdings, Inc., and is one of the largest owners and operators of fitness clubs in the Northeast United States. TSI owns and operates fitness clubs in nine states. It operates in the Washington, D.C. metropolitan area as Washington Sports Clubs, and has six locations within D.C. Services offered by TSI vary by club. Some clubs include pools, saunas, and children’s programs in addition to personal training,

free weights, and cardio and strength training machines. TSI offers both month-to-month and annual memberships.

2. In November 2016, following an investigation in which the District found that TSI was engaged in deceptive cancellation practices, TSI entered into an Assurance of Voluntary Compliance (“AVC”) with the District. *See* Exhibit A (Assurance of Voluntary Compliance). As part of the AVC, TSI agreed that it would not “engage in any unlawful practice prohibited by the Consumer Protection Procedures Act (CPPA),” that it would not “make any oral or written statements that have the capacity, tendency, or effect of deceiving or misleading consumers concerning their ability to cancel their fitness center memberships,” and that it would “clearly and conspicuously inform consumers of its cancellation policies, both at the time consumers enter into or renew any membership agreement(s), or at the time they seek to cancel their memberships, if such cancellation request is made in any manner inconsistent with TSI’s operative cancellation policies.” AVC at Paragraphs 13-14.

3. Nevertheless, since entering into the AVC, TSI has continued to engage in cancellation practices in violation of both the AVC as well as the CPPA. In particular, TSI makes misrepresentations about its cancellation policies and fees to lure consumers to purchase memberships. For example, consumers are told that they may cancel at any time for free, when, in fact, TSI requires approximately six weeks’ notice and charges cancellation fees. TSI also maintains policies that make it extremely difficult for consumers to cancel their memberships and TSI fails to inform consumers of these policies. As a result, consumers believe that they have taken the appropriate steps to cancel their memberships, but TSI continues to charge consumers for months (and sometimes years). In some cases, consumers have continued being charged even after receiving emails confirming their cancellation or being verbally assured by TSI

representatives that their memberships had been effectively cancelled. Adding to this confusion, TSI does not provide written membership contracts to consumers that include its cancellation policies, even after consumers request copies.

4. The District institutes this proceeding as a result of TSI's ongoing violations of its AVC with the District and to stop TSI from engaging in the unlawful trade practices described in more detail below, including, but not limited to, its practices of (1) making oral or written statements that have the capacity, tendency, or effect of deceiving or misleading consumers about the cancellation of their memberships; (2) making untrue or misleading representations regarding its cancellation policies; and (3) failing to provide consumers with written copies of their contracts. The District seeks injunctive relief to prevent TSI from engaging in these and similar unlawful trade practices, civil penalties to deter TSI from engaging in these and similar unlawful trade practices, costs and attorney's fees, and restitution for consumers.

Jurisdiction

5. This Court has jurisdiction over the subject matter of this case pursuant to D.C. Code §§ 11-921 and 28-3909.

6. This Court has personal jurisdiction over Defendant TSI pursuant to D.C. Code § 13-423(a).

7. The Attorney General for the District of Columbia brings this action pursuant to the authority granted by D.C. Code § 28-3909.

The Parties

8. Plaintiff District of Columbia, a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the permanent seat of the government of the United States. The District is represented by and through its chief legal officer, the

Attorney General for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1). The Attorney General is specifically authorized to enforce the District's consumer protection laws, including the CPPA, pursuant to D.C. Code § 28-3909.

9. Defendant TSI is a New York corporation with its headquarters and principal place of business at 1001 US North Highway 1, Suite 201, Jupiter, Florida 33477. TSI owns and operates fitness centers in the United States under various trade names, including six clubs in Washington, D.C. ("D.C.") under the name Washington Sports Clubs. TSI engages, and has engaged, in the offer and sale of goods or services to consumers in D.C. for their personal, household or family purposes, by offering and selling fitness memberships and services.

TSI's Fitness Centers

10. TSI is one of the largest fitness center operators in the country. It has six locations in Washington, D.C. where it offers fitness and personal training memberships among other services.

11. To use TSI's facilities, consumers must sign up for a membership online or in person at a facility. Consumers have the option to sign up for a membership at a single club, known as a "Neighborhood" membership, or they may elect to have a "Regional Passport" membership, granting access to all clubs within the region. Either membership can be month-to-month or require an annual commitment. The annual membership includes an annual fee but offers a discounted monthly rate. All memberships require consumers to pay their membership dues monthly via recurring payment to a consumer's bank or credit card.

TSI's Misrepresentations to Induce Consumers to Purchase Memberships

12. When consumers sign up for memberships, many consumers are concerned about how easily they can cancel or change their memberships and what terms they must satisfy to do so. In order to reassure consumers that they are able to cancel easily and to induce them to purchase a membership, TSI representatives frequently make false representations to consumers about TSI's membership policies and fees.

13. For example, TSI representatives tell consumers that they can cancel for free and at any time permitted they have a valid reason. In practice, however, TSI requires forty-five (45) days' notice when consumers elect to cancel and charges consumers cancellation fees ranging from \$10 to \$99.95.

14. TSI also fails to disclose all applicable fees for signing up for its services. For example, TSI typically advertises promotional fees in emails and other advertisements. These promotions offer enrollment fees for as low as \$1. When consumers sign up for a membership, however, they are charged undisclosed additional fees. When consumers request refunds, those requests are denied.

15. When selling consumers annual memberships, TSI tells consumers that they have no obligation to renew after the year is up, stating or implying that the membership will end after one year. TSI representatives fail to disclose, however, that annual memberships automatically convert to month-to-month memberships at the end of the first year. When consumers realize that their memberships continue after one year, TSI informs them that they must still provide forty-five (45) days' notice, pay a new annual fee, pay monthly fees during the forty-five (45) day period, and pay a cancellation fee.

16. Finally, TSI offers trial memberships for consumers to test facilities and determine whether they want to join. TSI representatives tells consumers who sign up for trials that no action is required if they do not wish to continue with the membership after the trial period. In fact, TSI requires that consumers affirmatively cancel or they are charged for the membership.

17. When consumers lodge complaints or request refunds based on the misrepresentations described above, TSI directs consumers to language in TSI's membership contracts. However, TSI fails to (i) permit consumers to read contracts when signing up, (ii) provide copies of the contract to consumers when signing up, and (iii) provide executed copies of contracts when later requested by consumers.

18. TSI uses an electronic signing pad when signing up consumers for memberships at its facilities. TSI representatives verbally communicate the terms of membership to consumers. As described above, however, TSI representatives make false and misleading statements about consumers' membership terms that contradict the terms in TSI's membership contracts. TSI does not allow consumers to view the terms of membership when signing up. Instead, consumers are asked to sign an electronic pad without having the opportunity to read or review the terms of their membership agreements. When consumers later request copies of their executed membership agreements, they either do not receive them or are provided an unsigned copy of TSI's general agreement.

19. In some instances, TSI does not require consumers to sign contracts to initiate memberships. When consumers attempt to cancel their memberships, TSI tries to enforce the cancellation provisions in its standard contracts that consumers never signed.

TSI's Misleading Representations Regarding Cancellation

20. TSI also makes it extremely difficult for consumers to cancel their memberships and often continues to charge consumers after consumers have notified TSI of their intent to cancel.

21. As with the other terms of its membership contracts, TSI fails to disclose or adequately disclose to consumers its requirements for cancellation. In addition, TSI representatives fail to disclose to consumers that are attempting to cancel in person the necessary steps consumers must take to cancel their membership. As a result, consumers that attempt to cancel their memberships often think they have done so, only to later discover that they are still being charged by TSI.

22. In some instances, TSI continues to charge consumers after it has confirmed the consumers' memberships were cancelled. In several instances, consumers were informed by management or received email confirmation of cancellation, yet TSI continued to charge them.

TSI'S Conduct Violates the Assurance of Voluntary Compliance

23. TSI entered into an AVC with the District in November 2016. As part of the AVC, TSI agreed that it would not "make any oral or written statements that have the capacity, tendency, or effect of deceiving or misleading consumers concerning their ability to cancel their fitness center memberships" and would "clearly and conspicuously inform consumers of its cancellation policies, both at the time consumers enter into or renew any membership agreement(s), or at the time they seek to cancel their memberships, if such cancellation request is made in any manner inconsistent with TSI's operative cancellation policies." AVC at Paragraphs 13-14.

24. Furthermore, the AVC stated that any violations of the agreement would be considered an unlawful trade practice that violates the CPPA. AVC at Paragraph 29.

25. Since entering into the AVC with TSI, the District is aware of at least forty (40) complaints that describe conduct that violates the AVC. As described above in paragraphs 12-22, TSI has, in direct violation of the AVC: (i) continued to mislead consumers about the cancellation process; (ii) made oral statements that misled consumers concerning their ability to cancel their memberships; (iii) failed to clearly and conspicuously inform consumers of its cancellation policies both when entering into membership agreements and at the time members sought to cancel memberships in a manner inconsistent with TSI's operative cancellation policies; and (iv) failed to provide copies of contracts to consumers or to allow them to read them when signing.

TSI's Conduct Violates the Consumer Protection Procedures Act

26. TSI's representations to consumers that they could cancel for free at any time, when, in fact, TSI required forty-five (45) days' notice for a cancellation request to be effective and charged cancellation fees, are misrepresentations of material facts that tend to mislead consumers.

27. TSI's failure to inform or adequately inform consumers of all applicable sign up and initiation fees are material facts, the omission of which tends to mislead consumers.

28. TSI's failure to inform or adequately inform consumers that annual memberships automatically convert to month-to-month memberships are material facts, the omission of which tend to mislead consumers.

29. TSI's representations that consumers do not need to take any action to cancel trial memberships, when, in fact, TSI will continue to charge consumers that do not affirmatively cancel trial memberships, are misrepresentations of material fact that tend to mislead consumers.

30. TSI's failure to inform or adequately inform consumers about TSI's cancellation processes and requirements are material facts, the omission of which tend to mislead consumers.

31. TSI's failure to inform consumers that their cancellation attempts were insufficient are material facts, the omission of which tends to mislead consumers.

32. TSI's failure to explain its cancellation processes and requirements, and its representations that consumers may cancel at any time for free, are ambiguities as to material facts that tend to mislead consumers.

33. TSI's failure to provide consumers copies of membership agreements is a violation of the CPPA.

34. TSI's deceptive and misleading statements to consumers concerning their ability to cancel their memberships constitute violations of Paragraphs 13-16 of the AVC.

35. TSI's failure to "clearly and conspicuously inform consumers of its cancellation policies, both at the time consumers enter into or renew any membership agreement(s), [and] at the time they seek to cancel their memberships" constitute violations of Paragraph 14 of the AVC.

Count I: Violations of the Consumer Protection Procedures Act

36. The allegations of paragraphs 1 through 35 are re-alleged as if fully set forth herein.

37. The CPPA is a remedial statute that is to be broadly construed. It establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased or received in D.C.

38. The fitness memberships and services that TSI sells to consumers are purchased for personal, household or family purposes and, therefore, are consumer goods and services.

39. TSI, in the ordinary course of business, offers to sell or supply consumer goods and services and is therefore a merchant.

40. The CPPA prohibits unlawful trade practices in connection with the offer, sale and supply of consumer goods and services.

41. Under the CPPA, it is an unlawful trade practice for any person to:

(e) misrepresent as to a material fact which has a tendency to mislead;

* * *

(f) fail to state a material fact if such failure tends to mislead;

* * *

(f-1) use innuendo or ambiguity as to a material fact, which has a tendency to mislead; [and]

* * *

(q) fail to supply to a consumer a copy of a sales or service contract, lease, promissory note, trust agreement, or other evidence of indebtedness which the consumer may execute.

42. TSI's representations that consumers could cancel at any time for free, that annual memberships expired at the conclusion of one year, and that trial memberships expired without any action by consumers, are misrepresentations concerning material facts that have a tendency

to mislead consumers and are unlawful trade practices that violate the CPPA, D.C. Code § 28-3904(e).

43. TSI's failure to disclose to consumers all applicable initiation fees, that annual memberships automatically convert to month-to-month memberships, that consumers must affirmatively cancel trial memberships, all applicable cancellation fees, the processes and requirements for cancellation, and that consumers' cancellation attempts were insufficient, are material facts, the omission of which tended to mislead consumers and constitute unlawful trade practices that violate the CPPA, D.C. Code § 28-3904(f).

44. TSI's failure to explain its cancellation processes and requirements, and its representations that consumers may cancel at any time for free, constitute ambiguities as to material facts that have the tendency to mislead consumers and are unlawful trade practices that violate the CPPA, D.C. Code § 28-3904(f-1).

45. TSI's failure to supply consumers with a copy of a sales or service contract which the consumer may execute is an unlawful trade practice that violates the CPPA, D.C. Code § 28-3904(q).

46. TSI's conduct in violation of the AVC constitutes a violation of the CPPA pursuant to Paragraph 29 of the AVC.

Prayer for Relief

WHEREFORE, the District of Columbia respectfully requests this Court enter a judgment in its favor and grant relief against Defendant TSI as follows:

(a) Preliminarily or permanently enjoin Defendant, pursuant to D.C. Code § 28-3909(a), from violating the CPPA;

- (b) Order Defendant to pay restitution pursuant to D.C. Code § 28-3909(a) for amounts collected from District of Columbia consumers in violation of the CPPA;
- (c) Order the payment of civil penalties as permitted by statute pursuant to D.C. Code § 28-3909(b), for the Defendant's violations of the CPPA;
- (d) Award the District the costs of this action and reasonable attorney's fees pursuant to D.C. Code § 28-3909(b); and
- (e) Grant such further relief as the Court deems just and proper.

Jury Demand


The District of Columbia demands a trial by jury by the maximum number of jurors permitted by law.

Respectfully submitted,

Dated: January 8, 2019

KARL A. RACINE
Attorney General for the District of Columbia

ROBYN BENDER
Deputy Attorney General
Public Advocacy Division



BENJAMIN WISEMAN [1005442]
Director, Office of Consumer Protection
Public Advocacy Division



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*Licensed in Arizona and Maryland. Practicing in the District of Columbia under supervision of Benjamin Wiseman, Director, Office of Consumer Protection, Public Advocacy Division.

EXHIBIT A

OFFICE OF CONSUMER PROTECTION OF
THE OFFICE OF THE ATTORNEY
GENERAL FOR THE DISTRICT OF
COLUMBIA
441 4th Street, NW
Washington, DC 20001,

Proponent,

v.

TOWN SPORTS, INTERNATIONAL, LLC
d/b/a WASHINGTON SPORTS CLUBS
5 Penn Plaza, 4th Floor
New York, NY 10001,

Respondent.

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance (“Assurance”) is being entered into between the Office of Consumer Protection of the Office of the Attorney General for the District of Columbia (the “Office of Consumer Protection”) and Town Sports International, LLC, doing business as Washington Sports Clubs (hereinafter referred to as “TSI”). The Office of Consumer Protection and TSI agree as follows:

THE PARTIES

1. The Office of Consumer Protection is authorized to bring legal actions seeking injunctive relief, consumer restitution, civil penalties, costs, and attorneys’ fees for violations of the District of Columbia consumer protection laws, including the Consumer Protection Procedures Act (CPPA), D.C. Code §§ 28-3901, *et seq.*

2. TSI owns and operates fitness centers on the eastern coast of the United States under various trade names, including eight clubs in the District of Columbia under the name Washington Sports Club.

THE OFFICE OF CONSUMER PROTECTION'S ALLEGATIONS

3. In order to become members at one of TSI's Washington Sports Clubs, TSI requires consumers to enter into membership agreements that generally contain one year terms. Although TSI's membership agreements state that consumers must terminate their memberships in writing with thirty days' notice, TSI's employees have told consumers at the time they enter into their memberships and/or during the term of their memberships that they can cancel their memberships at any time by simply informing the desk manager at their clubs. The net impression these representations have had on consumers is that they have the flexibility to end their memberships at any time and that TSI's cancellation practices are informal.

4. At various times pertinent hereto, TSI has accepted consumers' oral and written requests to cancel their memberships, but continued to bill and collect amounts from consumers for their memberships, notwithstanding the consumers' prior cancellation.

5. The Office of Consumer Protection alleges that TSI's representations that consumers could cancel their memberships and practice of accepting such cancellation requests while continuing to bill consumers for their fitness center memberships, are unlawful practices that are prohibited by the CPPA.

6. The Office of Consumer Protection alleges that TSI's representations that consumers owed payments for their cancelled gym memberships violated the District's Debt Collection Law, D.C. Code § 28-3814.

TSI'S DENIAL

7. TSI denies it has committed any unlawful practices or violated any laws, including the CPPA and Debt Collection Law.

INJUNCTIVE TERMS

8. For purposes of resolving disputes concerning the above allegations, TSI agrees to do as is set forth below.

9. The provisions of this Assurance shall apply to TSI and its officers, employees, agents, successors, assignees, affiliates, merged or acquired entities, parent or controlling entities, wholly owned subsidiaries, and all other persons acting in concert with TSI.

10. The provisions of this Assurance shall apply to TSI's conduct in connection with its offer and sale of consumer goods and services in the District of Columbia.

11. TSI shall not engage in any unlawful practice prohibited by the Consumer Protection Procedures Act (CPPA), D.C. Code §§ 28-3901, *et seq.*

12. TSI shall not collect any debts in violation of the Debt Collection Law, D.C. Code § 28-3814.

13. TSI shall not make any oral or written statements that have the capacity, tendency, or effect of deceiving or misleading consumers concerning their ability to cancel their fitness center memberships.

14. TSI shall clearly and conspicuously inform consumers of its cancellation policies, both at the time consumers enter into or renew any membership agreement(s), or at the time they seek to cancel their memberships, if such cancellation request is made in any manner inconsistent with TSI's operative cancellation policies. For purposes of this paragraph, a clear and conspicuous disclosure when referring to a written disclosure shall mean that such statement

or disclosure be in a type, size and location sufficiently noticeable for a consumer to read and comprehend it, and in a print that contrasts with the background against which it appears. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, in a manner that is likely to be noticed, readable, and understandable, and it must not be obscured in any manner. An oral disclosure shall be delivered in a volume and cadence sufficient for a consumer to hear and comprehend it and shall not be inconsistent with any previously made statements.

15. TSI shall not make any misleading or contradictory representations to consumers concerning its cancellation policies.

16. TSI shall not represent that consumers owe it any monies for any fitness club memberships that have been previously cancelled consistent with TSI's cancellation policies.

17. TSI shall not collect or attempt to collect any amounts from consumers that are not legally chargeable or otherwise owed by consumers.

PAYMENT TERMS

Restitution Payments

18. TSI shall pay restitution to the District equal to the amounts that TSI has collected from consumers residing in the District who were charged amounts for fitness center memberships after they cancelled the memberships. For purposes of calculating restitution owed, a consumer's membership was canceled effective the date the consumer complied with either oral cancellation instructions of a TSI employee or agent or with any applicable written cancellation policy, whichever date is earlier.

19. After a review of its business records, TSI represents and affirms that it is unable to identify the entire class of consumers for whom restitution can be calculated based on the company's available business records. The Office of Consumer Protection agrees to enter into this Assurance based on its acceptance of TSI's representation that, from its available business records, it cannot reasonably identify all of the consumers who were charged amounts after they cancelled their memberships, either consistent with a then-TSI policy or with instructions provided by a TSI employee or agent. If the Office of Consumer Protection receives information that establishes this representation as untrue, the Office of Consumer Protection may set aside this Assurance. In light of this representation, TSI shall pay restitution based on consumer complaints, as described in paragraphs 20 through 24 below.

20. The Office of Consumer Protection shall provide TSI information concerning any consumers it has identified as having complaints regarding TSI's collection of any amounts from those consumers for fitness club memberships after the consumers cancelled their memberships. Within thirty (30) days of receiving the consumer complaint information provided by the Office of Consumer Protection, and based on this information, as well a reasonable review of its own business records to identify any other consumers owed restitution under this Assurance, TSI shall provide the Office of Consumer Protection a list of consumers it is aware of as having complaints regarding TSI's collection of any amounts from those consumers for fitness club memberships after the consumers cancelled their memberships (the "Consumer Complaint List"). TSI shall produce the Consumer Complaint List in both electronic and paper form. For each consumer whose name is contained on the Consumer Complaint List, TSI shall provide the following information in the form of a spreadsheet, with each item below contained in a separate field:

- a. the consumer's name;
- b. the consumer's street address;
- c. the city, state and zip code;
- d. the date on which the consumer claims to have cancelled his or her membership;
- e. the amount the consumer paid for his or her membership following the date on which the consumer claims to have canceled his or her membership; and
- f. the amount of any membership fees already refunded to the consumer based on his or her claim that they were billed for membership fees after cancelling his or her membership.

21. For a period of three (3) years following the date of this Assurance, TSI shall maintain all of its records in its possession concerning consumers identified in the Consumer Complaint List, as well as all other billing and cancellation records it maintains concerning consumers. TSI shall provide the Office of Consumer Protection access to such documents upon request.

22. TSI shall pay restitution within thirty (30) days of providing the Consumer Complaint List to the Office of Consumer Protection by sending a refund check to each consumer listed on the Consumer Complaint List in the amount that the consumer claims he or she paid for his or her membership following the date on which the consumer claims to have canceled his or her membership, which amounts will be set forth in the Consumer Complaints List. TSI may credit against these payments any amounts it has already refunded to a consumer in connection with his or her complaint. Each refund check shall be valid for ninety (90) days.

At the same time each refund check is delivered to any consumer, TSI shall deliver a copy of the check to the Office of Consumer Protection.

23. No later than one hundred twenty (120) days following its payment of the restitution amounts pursuant to paragraph 22, TSI shall deliver to the Office of Consumer Protection:

- a. a copy of each cancelled check deposited by a consumer reflecting a payment to a consumer pursuant to paragraph 22;
- b. a list of all consumers who did not deposit a refund check sent pursuant to paragraph 22; and
- c. a check for the total amount of un-deposited refund checks sent pursuant to paragraph 22. Any part of these restitution amounts may, at the discretion of the Attorney General, be (a) held in trust for, or paid over to, consumers by the District or (b) used in accordance with District law for any other lawful purpose.

24. For a period of three (3) years from the date of this Assurance, TSI shall resolve any further complaints it receives by paying restitution to consumers who claim they were charged any amount for fitness club memberships after cancelling their memberships, either consistent with (i) a then-TSI policy or (ii) instructions provided by a TSI employee. To be eligible for restitution, consumers must have cancelled their memberships before this Assurance was signed. TSI shall resolve complaints pursuant to this paragraph either by (i) paying restitution to complaining consumers within thirty (30) days of their receipt of the consumers' complaint and documenting the payment of restitution pursuant to this paragraph by providing

the District a copy of any cancelled check evidencing such payment or (ii) challenging any such complaints consistent with the procedures set out in this Assurance at paragraphs 25-32 below.

Claims Procedure

25. If TSI contends that any consumer claim submitted pursuant to paragraphs 18 through 24 of this Assurance is not eligible for a restitution payment, TSI shall, within thirty (30) days of receiving the claim, provide the Office of Consumer Protection with a written explanation of the basis for TSI's denial of the claim. Within fifteen (15) days of the Office of Consumer Protection notifying TSI that it agrees with TSI's reasons for declining payment to any consumer, TSI shall send a letter to the consumer notifying the consumer of the denial of the claim.

26. If the Office of Consumer Protection disagrees with TSI's reasons for declining to pay restitution to any consumer, TSI must resolve the disputed claim using the following claim resolution procedure:

- a. Within thirty (30) days of the first instance of the Office of Consumer Protection notifying TSI of a dispute over a claim pursuant to this Assurance, TSI shall hire a neutral third party (the "Claims Administrator") to resolve disputed consumer claims under this Assurance. TSI shall hire and pay for the Claims Administrator, but the selection of the Claims Administrator shall be subject to approval by the Office of Consumer Protection. To be eligible for appointment, the Claims Administrator must agree to remain available to resolve disputed claims for the entire period of time remaining under paragraph 24 of this Assurance.

- b. Within ten (10) days of the Claims Administrator being appointed, or, once appointed, within ten (10) days of being notified by the Office of Consumer Protection that it disagrees with TSI's decision to deny paying restitution for a claim, TSI shall (i) mail consumers the Claim Form attached hereto as Exhibit A and (ii) provide the Claims Administrator a copy of the following: (A) the consumer's complaint, (B) all documents provided by the consumer concerning the complaint, (C) all other documents or information relied upon by TSI in declining to pay restitution to the consumer, and (D) any other relevant information to the claim in the possession of TSI.
- c. The Claims Administrator shall request from TSI and the consumer any additional information the Claims Administrator deems necessary to make a full and fair decision regarding any consumer claim challenged by TSI.
- d. The Claims Administrator may resolve a claim solely based on the information provided pursuant subparagraphs (b) and (c).
- e. The Claims Administrator may conduct hearings on challenged claims by telephone when requested by either party or when the Claims Administrator deems it necessary. The consumer shall be informed in writing of the option for a telephone hearing. No state or federal rule of evidence shall apply to the Claims Administrator's review, including any telephonic hearing conducted pursuant to this paragraph. However, no *ex parte* communications with the Claims Administrator shall occur in connection with any challenged claim other than for purposes of the Claim Administrator requesting and receiving information from TSI or a consumer.

- f. The Claims Administrator shall issue a written decision regarding the review of any challenged claim within a reasonable period of time, but in no event later than sixty (60) days following receipt of the challenged claim or any supporting documentation without good cause. The Claims Administrator's decision shall be binding only as to the District and TSI.
- g. The Claims Administrator shall deliver the decision to TSI, the Office of Consumer Protection and the consumer. In the event a decision issued by the Claims Administrator requires TSI to provide restitution to a consumer, TSI shall pay that amount to the consumer within thirty (30) days of receiving the decision.
- h. At the request of TSI or the Office of Consumer Protection, the Claims Administrator or his or her designee shall meet and confer with TSI and the Office of Consumer Protection for any purpose relating to the administration of the claims review process, including, but not limited to, monitoring and auditing the claims review process.

Payments to the District

27. Within thirty (30) days of the date of this Assurance, TSI shall pay to the District the sum of Five Thousand (\$5,000.00) for costs the District has incurred investigating this matter or that may be incurred by the Agency in administering the terms of this Assurance.

28. Within thirty (30) days of the date of this Assurance, TSI shall pay to the District the sum of Fifteen Thousand (\$15,000.00) as a civil penalty.

29. TSI understands that this Assurance is enforceable by the Office of Consumer Protection and agrees that any violations of this Assurance shall be considered an unlawful

practice that violates the Consumer Protection Procedures Act subjecting TSI to all available legal and equitable remedies.


**FOR THE OFFICE OF THE ATTORNEY GENERAL
FOR THE DISTRICT OF COLUMBIA:**

KARLA A. RACINE
Attorney General for the District of Columbia

NATALIE LUDAWAY
Deputy Attorney General for the District of Columbia



PHILIP ZIPERMAN
Director, Office of Consumer Protection



JIMMY R. ROCK
Deputy Director, Office of Consumer Protection
441 4th Street, N.W., Suite 630 South
Washington, D.C. 20001
(202) 741-0770
Jimmy.rock@dc.gov

Dated: 11-21-2016

FOR TOWN SPORTS INTERNATIONAL, INC.:



Carolyn Spatalora
Chief Financial Officer
Town Sports International, Inc.

Dated: 11-1-2016

EXHIBIT A – CLAIMS FORM

[Date]

Re: Town Sports International, LLC (operating the Washington Sports Clubs)
[Consumer Name]

Dear [Consumer]:

Pursuant to a settlement that Town Sports International, LLC (TSI) recently reached with the Office of the Attorney General for the District of Columbia concerning cancellation and billing issues at the Washington Sports Clubs, we have reviewed your complaint that you were billed monthly membership charges after canceling your membership. TSI is denying your complaint because [state reason].

You have the right to have your complaint reconsidered by [Insert Name of Claims Administrator], who is a neutral third-party serving as the Claims Administrator in connection with the settlement. If you wish to have your complaint reconsidered, please return the Claim Form attached to this letter to:

[Name of Claims Administrator]
[Address of Claims Administrator]
[Fax # of Claims Administrator]

TSI will provide the Claims Administrator with your complaint and all supporting documents it has or that you provided to TSI. You may provide additional information on the space provided in the attached Claim Form. Under the settlement, the Claims Administrator may contact you for more information. Otherwise, the Claims Administrator will notify you of the decision on your complaint within approximately sixty (60) days.

If you have any questions about this process, you may contact the Office of the Attorney General for the District of Columbia at (202) 442-9828.

[Signature block]

Return to:

[Name of Claims Administrator]
[Address of Claims Administrator]
[Fax # of Claims Administrator]

WASHINGTON SPORTS CLUB CLAIM FORM

Consumer's Name: _____

Street Address: _____

City, State, Zip Code: _____

Do you want to have your complaint against Town Sports International, LLC (operating the Washington Sport Clubs) reviewed by [Name of Claims Administrator], a neutral third-party claims administrator?

Yes _____ No _____

If you want to provide more information concerning your complaint to [Name of Claims Administrator], please use the space provided below.

PLEASE CALL THE OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA AT (202) 442-9828 IF YOU HAVE ANY QUESTIONS CONCERNING YOUR CLAIM.

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

CHIN TUAN, HANNAH ALBUM, MAYA BRAXTON, MONIQUE HORTON, ROBERT KNORR, EVELISSE LUCIANO, RYAN McARTHUR, SEAN MILLER, EVA MITCHELL and NICOLE TRUDEAU

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

David E. Gottlieb, Esq. Wigdor LLP (212) 257-6800
Taylor J. Crabill, Esq. 85 Fifth Avenue, Fifth Floor
New York, NY 10003

DEFENDANTS

TOWN SPORTS INTERNATIONAL, LLC and TOWN SPORTS INTERNATIONAL HOLDINGS, INC. d/b/a NEW YORK SPORTS CLUBS, BOSTON SPORTS CLUBS, WASHINGTON SPORTS CLUBS and PHILADELPHIA SPORTS CLUBS

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

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

Attorneys (If Known)

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

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

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country).

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(a)(1)
Brief description of cause: Pursuing claims for Defendants' violations of various states' consumer protection laws.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Hon. Margo K. Brodie DOCKET NUMBER 18-cv-02705

DATE 5/13/2019 SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature of David E. Gottlieb

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration

I, David E. Gottlieb, counsel for Plaintiffs, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? Yes No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? Yes No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: 

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

CHIN TUAN, HANNAH ALBUM, MAYA BRAXTON,
MONIQUE HORTON, ROBERT KNORR, EVELISSE
LUCIANO, RYAN McCARTHY, SEAN MILLER, EVA
MITCHELL and NICOLE TRUDEAU

Plaintiff(s)

v.

TOWN SPORTS INTERNATIONAL, LLC and TOWN
SPORTS INTERNATIONAL HOLDINGS, INC. d/b/a
NEW YORK SPORTS CLUBS, BOSTON SPORTS
CLUBS, WASHINGTON SPORTS CLUBS and
PHILADELPHIA SPORTS CLUBS

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Town Sports International, LLC
5 Penn Plaza, 4th Floor
New York, NY 10001

A lawsuit has been filed against you.

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

David E. Gottlieb, Esq.
Taylor J. Crabill, Esq.
Wigdor LLP
85 Fifth Avenue, Fifth Floor
New York, NY 10003

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

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____; or

Other *(specify)*:

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

CHIN TUAN, HANNAH ALBUM, MAYA BRAXTON,
MONIQUE HORTON, ROBERT KNORR, EVELISSE
LUCIANO, RYAN McCARTHY, SEAN MILLER, EVA
MITCHELL and NICOLE TRUDEAU

Plaintiff(s)

v.

TOWN SPORTS INTERNATIONAL, LLC and TOWN
SPORTS INTERNATIONAL HOLDINGS, INC. d/b/a
NEW YORK SPORTS CLUBS, BOSTON SPORTS
CLUBS, WASHINGTON SPORTS CLUBS and
PHILADELPHIA SPORTS CLUBS

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Town Sports International Holdings, Inc.
1001 US North Highway 1, Suite 201
Juniper, FL 33477

A lawsuit has been filed against you.

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

David E. Gottlieb, Esq.
Taylor J. Crabill, Esq.
Wigdor LLP
85 Fifth Avenue, Fifth Floor
New York, NY 10003

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
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CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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

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was received by me on *(date)* _____.

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

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

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

I returned the summons unexecuted because _____; or

Other *(specify)*:

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: