

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

PAUL WESOLOWSKI, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

VERTICAL FITNESS GROUP, LLC, d/b/a
XPERIENCE FITNESS, d/b/a CLUB 7776, and
JOHN DOES 1-5,

Defendants.

) Case No.: 19-cv-120

) **CLASS ACTION COMPLAINT**

) **Jury Trial Demanded**

COMES NOW Plaintiff Paul Wesolowski, by his Attorneys, Ademi & O'Reilly, LLP, and for his class action complaint, states as follows:

INTRODUCTION

1. Plaintiff brings this action individually and on behalf of a proposed class (the "Class"), as more fully defined below, of similarly situated consumers throughout the State of Wisconsin to redress the pervasive pattern of fraudulent, deceptive and otherwise improper billing practices that Defendant Vertical Fitness Group, LLC, d/b/a Xperience Fitness ("Xperience") continues to engage in relating to agreements for personal trainer services ("Training Agreements"), and relating to overcharging consumers for gym memberships.

2. Plaintiff brings this action on behalf of himself and other similarly situated consumers throughout Wisconsin to halt the false billing practices, and obtain redress for those who have been overcharged by Xperience.

3. Plaintiff alleges violations of the Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et seq.*, and 12 C.F.R. 205 *et seq.*, commonly known as Regulation E, which contains regulations

promulgated by the Board of Governors of the Federal Reserve System to implement the Act (the Act and Regulation E shall hereinafter be collectively referred to as the “EFTA”), and Wis. Stat. §§ 100.177, 100.18, as well as unjust enrichment under the laws of the State of Wisconsin.

JURISDICTION AND VENUE

4. The court has jurisdiction to grant the relief sought by the Plaintiff pursuant to 15 U.S.C. § 1693m and 28 U.S.C. §§ 1331, 1337. Venue in this District is proper in that Plaintiff sought services from Xperience at its location in Oak Creek, Milwaukee County, and because the claim arose in Milwaukee County and Defendant does substantial business in Milwaukee County.

PARTIES

5. Plaintiff Paul Wesolowski is, and at all times relevant to this action has been, a resident and citizen of Milwaukee County, Wisconsin.

6. Defendant Vertical Fitness Group, LLC is a Wisconsin limited liability company, and has its principal place of business located at 3701 East Evergreen Drive, Suite 300, Appleton, Wisconsin 54913-7402. Defendant, therefore, is a citizen of Wisconsin.

7. Defendant owns and operates 17 various gym locations throughout Wisconsin and Minnesota under the fictitious (in the legal sense) or trade name “Xperience Fitness.”

8. Upon information and belief, Defendant has the right of complete or substantial control over all Xperience locations in that it could implement and direct the policies and procedures of those gyms.

9. In order to use Xperience’s facilities, consumers enter into a “Membership Agreement.”

10. At all Xperience gym locations, Xperience offers the services of personal trainers. See <https://myxperiencefitness.com/personal-trainers/>. Xperience’s website states: “Members have the ‘no-pressure’ flexibility to engage with our trainers as often as they need or sign up for our designed programs...”

11. Upon information and belief, Xperience operates a division or other entity named “Club 7776.” Club 7776 is not registered as a separate business entity with the Department of Financial Institutions, but if it is a separate entity from Xperience, Plaintiff names that unknown entity as Defendant John Doe No. 1.

12. When an Xperience member requests personal trainer services, he or she signs a “Training Agreement” with Club 7776. The Training Agreement is separate from the Membership Agreement with Xperience.

13. Subsequently, Defendant, through third party billing service ABC Financial initiates either direct withdrawals from the member’s bank account or charges the member’s credit card.

14. Xperience’s standard form Training Agreement does not comply with the statutory requirements for fitness center contracts set forth in Wis. Stat. § 100.177.

15. Moreover, Xperience does not provide the consumer a copy of the Training Agreement at the time he or she signs it.

16. Plaintiff suffered an injury in fact and lost money as a result of the deceptive and unfair conduct described herein.

SUBSTANTIVE ALLEGATIONS

17. On or around August 24, 2018, Plaintiff visited the Defendant’s gym located at 6251 S 27th Street, Greenfield, Wisconsin 53221.

18. Plaintiff had no relationship with Defendant prior to August 24, 2018.
19. At the gym, Plaintiff spoke with an Xperience representative about obtaining a membership. An Xperience employee quoted the price of a “Fit Membership,” which included the features Plaintiff wanted, as \$21.99 per month.
20. At that time, Plaintiff entered into a Membership Agreement on a month-to-month basis at \$21.99 per month.
21. A copy of the Membership Agreement is attached as Exhibit A.
22. On or around August 29, 2018, also at the Greenfield gym, Plaintiff entered into a Training Agreement with “Club 7776.”
23. A copy of the Training Agreement is attached as Exhibit B.
24. The Training Agreement states that Plaintiff contracted for the “NEW Pro 144Session 3xBiweekly” program.
25. Plaintiff paid \$343.22 by Visa credit card on August 29, 2018, per Exhibit B.
26. The Training Agreement also states that, in addition to the \$343.22 paid on August 29, 2018, Plaintiff was obligated to make 23 payments of \$342.95.
27. Plaintiff did not receive a copy of the Training Agreement when he signed it on August 29, 2018.
28. In September 2018, Plaintiff realized that he did not have sufficient time to dedicate to the training program.
29. Plaintiff had to return to the Greenfield gym and request a copy of the Training Agreement on September 14, 2018.
30. Upon returning to the Greenfield gym, Plaintiff requested of an Xperience employee that Xperience and/or Club 7776 terminate the Training Contract but not his

Membership Contract. At the time, Plaintiff was under the impression that Xperience had done as Plaintiff requested.

31. Plaintiff occasionally attends the Greenfield gym, but has not had any further personal training sessions. Xperience employees, however, began hounding Plaintiff about resuming the training program in December 2018, despite Plaintiff's requests to cancel the Training Agreement.

32. On January 18, 2019, Plaintiff discovered that Xperience has charged Plaintiff's debit card a total of \$2,605.22 between October 25, 2018 and January 17, 2019, consisting of multiple, recurring charges of \$342.95 and \$68.19. A copy of a printout from Plaintiff's "Checking/Savings Account History" for his checking account at Wells Fargo Bank is attached as Exhibit C.

33. Plaintiff did not authorize Xperience or Club 7776 to charge Plaintiff's Wells Fargo debit card for the training sessions. Plaintiff canceled the Training Agreement, of which he had not previously been provided a copy, on September 14, 2018.

34. All of the \$342.95 charges are unauthorized and void.

35. It is unclear whether the \$68.19 charges are for Plaintiff's gym membership or for the Training Agreement or something else.

36. If the \$68.19 charges are for Plaintiff's gym membership, Xperience is significantly overcharging Plaintiff. The Membership Agreement states that Plaintiff's membership costs \$21.99 per month, and that amount may only be increased annually. Exhibit A.

37. Moreover, Xperience's website also states that the membership level for which Plaintiff signed up – called a "Fit Membership" is \$21.99 per month:

	PLATINUM MEMBERSHIP	FIT MEMBERSHIP	CORE MEMBERSHIP
	\$29.99 /mo	\$21.99 /mo	\$9.99 /mo*
Fitness Floor Access	✓	✓	✓
Locker Rooms	✓	✓	✓
7 Days Per Week	✓	✓	✓
FIT Group Exercise Classes	✓	✓	✗
Online Meal Planning Tool	✓	✓	✗
Unlimited Tanning	✓	✓	✗
20% off Proshop Coupon	✓	✓	✗
15% off all Supplements	✓	✓	✗
Access to All Xperience Fitness Locations	✓	✓	✗
All Club Hours	✓	✓	✗
Platinum Guests	✓	✗	✗
Platinum Specialty Classes	✓	✗	✗
Platinum Spin Classes	✓	✗	✗
Les Mills Classes	✓	✗	✗
	JOIN NOW	JOIN NOW	JOIN NOW

<https://myxperiencefitness.com/join-gym-membership/>.

VIOLATIONS OF LAW

The EFTA and Regulation E

38. The EFTA’s purpose is to “provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems. The primary objective of this subchapter, however, is the provision of individual consumer rights.” 15 U.S.C. § 1693(b).

39. “Electronic funds transfer” is defined in Regulation E to mean “any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for

the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account.” 12 C.F.R. § 205.3(b).

40. 15 U.S.C. 1693e(a) states:

A preauthorized electronic fund transfer from a consumer's account may be authorized by the consumer only in writing, and **a copy of such authorization shall be provided to the consumer when made**. A consumer may stop payment of a preauthorized electronic fund transfer by notifying the financial institution orally or in writing at any time up to three business days preceding the scheduled date of such transfer. The financial institution may require written confirmation to be provided to it within fourteen days of an oral notification if, when the oral notification is made, the consumer is advised of such requirement and the address to which such confirmation should be sent.

(emphasis added)

41. Similarly, the implementing regulation, 12 C.F.R. § 205(10)(b), states:

(b)Written authorization for preauthorized transfers from consumer's account. Preauthorized electronic fund transfers from a consumer's account may be authorized only by a writing signed or similarly authenticated by the consumer. The person that obtains the authorization shall provide a copy to the consumer.

42. The purported authorization for preauthorized transfers from Plaintiff's checking account (through his debit card) is on the bottom of the Training Agreement. Exhibit B. But Xperience did not provide a copy of the Training Agreement to Plaintiff when the authorization was made.

43. The EFTA includes a private right of action, stating:

(a) Individual or class action for damages; amount of award. Except as otherwise provided by this section and section 1693h of this title, any person who fails to comply with any provision of this subchapter with respect to any consumer, except for an error resolved in accordance with section 1693f of this title, is liable to such consumer in an amount equal to the sum of—

(1) any actual damage sustained by such consumer as a result of such failure;

(2)

(A) in the case of an individual action, an amount not less than \$100 nor greater than \$1,000; or

(B) in the case of a class action, such amount as the court may allow, except that (i) as to each member of the class no minimum recovery shall be applicable, and (ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same person shall not be more than the lesser of \$500,000 or 1 per centum of the net worth of the defendant; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

State Law

44. Xperience's conduct also violated Wisconsin state law regulating fitness center contracts and misrepresentations in advertising.

45. Wis. Stat. § 100.177 regulates "Fitness Center and Weight Reduction Center Contracts."

46. Defendant's primary, if not sole, business is operating gym facilities. <http://myxperiencefitness.com/>. As such, Defendant is a "fitness center." Wis. Stat. § 100.177(1)(c) ("Fitness center" means an establishment that, for profit, provides as its primary purpose services or facilities that are purported to assist patrons in physical exercise, in weight control, or in figure development, including but not limited to a fitness center, studio, salon or club. 'Fitness center' does not include an organization solely offering training or facilities in an individual sport or a weight reduction center.")

47. To the extent that Club 7776 is a legal entity separate from Xperience, Club 7776 is also a "fitness center," in that its primary purpose is to provide personal training services that

are purported to assist patrons in physical exercise, in weight control, or in figure development,
Id.

48. The Membership Agreement is a “Contract for center services.” Wis. Stat. § 100.177(1)(b)1.

49. The Training Agreement is also a “Contract for center services.” Wis. Stat. § 100.177(1)(b)2.

50. Wis. Stat. § 100.177(2) requires that contracts for fitness center services must be in writing and provided to the customer at the time he signs it.

51. Xperience and/or Club 7776 did not provide Plaintiff with a copy of the Training Agreement at the time he signed it.

52. Wis. Stat. § 100.177(6) states:

Every contract for fitness center service shall contain:

- (a) A caption printed in boldface uppercase type of not less than 10-point size entitled “CANCELLATION AND REFUNDS”.
- (b) A provision under the caption stating: “*Right to Cancel.* You are permitted to cancel this contract until midnight of the 3rd operating day after the date on which you signed the contract. If the facilities or services that are described in the contract are not available at the time you sign the contract, you have until midnight of the 3rd operating day after the day on which you received notice of their availability, to cancel the contract. If within this time period you decide you want to cancel this contract, you may do so by notifying (the seller) by any writing mailed or delivered to (the seller) at the address shown on the contract, within the previously described time period. If you do so cancel, any payments made by you, less a user fee of no more than \$3 per day of actual use, will be refunded within 21 days after notice of cancellation is delivered, and any evidence of any indebtedness executed by you will be canceled by (the seller) and arrangements will be made to relieve you of any further obligation to pay the same.”

53. The Training Agreement does not include the caption that Wis. Stat. § 100.177(6)(a) specifically requires. The purpose of the caption is to direct the consumer’s attention to the cancellation provision.

54. Instead, the Training Agreement buries the cancellation provision in a block of tiny print – smaller than 10-point font – on the right side of the Training Agreement. Exhibit B.

55. The language of the cancellation provision also does not match the language the statute requires. Wis. Stat. § 100.177(6)(b).

56. Wis. Stat. § 100.177(14)(b) states:

(14) Any contract for center services is unenforceable against the buyer and is a violation of this section if:

...

(b) The contract does not comply with the requirements of this section.

57. Wis. Stat. § 100.20(5) provides a private right of action for a fitness center’s violation of Wis. Stat. § 100.177. Wis. Stat. § 100.177(15)(b) (“In addition to the remedies otherwise provided by law, any person injured by a violation of this section may bring a civil action for damages under s. 100.20(5)”).

58. The Wisconsin Deceptive Trade Practices Act, Wis. Stat. § 100.18 (“WDTPA”) makes it unlawful to make any “advertisement, announcement, statement or representation [that] contains any assertion, representation or statement of fact which is untrue, deceptive or misleading.” Wis. Stat. § 100.18(1).

59. Xperience’s representative represented to Plaintiff, before Plaintiff entered into the Membership Agreement or any other agreement, that Plaintiff would be charged \$21.99 per month for the “Fit” membership.

60. Xperience’s representations were false. Upon information and belief, Plaintiff has been charged \$68.19 per month for his gym membership since October 30, 2018. Exhibit C.

61. The WDTPA provides a private right of action for “[a]ny person suffering pecuniary loss” because of a violation of the WDTPA. Wis. Stat. § 100.18(11)(b)2.

62. Plaintiff suffered pecuniary loss as a result of Xperience’s and/or Club 7776’s actions.

63. Even though the Training Agreement is unenforceable against Plaintiff pursuant to Wis. Stat. § 100.177(14)(b), Xperience has not returned Plaintiff’s initial \$343.22 payment and has debited, at least, an additional \$2,400.65 (seven payments of \$342.95) from Plaintiff’s checking account without authorization. Exhibit C.

64. To the extent that Xperience charged Plaintiff \$68.19 per month for his Fit Membership instead of the \$21.99 per month in the agreement (Exhibit A), Xperience has overcharged Plaintiff at least \$138.60. Exhibit C.

65. Plaintiff and the class are entitled to double damages, pursuant to Wis. Stat. § 100.20(5) (“Any person suffering pecuniary loss because of a violation by any other person of any order issued under this section may sue for damages therefor in any court of competent jurisdiction and shall recover twice the amount of such pecuniary loss, together with costs, including a reasonable attorney’s fee.”)

CLASS ACTION ALLEGATIONS

66. Plaintiff brings his claims on behalf of two classes and a subclass.

67. Class I consists of (a) all natural persons in the State of Wisconsin (b) who entered into a “Fit Membership” agreement with Xperience, (c) while Xperience represented to the person that the monthly price of membership is \$21.99 per person, (d) and were charged more than \$21.99 in any one month (e) between January 22, 2016 and January 22, 2019,

inclusive. Excluded from Class I are individuals for whom the charge greater than \$21.99 was due solely to sales tax or an initiation fee.

68. Class II consists of (a) all natural persons in the State of Wisconsin (b) who entered into a Training Agreement with Xperience and/or Club 7776, (c) and who signed a Training Agreement in the form of Exhibit B to the complaint in this action, (d) between January 22, 2013 and January 22, 2019, inclusive.

69. Plaintiff also brings his claims on behalf of a subclass of Class II, consisting of (a) all natural persons in the State of Wisconsin (b) who entered into a Training Agreement with Xperience and/or Club 7776, (c) and who signed a Training Agreement in the form of Exhibit B to the complaint in this action (d) which included a pre-authorized transfer from the person's credit card, debit card, or bank account, and (d) to whom Xperience did not provide a written copy of the Training Agreement to the person at the time the person signed the Training Agreement (d) between January 21, 2018 and January 22, 2019 (the "EFTA subclass").

70. Upon information and belief, each class and the subclass are each so numerous that joinder of all members of the Class is impracticable. While the exact number of class members is presently unknown and can only be ascertained through discovery, Plaintiff believes that there are more than 40 class members based upon the fact that Defendant has 10 gym locations in Wisconsin.

71. Plaintiff's claims are based upon the language of a standard form contract and are typical of the claims of the proposed Classes.

72. Plaintiff will fairly and adequately represent and protect the interests of the proposed Classes. Plaintiff does not have any interests antagonistic to those of the proposed

Class. Plaintiff has retained competent counsel experienced in the prosecution of this type of litigation.

73. The questions of law and fact common to the proposed Class members, some of which are set out above, predominate over any questions affecting only individual Class members.

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

75. Common questions predominate over any individual questions. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, in that:

- a. The individual class members may not be aware of their legal rights.
- b. Concentration of the litigation concerning this matter in this Court is desirable.
- c. The claims of the representative plaintiff are typical of the claims of the class.
- d. A failure of justice will result from the absence of a class action.

COUNT I
Violation of the EFTA, 15 U.S.C. § 1693(e)

76. Plaintiff incorporates the above numbered paragraphs by reference.

77. Plaintiff brings Count II individually, and on behalf of all similarly situated residents for violations of 15 U.S.C. 1693e(a) and 12 C.F.R. § 205(10)(b).

78. Xperience failed to provide Plaintiff with a copy of the preauthorized electronic transfer authorization at the time Plaintiff entered into the Training Agreement.

79. Defendants violated 15 U.S.C. 1693e(a) and 12 C.F.R. § 205(10)(b).

COUNT II
Violation of Wis. Stat. §§ 100.177 and 100.20(5)

80. Plaintiff incorporates the above numbered paragraphs by reference.

81. Plaintiff brings Count II individually, and on behalf of all similarly situated residents for violations of the Wis. Stat. § 100.177.

82. Xperience and/or Club 7776 did not provide Plaintiff with a copy of the Training Agreement at the time he signed it, in violation of Wis. Stat. § 100.177(2).

83. The section of the Training Agreement describing cancelations and refunds does not comply with Wis. Stat. § 100.177(6)(b). Exhibit B.

84. The Training Agreement is void and unenforceable against Plaintiff pursuant to Wis. Stat. § 100.177(14)(b).

85. Plaintiff suffered pecuniary loss as a result of Xperience's and/or Club 7776's actions.

COUNT III
Violation of Wis. Stat. § 100.18

86. Plaintiff incorporates the above numbered paragraphs by reference.

87. Plaintiff brings Count III individually, and on behalf of all similarly situated residents for violations of the Wisconsin Deceptive Trade Practices Act, Wis. Stat. § 100.18, *et seq.*

88. Defendant's foregoing misrepresentations and omissions regarding the price of a gym membership are deceptive and/or unfair acts or practices prohibited by the Wisconsin Deceptive Trade Practices Act.

89. Defendant intended to be deceptive and/or unfair to Plaintiff and the proposed Class by intentionally making the foregoing false and misleading statements as alleged above, because had Defendant provided accurate information, Plaintiff and the proposed Class members would not have entered into a gym membership with Xperience.

90. Defendant's practice of creating, approving and distributing advertising for Xperience's gym memberships that contained false and misleading representations regarding the monthly price of such memberships for the purpose of selling them to Plaintiff and the proposed Class, as alleged in detail *supra*, is both an unfair act and deceptive practice prohibited by the foregoing statutes.

91. Defendant intended to be deceptive and unfair to Plaintiff and the proposed Class by unlawfully representing that the price of a "Fit Membership" is \$21.99, when in fact, Xperience actually charged significantly more than those amounts per month.

92. Defendant intended that Plaintiff and the proposed Class members rely on Defendant's misrepresentations. A falsely low price is a strong incentive to choose that particular service if the customer does not know that the price is false.

93. Plaintiff and the proposed Class members justifiably relied on the misrepresentations to their detriment by entering into gym memberships with Xperience.

94. Had Plaintiff and the proposed Class members known the truth, they would not have entered into gym membership agreements with Xperience.

95. The above-described deceptive and unfair acts and practices were used or employed in the conduct of trade or commerce, namely, the sale of gym memberships to Plaintiff and the proposed Class members.

96. The above-described deceptive and unfair acts offend public policy and cause substantial injury to consumers.

97. As a direct and proximate result of the foregoing, the Plaintiff and Class members have been damaged in an amount to be determined at trial.

COUNT IV
Unjust Enrichment

98. Plaintiff incorporates the above numbered paragraphs by reference.

99. Plaintiff brings Count IV individually, and on behalf of all similarly situated residents in and under the unjust enrichment laws.

100. As a direct and proximate result of Defendant's misconduct as set forth above, Defendant has been unjustly enriched.

101. Specifically, by its misconduct described herein, Defendant has accepted a benefit (*i.e.*, monies paid by Plaintiff and the proposed Class members for the purchase of the gym membership and subsequent monthly charges) to the detriment of Plaintiff and the proposed Class.

102. Defendant's retention of the full amount of monies paid for the account violates the fundamental principles of justice, equity, and good conscience.

103. Defendant accepted the benefit based on its misrepresentations and omissions regarding the gym membership to the Plaintiff and the proposed Class members, and it would be inequitable for the Defendant to retain the benefit of those monies, as it was paid the money under false pretenses.

104. Defendant has obtained money to which it is not entitled, and interest on that money, and under these circumstances equity and good conscience require that the Defendant return the money with interest to the Plaintiff and the proposed Class.

105. As a direct and proximate result of the foregoing, Plaintiff and the proposed Class have been damaged in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and against Defendant for:

- a. Statutory damages;
- b. Actual damages;
- c. Injunctive relief, including but not limited to a finding that the Training Agreement is void and unenforceable;
- d. Restitution and disgorgement of the monies received by Defendants;
- e. Attorney's fees, litigation expenses and costs of suit;
- f. Such other or further relief as the Court deems proper.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury.

Dated: January 22, 2019

ADEMI & O'REILLY, LLP

s/ John D. Blythin

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Counsel for Plaintiff and the Proposed Class

EXHIBIT A

Xperience Fitness
 6251 South 27th Street
 Greenfield, WI 53221
 (414) 269-2677
 myxperiencefitness.com



Club # 7776 Agreement #: 3688
 Primary Member #: 3688
 Barcode: 3648
 Date: 08/24/2018
 Agreement Type: New

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of sex or marital status. The agency that administers compliance with the law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Wesolowski	Paul	Male
Primary Member Last Name	First	Middle Initial
4466 S New York Ave	Saint Francis	WI
Street Address	City	State
<u> 0179</u>		11/24/1956
Primary Phone Number	Cell Phone	Birthdate
E-Mail Address	Employer	
David Wesolowski	(414) 587-5611	
Emergency Contact Name	Emergency Phone Number	

..... Secondary Members

NAME	DOB	NAME	DOB	NAME	DOB	NAME	DOB
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Membership Privileges, Notices, Disclosures & Agreements

As used in this Agreement, "You" means the Primary Member identified above, and any Secondary Member who has attained 18 years of age.

The Xperience Fitness facility available to You is identified above. Subject to operating hours, the facility and services are immediately available for your use. This facility is a general fitness facility (for example, it includes cardio and weight-lifting equipment and fitness classes). Any conditions and restrictions on the use of the facility are described in this Agreement.

MEMBERSHIP TYPE: Fit

MONTH-TO-MONTH PROGRAM: Provided that You are not in default of this agreement and subject to the terms and conditions hereof, this agreement shall continue on a month-to-month basis until written notice of termination is given and received by the Club via the cancellation policy terms below.

CANCELLATION POLICY: Excluding 'CANCELLATIONS AND REFUNDS' (Number one (1) on page two (2) of this agreement) You may cancel this membership for any reason at any time by providing a written notice delivered by the following options: Mailed to ABC Financial Services, Inc., PO Box 6800, Sherwood, AR 72124. You may send an e-mail cancellation request to: customer-care@abcfinc.com. You may hand deliver the notice to your Xperience Fitness location. After we receive cancellation notice, your membership will continue for the remainder of the month for which You have paid in advance plus the following month. No pro-rata refunds will be made and Your Last Monthly Dues that You pay today will be applied to the last month of your membership.

CANCELLATION POLICY FOR MILITARY MEMBERS: If you are a member of the military and are issued orders into active duty, for deployment, or for a permanent change of duty station, You may cancel your membership without penalty by sending by certified mail written notice to ABC Financial Services, Inc., PO Box 6800, Sherwood, AR 72124 of such cancellation and a copy of your orders. You may also cancel by personally delivering your cancellation notice with a copy of your orders. Upon receipt of such notice, Xperience will issue a refund to You of money, if any, You have paid in advance for services not yet used, including a pro-rata refund of your Monthly Dues and your Last Monthly Dues.

DUES CALCULATION: Your Base Membership Rate is an amount equal to your Monthly Dues set forth in the Payment Schedule Box in this Agreement. Xperience Fitness may increase your Monthly Dues above your Base Membership Rate on an annual basis by an amount approximately equal to the annual increase in The Consumer Price Index (CPI) multiplied by your Base Membership Rate. Your Monthly Dues, which include sales tax, may also be increased if sales tax rates increase during your membership. Xperience Fitness will notify You of such increases in your Monthly Dues at least 30 days in advance.

PAYMENT METHOD FEE: If You choose at any time to pay your Monthly Dues by a method other than Electronic Funds Transfer, You will be assessed a \$5.00 fee for each payment not made by Electronic Funds Transfer, which will be due with that payment.

ANNUAL MAINTENANCE FEE: You understand that beginning on 11/22/2018, and on the same date of each year thereafter, in addition to your Monthly Dues, You will owe \$ 39.99 per member.

CHANGE IN MEMBERSHIP TYPE: You may change Membership Type within the first three (3) days of enrollment at no charge. To change Membership Type after three (3) days of enrollment, a \$20.00 administration fee is required.

1. Your Term Begins:	<u> 08/24/2018</u>
2. Enrollment Fee:	<u> \$ 0.00</u>
3. Processing Fee:	<u> \$ 10.00</u>
4. First Monthly Dues:	<u> \$ 0.00</u>
5. Last Monthly Dues:	<u> \$ 0.00</u>
6. Total Paid Today:	<u> \$ 10.00</u>

DUES		
Number of Payments	Monthly Dues Amount	Payment Due Date
1	\$ 21.99	08/29/2018

Notes

MEMBER Paul Wesolowski PARENT OR GUARDIAN CLUB REPRESENTATIVE



PLEASE ATTACH A VOIDED OR BLANK CHECK REQUEST FOR PREAUTHORIZED PAYMENT
 You hereby request the privilege of paying to ABC Financial Services, Inc. ("the Company"), Sherwood AR 72124, and further authorize the Company to draw items (check, electronic fund transfers, charge card) for the purpose of paying your Monthly Dues, Annual Maintenance Fee, and any late fees or insufficient funds fees, on the account of

REQUIRED FOR ALL EFT AND CREDIT CARD DRAFT ACCOUNTS

Paul Wesolowski
 NAME AS IT APPEARS ON ACCOUNT

Credit Card	XXXX-XXXX-XXXX-0593	05 2022	Visa
PAYMENT METHOD	CREDIT/DEBIT CARD NUMBER	EXP. DATE	
BANK NAME	ROUTING NUMBER (9 DIGIT)	ACCOUNT NUMBER	

Subject to the following conditions:

- The items shall be drawn on or about the date or dates of the Payment Schedule. The transactions on your bank statement will constitute receipts for payment on your account.
- If the Monthly Dues payments set forth on the Payment Schedule should vary in amount, You are entitled to notice at least 10 days before each payment of when it will be made and how much it will be. However, by executing this preauthorization, You choose to instead get this notice only when the payment would differ by more than \$50.00 from the most recent payment.
- By executing this agreement, You acknowledge that certain disclosures in connection with this authorization are available for your review at the Company's website: www.abcfinc.com under terms and conditions.
- The privilege of making payments under this arrangement may be revoked by the Company if any item is not paid upon presentation.
- If this preauthorization payment arrangement is revoked for any reason, this does not release You from your obligations.
- A service fee of \$19.50 will be assessed and drafted for any check, draft, credit card, or order returned for insufficient funds or any other reason. A late fee equal to 1% of the Monthly Dues past due will be assessed and drafted should any Monthly Dues become past due.
- This preauthorization payment arrangement shall apply to all Members identified in this Agreement.

Date 08/24/2018 Account Order Signature

Exhibit B

Club 7776
6251 S. 27th St.
Greenfield WI 53221
(414) 269-2677

Club # 7776 Agreement #: [REDACTED] 3688
Barcode: [REDACTED] 8648
Date: 08/29/2018

TRAINING AGREEMENT

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of sex or marital status. The agency that administers compliance with the law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20560

PAUL	WESOLOWSKI		
First Name	Last	Middle Initial	Social Security #
4466 S NEW YORK AVE	SAINT FRANCIS	WI	53235-5616
Street Address	City	State	Zip Code
[REDACTED] 0179	(000) 000-0000	11/24/1956	Male
Primary Phone Number	Work Phone	Birth Date	Gender
[REDACTED] 2400			
Employer	Occupation		
	(000) 000-0000		
Source	Cell Phone	E-Mail Address	

Membership Privileges, Notices, Disclosures & Agreements

Training Program NEW Pro 144Session 3xBiweekly

- Agreement begins: 08/29/2018
- Package Quantity (per invoice) 6
- Price Per Unit: \$57.16
- Purchased Today (pretax): Qty 6 x \$57.16 = \$186.03

Additional Items:

- MY ZONE BELTS \$89.00
- PT Client Program - Protein \$64.57
-
-

Additional Item Total:	\$153.57
Subtotal:	\$339.60
Tax:	\$3.62
Total Amount Paid Today:	\$343.22
Balance Due:	\$7,887.85

Payment Frequency:		Every Other Week
Number of Payments	Payment Amount (per 1wk)	First Payment Due Date
23	\$ \$342.95	09/12/2018

This agreement is nonrenewable.
Member is permitted to cancel this contract until midnight of the 3rd operating day after the date on which Member signs this contract. If the facilities or services that are described in this contract are not available at the time Member signs this contract, then Member has until midnight of the 3rd operating day after the day on which Member received notice of their availability to cancel this contract. If within this time period Member decides to cancel this contract, then Member may do so by notifying Seller in writing, mailed or delivered to seller at the address listed on the front of this agreement or to Xperience Fitness Support Center PO Box 657 Appleton WI 54912, within the previously described time period. If Member does so cancel, any payments made by Member, less a user fee of no more than \$3.00 per day of actual use, will be refunded within 21 days after notice of cancellation is delivered, and any evidence of any indebtedness executed by Member will be canceled by Seller and arrangements will be made to relieve Member of any future obligations to pay same.

Notice Required by Law: Any holder of this consumer credit Agreement is subject to all claims and defenses which the debtor could assert against the seller of goods and services obtained pursuant hereto or with the proceeds hereof. Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder.

Do not sign this Training Agreement before you have read all of the terms and conditions of this Agreement. The client is entitled to a completely filled in copy of this Agreement. The client acknowledges that they have been told: (A) That this document is an Agreement and will become legally binding upon its acceptance by the club; (B) The terms and conditions of this Agreement; (C) That they acknowledge that they have examined the facilities and that they accept them in the present condition, and the Client assumes any and all risk involved in the use of the facility and equipment; (D) There are no warranties either expressed or implied which extend beyond this Agreement; (E) That the client may cancel a scheduled appointment 24 hours before that appointment without a charge, and that when cancellations are made with less than 24 hours notice, they will be billed for that session.

Agreement: I commit to having a better body, and a better life. I understand that there are no shortcuts. I understand that the club does not provide quick fixes and easy answers. I will progress within my own ability, but will be required to work hard each day. However, if I consistently follow all of the components outlined in the program, I will get results. Furthermore, I agree to train on average of no less than once per week for the duration of this contract. I understand training sessions are not transferable or refundable.

Waiver and Claims: You expressly agree that all risk at the club including equipment and services, is undertaken by you at your sole risk. You further agree that the club, its employees, agents, or officers are not liable for any damages or injuries to yourself or your property. You agree that the club, its employees, agents, or officers are not subject to any claims or damages resulting from acts of passive or active negligence on the part of the club, its employees, agents, or officers. You also agree that the club is not responsible or liable for articles that are damaged, lost or stolen in or about the premises of the club. This agreement constitutes the entire agreement between you and the club. This agreement may only be amended or altered in writing, signed by both parties.

If sales tax is required or ever imposed by the state in which the club resides, you understand and agree that your dues amount may be adjusted by the amount of such sales tax and any future changes in the sales tax rate.

Members will be charged for a scheduled training session if not canceled 24 hours prior to session. Member Initials [Signature]

Xperience Fitness reserves the right to provide a substitute trainer if the scheduled trainer is unavailable. Member Initials [Signature]

Member certifies that he/she has read, understands, and agrees to the terms set forth in this agreement. Member Initials [Signature]

DEFAULT AND LATE PAYMENTS. Should you default on any payment obligation as called for in this agreement, the club will have the right to declare the entire remaining balance due and payable and you agree to pay allowable interest, and all costs of collection, including but not limited to collection agency fees, court costs, and attorney fees. A default occurs when any payment due under this agreement is more than ten days late. Should any monthly payment become more than ten days past due, you will be charged a late fee. An additional service fee will be charged for any check, draft, credit card, or order returned for insufficient funds or any other reason. If the Member is paying monthly dues by electronic funds transfer (EFT), the club's billing company, ABC Financial Services, Inc., reserves the right to draft via EFT all amounts owed by the member including any and all late fees and service fees. Subject to appropriate State and Federal Law.

Subject to applicable law, Member agrees that ABC Financial Services, Inc. may contact Member at any mailing address, phone number or e-mail address set forth on the face of this agreement, or any other address subsequently provided to, or obtained by, ABC Financial Services, Inc.

<u>[Signature]</u> CLUB REPRESENTATIVE	08/29/2018 DATE	<u>[Signature]</u> MEMBER	08/29/2018 DATE
Andrew Outcalt SERVICE EMPLOYEE	08/29/2018 DATE		

	PLEASE ATTACH A VOID OR BLANK CHECK • REQUEST FOR PREAUTHORIZED PAYMENT If/We hereby request the privilege of paying to ABC Financial Services, Inc. ("The Company"), Shrewsbury, AR 72124, and further authorize the Company to draw items (checks, electronic fund transfers, charge card) for the purpose of paying said payments, including any late fees or service fees, on the account of		REQUIRED FOR ALL EFT AND CREDIT CARD DRAFT ACCOUNTS
	Credit Card	PAUL WESOLOWSKI NAME AS IT APPEARS ON ACCOUNT XXXX-XXXX-XXXX-0593	
PAYMENT METHOD	CREDIT/DEBIT CARD NUMBER	EXP DATE	
BANK NAME	ROUTING NUMBER (9 DIGITS)	ACCOUNT NUMBER	
Subject to the following conditions: 1. The items shall be drawn on or about the date or dates of the Payment Schedule. The transactions on your bank statement will constitute receipts for payment on your account. 2. If the regular payments set forth on the Payment Schedule should vary in amount, you are entitled to notice at least 10 days before each payment of when it will be made and how much it will be. However, by executing this preauthorization, you choose to instead get this notice only when the payment would differ by more than \$50.00 from the most recent payment. 3. By executing this agreement, you acknowledge your awareness that certain disclosures required by the Electronic Funds Transfer Act and its regulations are available for your review at the Company's website www.abcfinancial.com under terms and conditions. 4. The privilege of making payments under this arrangement may be revoked by the Company if any item is not paid upon presentation. 5. If this preauthorization payment arrangement is revoked for any reason, this does not release you from your obligation (Payment Schedule). 6. A service fee will be assessed and drafted for any check, draft, credit card, or order returned for insufficient funds or any other reason. A late fee will be assessed and drafted should any monthly payment become past due. 7. This preauthorization payment arrangement shall apply to the following Applicant(s):			
ACCOUNT HOLDER SIGNATURE	08/29/2018		

Exhibit C

Checking/Savings Account History

3271

STATEMENT MAILING NAME: PAUL B WESOLOWSKI

Show entries

Search:

Date	Description	Image Available	Check Number	Amount	Balance
01/17/2019	RECURRING PAYMENT AUTHORIZED ON 01/16 ABC*XPERIENCE FITN 414-2692677 WI [REDACTED] 2934 CARD 0593	No		342.95	1,438.36
01/03/2019	RECURRING PAYMENT AUTHORIZED ON 01/02 ABC*XPERIENCE FITN 414-2692677 WI [REDACTED] 6325 CARD 0593	No		342.95	1,342.98
12/31/2018	RECURRING PAYMENT AUTHORIZED ON 12/29 ABC*XPERIENCE FITN 414-2692677 WI [REDACTED] 4058 CARD 0593	No		68.19	1,715.93
12/20/2018	RECURRING PAYMENT AUTHORIZED ON 12/19 ABC*XPERIENCE FITN 414-2692677 WI [REDACTED] 1851 CARD 0593	No		342.95	1,989.17
12/06/2018	RECURRING PAYMENT AUTHORIZED ON 12/05 ABC*XPERIENCE FITN 414-2692677 WI [REDACTED] 5336 CARD 0593	No		342.95	2,065.14
11/30/2018	RECURRING PAYMENT AUTHORIZED ON 11/29 ABC*XPERIENCE FITN 414-2692677 WI [REDACTED] 3303 CARD 0593	No		68.19	2,466.49
11/23/2018	RECURRING PAYMENT AUTHORIZED ON 11/21 ABC*XPERIENCE FITN 414-2692677 WI [REDACTED] 1436 CARD 0593	No		342.95	2,653.78
11/08/2018	RECURRING PAYMENT AUTHORIZED ON 11/07 ABC*XPERIENCE FITN 414-2692677 WI [REDACTED] 5152 CARD 0593	No		342.95	1,541.71
10/30/2018	RECURRING PAYMENT AUTHORIZED ON 10/29 ABC*XPERIENCE FITN 414-2692677 WI [REDACTED] 3919 CARD 0593	No		68.19	2,025.96

Date	Description	Available	Number	Amount	Balance
10/30/2018	RECURRING PAYMENT AUTHORIZED ON 10/29 ABC*XPERIENCE FITN 888- 8279262 WI [REDACTED] 9854 CARD 0593	No		9.99	2,094.15
10/25/2018	RECURRING PAYMENT AUTHORIZED ON 10/24 ABC*XPERIENCE FITN 414- 2692677 WI [REDACTED] 2313 CARD 0593	No		342.95	1,774.98

Showing 1 to 11 of 11 entries (filtered from 84 total entries)

Previous

1

Next

CLOSE

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 THE REVERSE OF THE FORM.)

Place an X in the appropriate Box: Green Bay Division Milwaukee Division

I. (a) PLAINTIFFS

PAUL WESOLOWSKI

(b) County of Residence of First Listed Plaintiff Milwaukee

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Ademi & O'Reilly, LLP, 3620 E. Layton Ave., Cudahy, WI 53110
(414) 482-8000-Telephone (414) 482-8001-Facsimile

DEFENDANTS

VERTICAL FITNESS GROUP, LLC, et al.

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

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

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

- | | | | | | |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input checked="" type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 495 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	PRISONER PETITIONS	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	Habeas Corpus:	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 530 General	IMMIGRATION		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 555 Prison Condition			

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
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. 1693 et seq. and state law

Brief description of cause:
Violation of Electronic Funds Transfer Act and state law.

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: January 22, 2019 SIGNATURE OF ATTORNEY OF RECORD: s/ John D. Blythin

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFF _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT

for the Eastern District of Wisconsin

PAUL WESOLOWSKI

Plaintiff(s)

v.

VERTICAL FITNESS GROUP, LLC, d/b/a XPERIENCE FITNESS, d/b/a CLUB 7776, and JOHN DOES 1-5

Defendant(s)

Civil Action No. 19-cv-120

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) VERTICAL FITNESS GROUP, LLC c/o MLF CORPORATE SERVICES LLC 2501 E ENTERPRISE AVE APPLETON, WI 54913-7805

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you receive 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 the plaintiff's attorney, whose name and address are:

John D. Blythin Ademi & O'Reilly, LLP 3620 East Layton Avenue Cudahy, WI 53110

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.

STEPHEN C. DRIES, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

PROOF OF SERVICE

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

This summons and the attached complaint for *(name of individual and title, if any)*:

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

I personally served the summons and the attached complaint on the individual at *(place)*:

_____ on *(date)* _____ ; or

I left the summons and the attached complaint 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 and the attached complaint 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.:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Wisconsin Man Claims Xperience Fitness Charged Payments Without Authorization](#)
