

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA) Index No.
JAMES, Attorney General of the State of New York,)

Petitioner,)

– against –)

TOWN SPORTS INTERNATIONAL HOLDINGS, INC.)
and TOWN SPORTS INTERNATIONAL, LLC d/b/a)
NEW YORK SPORTS CLUB AND LUCILLE ROBERTS,)

Respondents.)

VERIFIED PETITION

The People of the State of New York, by their attorney, Letitia James, Attorney General of the State of New York (“Petitioner” or “NYAG”), respectfully alleges as follows:

Introduction

1. Respondents Town Sports International Holdings, Inc. and Town Sports International, LLC (“TSI”) are the owners and operators of nearly 100 gyms and fitness clubs in New York State doing business under the brand names New York Sports Club and Lucille Roberts.¹

2. From March 16, 2020 until very recently, all gyms in New York have been closed by executive order due to the COVID-19 pandemic. While the mandatory closure of gyms has been undeniably challenging for the industry, financial distress does not relieve gyms – or any other companies – from their obligations under the law.

3. Since the mandatory shutdown order through the present date, TSI has repeatedly and persistently flouted its obligations. At every turn, TSI has sought to mitigate its precarious financial state at its members’ expense, and has effectively used its members as a source of interest-free financing for TSI’s operations.

4. As set forth in detail below and in the accompanying affirmations and consumer complaints, TSI has violated multiple New York State laws by charging consumers membership dues for services not being offered; failing to issue credits as promised; imposing unlawful fees and advance notice requirements on cancellation requests; misleading consumers about their rights to cancel their memberships; and refusing to honor cancellation requests.

¹ See September 30, 2020 Affirmation of Christopher L. McCall (“McCall Affirmation” or “McCall Aff.”) Ex. 1 at p. 24.

5. TSI brazenly refused to honor its members' cancellation requests. As described in detail below, consumers went to extraordinary lengths to comply with the letter and spirit of the requirements set forth in TSI's contracts, sending letters by certified and registered mail to multiple TSI addresses, submitting requests by email or on TSI's website following TSI's explicit promise that such cancellations would be accepted, and even appearing in person.² Some even received written acknowledgment from TSI that "[y]our cancellation request has been processed as requested. You will not be billed any further and there is no cancellation fee." No matter. TSI charged them on September 1, 2020, and there is no reason to think TSI will not continue to do so indefinitely.

6. Moreover, many of TSI's members cancelled their memberships because they were unemployed due to the pandemic, and could no longer afford the luxury of a gym membership. Under the circumstances, TSI's *Hotel California*-style approach to its members – "You can check out any time you like, but you can never leave"³ – is not only unlawful, it is reprehensible.

7. Since March 16, 2020, the NYAG has received approximately 1,848 complaints against TSI regarding the practices of New York Sports Clubs and Lucille Roberts.⁴ 437 of those complaints have been filed since September 1, 2020.

² Most members also meticulously documented their efforts and submitted this documentation to the NYAG with their complaints. *See generally* McCall Aff.

³ The Eagles, *Hotel California* (Asylum Records 1976).

⁴ *See* Affirmation of Andre Lugo dated September 30, 2020.

I. Parties

8. Petitioner is the People of the State of New York by Letitia James, Attorney General of the State of New York.

9. Since March 16, 2020, the NYAG has received approximately 1,848 complaints against TSI regarding the practices of New York Sports Clubs and Lucille Roberts.⁵ 437 of those complaints have been filed since September 1, 2020.

10. Respondent Town Sports International Holdings, Inc. (“TSI Holdings”) is a Delaware corporation with its principal place of business in Florida and an executive office in New York.

11. Respondent Town Sports International, LLC (“TSI LLC” and, together with TSI Holdings, “TSI”) is a New York limited liability company with its principal place of business in New York. TSI LLC is a wholly-owned subsidiary of TSI Holdings.

12. As of March 31, 2020, TSI owns 185 fitness clubs around the world with approximately 605,000 members operating under different brand names.⁶

13. In New York, TSI has operated 92 gyms, 78 of which are New York Sports Club-branded gyms and 14 of which are Lucille Roberts-branded gyms.⁷ For ease of reference this Petition shall use “New York Sports Club” to refer to both.

⁵ See Affirmation of Andre Lugo dated September 30, 2020.

⁶ See McCall Aff. Ex. 1 at p. 24.

⁷ See *id.*

14. On September 14, 2020, TSI LLC and other subsidiaries of TSI Holdings filed petitions for bankruptcy; TSI Holdings has not filed for bankruptcy.⁸

15. The same day it filed for bankruptcy, TSI LLC filed a motion in the Bankruptcy Court to reject leases for certain New York Sports Clubs and to abandon any property remaining at the property.⁹ According to the motion, prior to the bankruptcy filing TSI LLC “relinquished the keys to the Premises and provided the alarm code(s) to the lessor or its representative, abandoned the Premises and, in conjunction therewith, indicated that they were unequivocally surrendering possession as a result thereof.”

16. Among the leases TSI LLC has sought to reject are the leases for nine New York Sports Clubs in New York.¹⁰

⁸ See *In re Town Sports International, LLC, et al.*, Case No. 20-12168 (Bankr. Del. 2020). The Bankruptcy Code expressly exempts from the automatic stay “the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit’s . . . police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit’s . . . police or regulatory power.” 11 U.S.C. § 362(b)(4). In other words, “[w]here a governmental unit is suing a debtor to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws . . . the action or proceeding is not stayed under the automatic stay.” *SEC v. Brennan*, 230 F.3d 65, 71 (2d Cir. 2000) (quoting legislative history of the Bankruptcy Code). Thus, the commencement of this action against TSI LLC is not barred by the automatic stay. Respondent TSI Holdings has not filed for bankruptcy, and therefore no provisions of the Bankruptcy Code apply to it.

⁹ See McCall Aff. Ex. 2 at pp. 3-4 (“By this Motion, to preserve and maximize the value of their estates, the Debtors seek to reject the Rejected Leases and abandon any interest that the Debtors have in the underlying Premises, effective as of the Petition Date. The Debtors have determined that the Rejected Leases are not integral to the Debtors’ chapter 11 efforts, are not otherwise beneficial to the Debtors’ estates, and present burdensome contingent liabilities. In addition, the Debtors seek to abandon, effective as of the Petition Date, any Personal Property that remains as of such date on the Premises, to the extent applicable.”).

¹⁰ See *id.* at pp. 26-32.

II. Jurisdiction and Venue

17. The NYAG is authorized to bring this action under New York Executive Law § 63(12), which authorizes the NYAG to seek injunctive relief, restitution, disgorgement, civil penalties, and costs when any person or entity has engaged in repeated fraudulent or illegal acts or has otherwise demonstrated persistent fraud or illegality in conducting its business, New York General Business Law (“GBL”) § 349(b), which authorizes the NYAG to seek injunctive relief and restitution when any person or entity has engaged in deceptive acts or practices, and the New York Health Club Services Law (the “Health Club Law”), GBL § 630, which authorizes the NYAG to seek injunctive and other relief for violations of the law’s provisions.

18. Venue is proper in New York county under CPLR §§ 503(a) and 506(a) because the NYAG’s principal office is located in this county, a substantial part of the transactions, acts, practices, and courses of conduct giving rise to the NYAG’s claims occurred within this county, and TSI conducted business in this county.

III. Facts

A. Despite the Mandatory Closure of Its New York Clubs, TSI Charges Members’ Dues in April

19. In response to the COVID-19 pandemic, on March 16, 2020, New York Governor Andrew Cuomo issued an executive order requiring gyms and fitness centers to “cease operation effective at 8 pm on March 16, 2020 until further notice.”¹¹

¹¹ See N.Y. Exec. Order No. 202.3 (Mar. 16, 2020), available at <https://www.governor.ny.gov/news/no-2023-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.

20. The vast majority of gyms in New York responded to the mandatory club closures by automatically freezing memberships at no cost to members until gyms reopen, and promptly communicating this fact to members.¹² TSI did neither.

21. Instead, TSI posted an “Emergency Alert” on its website informing members that clubs were closed, but did not address how memberships would be handled going forward. The alert read in full as follows:

Emergency Alert! In adherence with State and Federal guidelines concerning COVID-19, also known as Coronavirus, we will be temporarily closing all of our NY, NJ and Connecticut clubs starting 8PM on March 16th until further guidance from the state government. We will miss all of our valued members and whenever this passes we'll be back at our clubs waiting for you.¹³

22. In the days following the club closures, members began to contact TSI by telephone, email, and via social media platforms to try to obtain more information. Members

¹² See, e.g., Anytime Fitness, *Regarding Memberships*, <https://www.anytimefitness.com/in-response-to-recent-public-health-concerns/> (“Anytime Fitness, LLC has recommended that the owners of all Anytime Fitness clubs in the United States and Canada that have temporarily closed as a result of the crisis freeze member accounts and cease billing members.”); Blink Fitness, *FAQ: What Happens to My Membership If My Gym Is Closed?*, <https://www.blog.blinkfitness.com/blink-fitness-gym-updates> (“You will not be billed during the time that your Blink gym is closed. Your membership will be put on freeze until we re-open. No action is needed on your part to start the freeze.”); Crunch, *Covid-19 FAQ: Will I Be Paying for My Membership While It’s Closed?*, https://info.crunch.com/covid-19_faqs (“All of our corporately owned gyms, as well as the vast majority of our independently owned and operated gyms, suspended billing as quickly as was administratively possible after their closure. As of April 1, all North American Crunch locations have suspended billing during the closure. It is possible that some members at some clubs were billed in error while we worked to freeze billing in our systems. As such, those members will receive an adjustment or credit applied to their membership.”); Equinox, *Covid-19 Updates*, <https://www.equinox.com/covid19update?icmp=banner-covid> (“Your membership will be put on freeze at no cost as of the day the club closed. No further action is required to freeze.”); Planet Fitness, *Covid-19 FAQ How Do I Cancel or Freeze My Account if My Club Is Currently Closed?*, <https://www.planetfitness.com/coronavirus-faq> (“We have proactively frozen all memberships on your behalf, and you will not be charged any fees during this time.”).

¹³ See TSI, <https://www.newyorksportsclubs.com/page/nysc-club-health-updates>.

were generally unable to reach anyone by telephone at any New York Sports Clubs, because they were closed, and because TSI had terminated the employment of a majority of its workforce.¹⁴

23. For example, consumer A.N. wanted to freeze their membership while TSI's clubs were closed but was unable to reach anyone at TSI.¹⁵ Consumer A.N. was an emergency room doctor at a major hospital in New York City, and they expressed their frustration to the NYAG: "I am a doctor fighting on the frontlines of COVID, and I do not have time or money to have it pilfered."¹⁶

¹⁴ See McCall Aff. Ex. 1 at p. 10 ("We have taken some immediate steps to reduce operating costs and to conserve cash. We informed all non-executive employees working at clubs which have been ordered to close that their employment with us was terminated with immediate effect."). It is not clear how many, if any, of these employees have been rehired, but it would appear that TSI has sufficient funds to pay employees. On April 24, 2020, TSI received a \$2.7 million small business loan under the federal Paycheck Protection Program. See McCall Aff. Ex. 24 at p. 33. On September 8, 2020, TSI awarded retention bonuses to its CEO and CFO in the amounts of \$1.5 million and \$750,000, respectively. See TSI, Form 8-K, Sept. 14, 2020, at p. 3, available at <http://www.townsportsinternational.com/static-files/e2eec3e3-9bbf-4ff5-b951-3478392748ba>.

¹⁵ According to a recent report, TSI experienced a massive data breach after failing to take the most basic information security precaution – password protection. For over a year TSI maintained an Internet database with 600,000 records of members and employees – including their names, addresses, phone numbers, email addresses, last four credit card digits, and credit card expiration dates – without so much as requiring a password to access the data. See Paul Bischoff, *Gym Chain Town Sports Exposes 600,000 Records of Members and Staff*, Comparitech.com, Sept. 23, 2020, available at <https://www.comparitech.com/blog/information-security/gym-chain-town-sports-exposes-personal-details-of-600000-members-staff-online-report/> ("In the wrong hands, cybercriminals could use the information stored in the database to scam and phish Town Sports customers and employees. Staff and gym members should be on the lookout for emails, text messages, and phone calls from fraudsters posing as Town Sports or a related company."). TSI did not remove the database until September 22, 2020, one day after the author of the report informed TSI of the breach. See *id.* In light of TSI's data breach, and to protect the privacy and information security of those consumers whose complaints the NYAG is filing in this public proceeding from potential cyber criminals, the NYAG will identify these consumers by their initials only, refer to the consumers with gender neutral pronouns, and will redact the consumers' names, contact information, and any other personally identifiable information, from the consumer complaints and any documents the consumers submitted with their complaints. The NYAG will promptly provide unredacted versions of the consumer complaints to TSI and the Court upon request.

¹⁶ See McCall Aff. Ex. 3 (A.N. complaint dated March 30, 2020).

24. Consumer J.M. was similarly unable to contact anyone at TSI:

Now with the COVID-19 pandemic, I wanted to proceed and cancel my membership but I haven't been able to contact anyone. I was charged on 04/01/2020 although all gyms have been closed since 03/16/2020. No one from their company has been responsive after sending multiple emails. I went on their instagram to finally see hundreds of people complaining about the same thing. We aren't able to cancel our membership or freeze any further charges.¹⁷

25. In response to numerous consumer complaints, the NYAG contacted TSI and demanded that it adopt a number of policies, including an automatic membership freeze, permitting electronic cancellations, and communicating policies clearly to members. The NYAG advised TSI that the Health Club Law authorizes gym members to cancel their membership under certain circumstances, including “after the services are no longer available or substantially available as provided in the contract because of the [gym’s] permanent discontinuance of operation or substantial change in operation.”¹⁸

26. In response to TSI’s assertion that its standard membership agreement¹⁹ did not permit cancellation under the circumstances presented by the mandatory gym closures, the NYAG further advised TSI that the protections afforded to gym members under the Health Club Law cannot be waived,²⁰ and any contract that fails to comply with the law “shall be void and unenforceable as contrary to public policy.”²¹

¹⁷ See McCall Aff. Ex. 4 (J.M. complaint dated April 1, 2020).

¹⁸ GBL § 624(3).

¹⁹ Many consumers attached a copy of their membership agreement to their complaints, including consumer K.M., whose membership agreement is included in exhibit 5 to the McCall Affirmation, and consumer A.H., whose membership agreement is included in exhibit 14 to the McCall Affirmation.

²⁰ GBL § 627(1).

²¹ GBL § 627(2).

27. TSI refused to implement a membership freeze or to communicate any information about memberships.

28. On March 31, 2020, TSI's CEO sent an email to members "to address the concerns members have expressed regarding membership dues. I want to reassure you that, as previously promised, we will issue credits to your accounts and address all membership-related concerns once our gyms are operating."²² In the email, TSI offered to upgrade memberships for members who did not cancel or freeze their memberships, and stated that "[i]f you want to pass up this opportunity to be upgraded [*i.e.*, cancel or freeze membership], please reach out to MemberHelp@tsiclubs.com where a Customer Service Representative will freeze your membership."²³

29. On or about April 1, 2020, without notice and despite the fact that all NYSC locations had been closed since March 16, 2020, TSI billed members their full April dues.²⁴

30. In response to further inquiries from the NYAG, on April 8, 2020, TSI announced that it had "adjusted our policies to align with your needs and industry best practices," implemented a membership freeze at no cost to members, and promised that "members will receive additional days of membership access equal to the number of days paid for while the clubs were closed in your area."²⁵ TSI advised members that if they wanted to cancel their

²² See McCall Aff. Ex. 6 (March 31, 2020 email from TSI to members).

²³ See *id.*

²⁴ See *id.* Exs. 7 (B.P. complaint dated April 2, 2020), 8 (E.G. complaint dated April 1, 2020), 9 (N.B. complaint dated April 2, 2020), 10 (T.B. complaint dated April 2, 2020), 11 (J.L. complaint dated April 1, 2020), 12 (C.B. complaint dated April 3, 2020), 13 (M.M. complaint dated April 2, 2020), 14 (A.H. complaint dated April 3, 2020), 15 (N.T. complaint dated September 16, 2020), 4 (J.M. complaint dated September 2, 2020), 16 (A.B. complaint dated September 9, 2020).

²⁵ See *id.* Ex. 17 (April 8, 2020 email from TSI to members).

membership, “please visit your club-specific website and click on ‘contact us’ to send your cancel request to your local club. You will receive an email confirmation of your cancel request.”

B. TSI Fails to Honor Cancellation Rights and Refuses to Freeze Memberships

31. Many members followed TSI’s instructions for cancelling or freezing their membership, but TSI ignored their requests.

32. Consumer J.L. submitted a cancellation request by email to MemberHelp@tsiclubs.com on April 1, 2020 and never received a response.²⁶ The membership remained in force, and TSI charged J.L. membership dues of \$44.95 on April 1, 2020 and September 1, 2020.²⁷

33. Consumer J.M. submitted a cancellation request on their club-specific website on April 18, 2020, but never received anything more than an automated response acknowledging the submission.²⁸ Like many other consumers, they continued to be charged.

34. Consumer B.P. wrote the following:

I’ve been trying to cancel my membership in NY Sports Club sending email on 3/14 and a certified letter to its Elmsford, NY office on 3/20(as required in the membership contract).

²⁶ See *id.* Ex. 11 (J.L. complaint dated April 1, 2020).

²⁷ See *id.* Ex. 11 (J.L. complaint dated April 1, 2020), Ex. 18 (J.L. complaint dated September 1, 2020).

²⁸ See *id.* Ex. 19 (J.M. complaint dated September 2, 2020). Consumer J.M. found out their membership had not been cancelled when TSI charged them monthly membership dues of \$59.99 on September 1, 2020, despite their prior cancellation request and the fact that their home gym is closed. The consumer explained their frustration trying to cancel: “I would like to add that the membership (with corresponding monthly fee) is for NYSC Avenue A location only. The Avenue A location isn’t currently open for business and won’t be for the remainder of the year (per the NYSC website). They are charging for service at a closed location. There is also no way to contact anyone about my previous cancellation request since no one is at the closed Avenue A location and TSI forces you to cancel it through your membership location.”

NYSC has again, charged my credit card for the monthly fee, although the club has been closed since late March. I would appreciate guidance on how to proceed as the credit card company says I must deal with the vendor when trying to cancel automatic monthly payments.²⁹

35. TSI charges anywhere from \$20 to \$150 for monthly membership dues, and these amounts can make a difference for consumers struggling to make ends meet during the public health and economic crisis caused by COVID-19. As consumer E.G. wrote in a complaint to the NYAG:

I have repeatedly tried to call and email NYSC to cancel my membership but have not been able to because the office is closed. They just charged me today for another month. I was laid off from my job yesterday and cannot afford to pay for a gym membership for a gym that is closed and won't respond to my calls. Please help.³⁰

36. Another consumer stated that "I have met substantial financial hardship due to the pandemic closures, I can no longer afford my membership."³¹

37. The NYAG received a similar complaint from N.B., a Lucille Roberts member who was charged monthly dues of \$34.99 on April 1 despite their attempts to cancel, and who noted that TSI "will wrongfully continue to charge me each month when I am out of work and don't [*sic*] have the means to pay for such services that aren't [*sic*] even available."³²

²⁹ See *id.* Ex. 7 (B.P. complaint dated April 2, 2020).

³⁰ See *id.* Ex. 8 (E.G. complaint dated April 1, 2020).

³¹ See *id.* Ex. 20 (E.C. complaint dated April 3, 2020).

³² See *id.* Ex. 9 (N.B. complaint dated April 2, 2020). The consumer attached to the complaint an email to TSI in which the consumer wrote in part: "My account should be frozen during this pandemic, since you guys are closed but yet I am still being charged by your gym when it is closed and unavailable. THIS IS RIDICULOUS. I lost my job due to the corona virus I do not have the means to afford these type of charges, moreso for a gym that is not even OPEN." *Id.*

38. Another consumer who was charged membership dues of \$99.99 on April 1 noted that, while TSI purportedly lacked the resources to respond to emails and phone calls requesting cancellation, “apparently someone is there to take the money.”³³

39. In those rare cases where members were able to reach someone at TSI’s corporate office, TSI provided different, and false, information. TSI told some members that the COVID-19 club closures did not permit members to cancel their membership.³⁴

40. TSI told other members they could only cancel or freeze their memberships in person – which would be impossible, as the clubs were closed – or by sending a letter via certified or registered mail – which would require members to leave their homes, in violation of orders then in place requiring people to remain in their homes except for essential purposes.

Consumer C.B. was outraged by this response:

I tried to cancel my membership on March 23, 2020 via a message online and no one replied to me. I finally received a reply from an email I sent to Daniel Smith, who told me they only take cancellations in person, or by Certified Mail. They said will pro-rate my cancellation 45 days from the post mark on my letter.

Since the club is closed, Certified mail is my only option.

In this locked-down environment, the fact that they are making members go out to the POST OFFICE to cancel memberships is nothing short of outrageous.

They have also been closed since 3/17/20, and they did not offer any kind of refund for not being able to use the services i [sic] paid for.³⁵

³³ See *id.* Ex. 10 (T.B. complaint dated April 2, 2020).

³⁴ This is also the position TSI has taken in conversations with the NYAG.

³⁵ See McCall Aff. Ex. 12 (C.B. complaint dated April 3, 2020).

41. In at least one instance, complying with TSI's cancellation requirements would have required a consumer sick with COVID-19 to appear in person at a club, and potentially exposing others to the virus. Specifically, the NYAG received a complaint from consumer M.M. stating that they were "at home sick with the virus," suggesting that was the reason they were unable to cancel their membership in person or by visiting a post office.³⁶ Consumer M.M. was charged \$79.99 on April 1, 2020.³⁷

42. TSI also told many members that cancellations were subject to 45-day advance notice requirements and subject to a \$10 or \$15 cancellation processing fee.³⁸

43. Many of these representations were false and contrary to the requirements of New York law. New York's Health Club Law prohibits contracts longer than 36 months and authorizes gym members to cancel their membership under certain circumstances, including "after the services are no longer available or substantially available as provided in the contract because of the [gym's] permanent discontinuance of operation or substantial change in operation." *See* GBL §§ 623(2), 624(3). The Health Club Law requires gym owners to provide monetary refunds – not credits – for such cancellations within 15 days. *See* GBL § 624(3) ("All moneys paid pursuant to such contract cancelled for the reasons contained in this subdivision shall be refunded within fifteen days of receipt of such notice of cancellation . . .") (emphasis

³⁶ *See id.* Ex. 13 (M.M. complaint dated April 2, 2020).

³⁷ *See id.*

³⁸ *See id.* Exs. 14 (A.H. complaint dated April 3, 2020) (consumer was charged a \$15 cancellation fee after submitting multiple cancellation requests by telephone, certified mail, regular mail, and email), 15 (N.T. complaint dated September 16, 2020) (consumer was charged a \$15 cancellation fee after submitting multiple cancellation requests by certified mail and email)).

added). The Health Club Law further prohibits misrepresentations about consumers' cancellation rights. *See* GBL § 626(8).

C. TSI Charges Members' Dues Without Notice on September 1, Notwithstanding the Fact that Many New York Sports Clubs Remain Closed and that Many Members Had Cancelled Their Membership

44. On August 17, 2020, Governor Cuomo announced that gyms could reopen beginning as of August 24, 2020, subject to certain restrictions (such as 33% capacity limitations).³⁹

45. On or about September 1, 2020, without notice of any kind, TSI billed members their September membership dues.⁴⁰

46. TSI billed many members their September membership dues despite the fact that their home New York Sports Club remains closed.

47. For example, TSI charged consumer K.M. \$64.99 on September 1, 2020, despite the fact that K.M.'s home gym on Manhattan's Upper West Side had not yet opened.⁴¹

48. While TSI is permitting members to work out at any New York Sports Club that is open, in many instances doing so would require members to use public transportation, which many are not comfortable doing due to safety concerns, and many members cannot afford the cost and time associated with the increased travel to a different location.

³⁹ *See* Press Release, *Governor Cuomo Announces Gyms and Fitness Centers Can Reopen Starting August 24*, Aug. 17, 2020, available at <https://www.governor.ny.gov/news/governor-cuomo-announces-gyms-and-fitness-centers-can-reopen-starting-august-24#:~:text=at%20All%20Times-.Governor%20Andrew%20M.,to%20open%20by%20September%202.>

⁴⁰ *See* McCall Aff. Exs. 19 (J.M. complaint dated September 2, 2020), 5 (K.M. complaint dated September 2, 2020), 16 (A.B. complaint dated September 9, 2020), 21 (N.W. complaint dated September 1, 2020), 22 (A.G. complaint dated September 13, 2020).

⁴¹ *See id.* Ex. 5 (K.M. complaint dated September 2, 2020).

49. For example, consumer L.S. belonged to a Staten Island club that was permanently closed and was told to visit another club that was miles away and would have required travel over a toll bridge.⁴² L.S. tried to cancel their membership repeatedly, but to no avail, as L.S. explained in their complaint to the NYAG:

I have emailed [a TSI employee] a number of times and receive an automated response that the recipient's mailbox is full and is not able to accept messages.

I have also tried calling their customer service number but there is no live person to speak to. The recording advises you to go the local club and cancel in person or send a certified letter to your local club requesting cancellation of membership. At this time no gym is open and my location is permanently closed.⁴³

50. Consumer A.B. expressed similar concerns to the NYAG:

I canceled my New York Sports Club membership in April, after Inwas [*sic*] charged for April, but the gym was closed. I was charged again on September 1, when gyms reopened even though I had a) canceled and b) the gym that charged me is still closed so I could not use it if I wanted to. It is on 36th and Madison in Manhattan, and I live in south Brooklyn and will not be going back to work near it for at least a year. Also I do not feel comfortable going to the gym right now.⁴⁴

51. Moreover, TSI ceased paying rent on clubs after they were closed,⁴⁵ and, as noted above, TSI LCC recently filed a motion in bankruptcy court to reject a number of leases, including many New York Sports Clubs in New York,⁴⁶ so for many members it is possible their home club may never reopen.

⁴² See *id.* Ex. 23 (L.S. complaint dated August 31, 2020).

⁴³ See *id.* Ex. 23 (L.S. complaint dated August 31, 2020).

⁴⁴ See *id.* Ex. 16 (A.B. complaint dated September 9, 2020).

⁴⁵ See *id.* Ex. 24 at p. 12 (“The Company has also ceased paying rent at its club locations that are subject to mandatory closure due to COVID-19.”).

⁴⁶ See *id.* Ex. 2.

52. Consumers who are no longer able to use the club they contracted to use – i.e., their “home club” – are permitted to cancel their memberships under the Health Club Law because the temporary or permanent closure of the consumers’ primary club constitutes a “substantial change in operation” under the Health Club Law.⁴⁷

53. TSI billed many members for their September membership dues despite the fact that the members had previously cancelled their memberships – some multiple times.

54. Consumer N.W. submitted two cancellation requests on TSI’s website in April 2020, sent a letter via certified mail in May 2020, and was nonetheless charged \$64.99 on September 1, 2020.⁴⁸

55. Consumer A.G. submitted a cancellation request on April 6, 2020, received an email from TSI on April 15, 2020 stating that “[y]our cancellation request has been processed as requested. You will not be billed any further and there is no cancellation fee.”⁴⁹ Sure enough, TSI charged A.G. \$69.99 on September 7, 2020.

56. Similarly, consumer N.T. submitted a cancellation request and on April 29, 2020 received an email from TSI stating that “[y]our cancellation request has been processed as requested. You will not be billed any further and there is no cancellation fee.”⁵⁰ Notwithstanding this promise, TSI subsequently charged N.T. dues and fees, including \$83.12 for September dues.

⁴⁷ GBL § 624(3).

⁴⁸ See McCall Aff. Ex. 21 (N.W. complaint dated September 1, 2020).

⁴⁹ See *id.* Ex. 22 (A.G. complaint dated September 13, 2020).

⁵⁰ See *id.* Ex. 15 (N.T. complaint dated September 16, 2020).

57. Consumer D.A. submitted cancellation requests to TSI by email and mail in May and August of 2020.⁵¹ TSI ignored these requests, and on September 1, 2020 billed D.A. membership dues. On September 4, 2020, D.A. visited their club in person to cancel, and informed the TSI employee that they had already submitted multiple requests. According to D.A., “The club manager admitted that he had a pile of mail that he had not gotten to and agreed to put a note in the system indicating that I requested a cancelation via mail. He told me that HQ would see that note cancel my membership, without the 45 day notice pre-requisite, and refund me the September dues.” As of September 21, 2020, D.A. had not received any refund.

58. Moreover, as D.A. makes clear in their complaint, TSI’s failure to honor D.A.’s repeated cancellation requests has consequences beyond inconvenience:

This process has been extremely frustrating, and while I have blocked transactions from this company with my credit card. I am afraid I will be building up a balance with TSI that will end up with a collection agency. I have been extremely patient and have tried multiple times to resolve this issue, but it feels like I’m getting the run around.⁵²

59. Like D.A., numerous consumers have expressed concerns that their credit ratings will be adversely affected by TSI’s practice of ignoring repeated cancellation requests.⁵³

60. In some instances, TSI has told members that a 45-day advance notice requirement applies to cancellations, but that is not the law. Section 624(3) of the Health Club Law requires gyms to provide monetary refunds to members who cancel their membership for

⁵¹ *See id.* Ex. 25 (D.A. complaint dated September 13, 2020).

⁵² *See id.*

⁵³ *See id.* Exs. 26 (C.W. complaint dated September 24, 2020) (“Due to several attempts to contact [TSI], I disputed my September charge on my credit card and blocked future payments. Will this result in them taking me to collections??”), 27 (B.W.S. complaint dated September 18, 2020) (“I fear being sent to collections and having my credit rating suffer as a result of their shady business practices, and I am unsure of any way to proceed other than going to the NY state AG’s office here.”).

one of the enumerated reasons (such as when gyms are no longer providing the services contracted for),⁵⁴ which is inconsistent with a 45-day notice requirement. And Section 623(2) of the Health Club Law prohibits membership agreements longer than 36 months. Thus, regardless of what TSI's standard membership agreement may state,⁵⁵ the Health Club Law does not permit TSI to impose a 45-day advance notice requirement when consumers exercise their statutory right to cancel.

61. TSI has refused to refund member dues for the time period from March 16, 2020 to April 8, when members were charged membership dues despite the fact that all New York Sports Clubs were closed, and despite the fact that the Health Club Law requires gyms to issue monetary refunds, not credits.⁵⁶

62. And contrary to the promise made on April 8, 2020, TSI does not appear to have given any member credits for this time period. In a member letter recently posted on TSI's website, TSI states that “[b]ased on our deep desire for a fresh start and to guarantee that all of our members feel that we appreciate their business, all members will be receiving 45 days of credit towards membership dues and/or ancillary services.”⁵⁷

63. However, TSI had not issued credits when it billed consumers on September 1, and it is not clear if these credits have actually been issued since that date.

⁵⁴ GBL § 624(3).

⁵⁵ As noted above, the provisions of the Health Club Law cannot be waived, and any contract that fails to comply with the law “shall be void and unenforceable as contrary to public policy.” GBL §§ 627(1), (2).

⁵⁶ See GBL § 624(3).

⁵⁷ See McCall Aff. Ex. 28 (member letter).

D. TSI's \$250,000 Bond

64. Section 622-a of the Health Club Law requires gyms to post a bond, letter of credit, or certificate of deposit

payable in favor of the people of the state of New York for the benefit of any [member] injured in the event that the [gym] goes out of business prior to the expiration of the [member's] contract for services, or otherwise fails to provide a refund to the [member] after cancellation of the [member's] contract for services as provided for in section six hundred twenty-four of this article.⁵⁸

65. TSI has complied with this provision of the Health Club Law by purchasing a bond in the amount of \$250,000 from the Guaranty Company of North America USA.⁵⁹

66. Given TSI's closure of certain New York clubs and its failure to provide refunds after cancellation of members' contracts as provided in section 624 of the Health Club Law, the bond should be released to the NYAG.

⁵⁸ GBL § 622-a(4).

⁵⁹ See McCall Aff. Ex. 29.

Claims

I. New York Executive Law § 63(12) (Fraud)

67. The NYAG repeats and realleges paragraphs 1-66 as if fully set forth herein.

68. New York Executive Law § 63(12) authorizes the NYAG to bring an action or proceeding for injunctive and other relief when any individual or business engages in repeated or persistent fraudulent conduct.

69. Executive Law § 63(12) broadly defines fraud to include “any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions.”

70. As described in detail above, TSI has repeatedly engaged in fraudulent conduct in violation of Executive Law § 63(12) by:

- a) charging consumers membership dues for services not being offered;
- b) failing to issue time credits as promised;
- c) imposing unlawful fees and advance notice requirements on cancellation requests;
- d) misleading consumers about their rights to cancel their memberships; and
- e) refusing to honor cancellation requests.

II. New York Executive Law § 63(12) (Illegality – Health Club Law (GBL Article 30))

71. The NYAG repeats and realleges paragraphs 1-70 as if fully set forth herein.

72. New York Executive Law § 63(12) authorizes the NYAG to bring an action or proceeding for injunctive and other relief when any individual or business engages in repeated or persistent illegal conduct.

73. The New York Health Club Services Law prohibits membership contracts of more than 36 months, authorizes gym members to cancel their membership under certain circumstances, including “after the services are no longer available or substantially available as provided in the contract because of the [gym’s] permanent discontinuance of operation or substantial change in operation,” and requires gym owners to provide refunds within 15 days for such cancellations. GBL §§ 623(2), 624(3).

74. The law further provides that it is “an unfair and deceptive trade practice and unlawful” for a gym to, *inter alia*, “[m]isrepresent in any manner . . . the [member’s] right to cancel” his or her membership under the law.⁶⁰

75. As described in detail above, TSI has repeatedly violated the Health Club Services Law by:

- a) charging consumers membership dues for services not being offered;
- b) failing to issue time credits as promised;
- c) imposing unlawful fees and advance notice requirements on cancellation requests;
- d) misleading consumers about their rights to cancel their memberships;

⁶⁰ GBL § 626(8).

- e) refusing to honor cancellation requests; and
- f) refusing to issue refunds for cancellations within 15 days.

76. By its actions in violation of the Health Club Services Law, TSI has engaged in repeated and persistent illegality in violation of New York Executive Law § 63(12).

III. New York Executive Law § 63(12) (Illegality – GBL § 349)

77. The NYAG repeats and realleges paragraphs 1-76 as if fully set forth herein.

78. New York Executive Law § 63(12) authorizes the NYAG to bring an action or proceeding for injunctive and other relief when any individual or business engages in repeated or persistent illegal conduct.

79. New York General Business Law § 349 prohibits “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service” and aiding and abetting such acts or practices.

80. As described in detail above, TSI has repeatedly violated GBL § 349 by:

- a) charging consumers membership dues for services not being offered;
- b) failing to issue time credits as promised;
- c) imposing unlawful fees and advance notice requirements on cancellation requests;
- d) misleading consumers about their rights to cancel their memberships; and
- e) refusing to honor cancellation requests.

81. By its actions in violation of GBL § 349, TSI has engaged in repeated and persistent illegality in violation of New York Executive Law § 63(12).

Prayer for Relief

WHEREFORE, the NYAG respectfully requests that the Court enter an order and judgment:

- a) enjoining TSI from violating New York law, including, but not limited to, charging consumers dues for clubs that have not reopened, failing to provide credits for the period from March 16 through April 8, 2020 and failing to honor consumers' statutory rights to cancel their contracts;
- b) granting restitution for New York consumers and disgorgement of all ill-gotten gains;
- c) imposing civil money penalties on TSI of \$5,000 for each violation of GBL § 349, as authorized by GBL § 350-d;
- d) imposing civil money penalties on TSI of \$2,500 for each violation of the Health Club Law, as authorized by GBL § 629(1).
- e) awarding monetary damages or other monetary relief;
- f) ordering TSI to pay costs pursuant to CPLR § 8303(a)(6);

- g) transferring the \$250,000 bond TSI posted pursuant to GBL 622-a to the NYAG; and
- h) awarding such other relief as the Court deems just and proper.

Dated: New York, New York
September 30, 2020

LETITIA JAMES
Attorney General of the State of New York



By: _____
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People of the State of New York, by Letitia James,
Attorney General of the State of New York*

VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

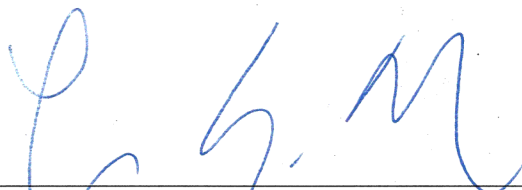
Christopher L. McCall, being duly sworn, deposes and says:

I am an Assistant Attorney General in the Office of Letitia James, Attorney General of the State of New York, assigned to the Bureau of Consumer Frauds and Protection. I am duly authorized to make this verification.

I have read the foregoing Petition and know the contents thereof, which are to my knowledge true, except as to matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. The grounds for my beliefs as to all matters stated upon information and belief are investigatory materials contained in the files of the Bureau of Consumer Frauds and Protection in the Office of Letitia James, Attorney General of the State of New York.

The reason this verification is not made by Petitioner is because Petitioner is a body politic, and the Attorney General of the State of New York is the Petitioner's duly authorized representative.

Jacqueline DeBoulay
Sworn to before me this



Christopher L. McCall
Assistant Attorney General

30th day of September, 2020

JACQUELINE DEBOULAY
Notary Public, State of New York
No. 61008136126
Qualified in Queens County
Commission Expires February 27, 2022