

1 **Todd M. Friedman (216752)**
2 **Adrian R. Bacon (280332)**
3 **Law Offices of Todd M. Friedman, P.C.**
4 **21550 Oxnard St., Suite 780**
5 **Woodland Hills, CA 91367**
6 **Phone: 877-206-4741**
7 **Fax: 866-633-0228**
8 **tfriedman@toddfalw.com**
9 **abacon@toddfalw.com**
10 *Attorneys for Plaintiff, LORI ROCCA, and all others similarly situated*

7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 LORI ROCCA, individually, and on
11 behalf of other members of the
12 general public similarly situated,

12 Plaintiff,

13 vs.

14 FITNESS INTERNATIONAL, LLC,
15 and Does 1-10,

16 Defendants.

Case No.

CLASS ACTION COMPLAINT FOR

- (1) Violation of California's False Advertising Law
- (2) Violation of Unfair Competition Law;
- (3) Violation of Unfair Competition Law;
- (4) Violation of Florida Deceptive and Unfair Trade Practices Act

Jury Trial Demanded

1 Plaintiff LORI ROCCA (“Plaintiff”), individually and on behalf of all other
2 members of the public similarly situated, allege as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this class action Complaint against Defendants
5 FITNESS INTERNATIONAL, LLC, to stop Defendants’ practice of cheating
6 consumers out of thousands of dollars each and to obtain redress for a nationwide
7 class of consumers (“Class Members”) who purchased, within the applicable
8 statute of limitations period, the products from Defendants (hereinafter
9 collectively referred to as the “Class Products”). Plaintiff is a “person” as defined
10 by Cal. Bus. & Prof. Code § 17201.

11 2. Defendant FITNESS INTERNATIONAL, LLC is a California
12 limited liability company and is engaged in the business owning and operating
13 fitness and training facilities open to the public with its headquarters and principle
14 place of business in California.

15 3. Defendants pressured consumers into signing agreements for
16 yearlong gym memberships by misleading consumers into believing that they were
17 only obtaining and obligated to pay for one month membership.

18 4. Plaintiff and others similarly situated signed these agreements.

19 5. Defendants would then proceed to charge large amounts of money
20 from Plaintiff and others similarly situated which these consumers did not
21 authorize.

22 6. Defendants misrepresented and falsely advertised to Plaintiff and
23 others similarly situated the content of the agreements that Defendants pressured
24 Plaintiff and others similarly situated to sign.

25 7. Defendants’ misrepresentations to Plaintiff and others similarly
26 situated caused them to enter into agreements, which Plaintiff and others similarly
27 situated would not have entered absent these misrepresentations by Defendants
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1 and its employees. In so doing, Defendants have violated California consumer
2 protection statutes and stole hundreds of thousands, if not millions, of dollars.

3 **JURISDICTION AND VENUE**

4 8. This class action is brought pursuant to Federal Rule of Civil
5 Procedure 23. All claims in this matter arise exclusively under California law.

6 9. This matter is properly venued in the United States District Court for
7 the Central District of California, because Defendant Fitness International, LLC
8 has its headquarters and principal place of business in Irvine, California.

9 10. There is original federal subject matter jurisdiction over this matter
10 pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4 (Feb.
11 18, 2005), by virtue of 28 U.S.C. §1332(d)(2), which explicitly provides for the
12 original jurisdiction of federal courts in any class action in which at least 100
13 members are in the proposed plaintiff class, any member of the plaintiff class is a
14 citizen of a State different from the State of citizenship of any Defendants, and the
15 matter in controversy exceeds the sum of \$5,000,000.00, exclusive of interests and
16 costs.

17 11. In the case at bar, there are at least 100 members in the proposed Class
18 and Sub-classes, the total claims of the proposed Class members are in excess of
19 \$5,000,000.00 in the aggregate, exclusive of interests and costs, and Plaintiff seeks
20 to represent a nationwide class of consumers, establishing minimum diversity.

21 **THE PARTIES**

22 12. Plaintiff LORI ROCCA is a citizen and resident of the State of
23 Florida.

24 13. Plaintiff alleges, on information and belief, that Defendants'
25 marketing campaigns, as pertains to this matter, were created by Defendants in
26 Irvine, California, and were disseminated from California, nationwide.

27 14. Plaintiff is informed and believes, and thereon alleges, that at all time
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1 relevant, Defendants' sales of memberships are governed by the controlling law
2 in the state in which they do business and from which the sales or products and
3 products, and the allegedly unlawful acts originated, which is California.

4 15. Plaintiff is informed and believes, and thereon alleges, that each and
5 all of the acts and omissions alleged herein were performed by, or is attributable
6 to, Defendants and/or its employees, agents, and/or third parties acting on its
7 behalf, each acting as the agent for the other, with legal authority to act on the
8 other's behalf. The acts of any and all of Defendants' employees, agents, and/or
9 third parties acting on its behalf, were in accordance with, and represent, the
10 official policy of Defendants.

11 16. Plaintiff is informed and believes, and thereon alleges, that said
12 Defendants is in some manner intentionally, negligently, or otherwise responsible
13 for the acts, omissions, occurrences, and transactions of each and all its employees,
14 agents, and/or third parties acting on its behalf, in proximately causing the
15 damages herein alleged.

16 17. At all relevant times, Defendants ratified each and every act or
17 omission complained of herein. At all relevant times, Defendants, aided and
18 abetted the acts and omissions as alleged herein.

19 **FACTUAL ALLEGATIONS**

20 18. Defendants' Sales Representative Mike DOE, using high pressure
21 sales techniques on Plaintiff, persuaded Plaintiff to purchase Defendants' services
22 at Defendants' South Tampa, FL location. Defendants' Sales Representative
23 informed Plaintiff that she could cancel the membership and be charged only for
24 a single month.

25 19. Shortly thereafter, Plaintiff sent a letter via certified mail, canceling
26 the membership in accordance with Defendants' representations.

27 20. Plaintiff did not then, nor ever, authorize Defendant to make an
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1 charge her card with additional funds after her cancellation.

2 21. Notwithstanding Plaintiff's cancellation, Defendants continued to
3 charge Plaintiff every month on her credit card.

4 22. Plaintiff immediately contacted Defendants, disputed funds and the
5 reinstate the cancellation of the contract.

6 23. Defendants responded that Plaintiff had signed an agreement (the
7 "Agreement") that allowed Defendants to deducts thousands of dollars from
8 Plaintiff's account that she had never agreed to

9 24. At the time of the agreement, Defendants and its agents made various
10 abiding representations to Plaintiff, including but not limited to promises that
11 Plaintiff was only signing up for one month membership and was only obligated
12 to pay for that one month.

13 25. For this reason, Plaintiff was induced to and eventually decided upon
14 signing an agreement with Defendants.

15 26. However, despite the representations of Defendants, the agreement
16 was for one year membership.

17 27. Upon learning this, Plaintiff felt ripped off and cheated by
18 Defendants.

19 28. Such sales tactics rely on falsities and have a tendency to mislead and
20 deceive a reasonable consumer.

21 29. Plaintiff is informed, believes, and thereupon alleges that such
22 representations were part of a common scheme to mislead consumers and
23 incentivize them to purchase Defendants' memberships.

24 30. In purchasing these memberships, Plaintiff relied upon Defendants'
25 representations.

26 31. Plaintiff would not have purchased the product if he knew that the
27 above-referenced statements made by Defendants were false.
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1 32. Had Defendants properly marketed, advertised, and represented the
2 true nature of these agreements Plaintiff would not have signed the agreement.

3 33. Defendants benefited on the loss to Plaintiff and provided nothing of
4 benefit to Plaintiff in exchange.

5 34. At all relevant times, the conduct of Defendants as set forth herein
6 has been willfully misleading, fraudulent, false and oppressive.

7 **CLASS ACTION ALLEGATIONS**

8 35. Plaintiff brings this action, on behalf of himself and all others
9 similarly situated, and thus, seeks class certification under Federal Rule of Civil
10 Procedure 23.

11 36. The class Plaintiff seeks to represent (the “Class”) is defined as
12 follows:

13 All persons in the United States who purchased Defendant’s services
14 within the applicable statute of limitations.

15 37. As used herein, the term “Class Members” shall mean and refer to the
16 members of the Class described above.

17 38. As used herein, the term “Class Members” shall mean and refer to the
18 members of the Class described above.

19 39. Excluded from the Class (collectively, the “Class”) are Defendants,
20 its affiliates, employees, agents, and attorneys, and the Court.

21 40. Plaintiff reserves the right to amend the Class, and to add additional
22 subclasses, if discovery and further investigation reveals such action is warranted.

23 41. Upon information and belief, the proposed Class is composed of
24 thousands of persons. The members of the Classes are so numerous that joinder of
25 all members would be unfeasible and impractical.

26 42. No violations alleged in this complaint are contingent on any
27 individualized interaction of any kind between members of the Class and
28 Defendants.

1 43. Rather, there are common questions of law and fact as to the members
2 of the Class that predominate over questions affecting only individual members,
3 including but not limited to:

- 4 (a) Whether Defendants engaged in unlawful, unfair, or deceptive
5 business practices in selling gym memberships to Plaintiff and
6 other members of the Class;
7 (b) Whether Defendants made misrepresentations with respect to
8 the gym memberships sold to consumers;
9 (c) Whether Defendants profited from the sale of the gym
10 memberships;
11 (d) Whether Plaintiff and members of the Classes are entitled to
12 equitable and/or injunctive relief;
13 (e) Whether Defendants' unlawful, unfair, and/or deceptive
14 practices harmed Plaintiff and members of the Classes; and
15 (f) The method of calculation and extent of damages for Plaintiff
16 and members of the Classes.

17 44. Plaintiff is a member of the classes he seeks to represent.

18 45. The claims of Plaintiff are not only typical of all members of the
19 Classes, they are identical.

20 46. All claims of Plaintiff and the Classes are based on the exact same
21 legal theories.

22 47. Plaintiff has no interest antagonistic to, or in conflict with, the
23 Classes.

24 48. Plaintiff is qualified to, and will, fairly and adequately protect the
25 interests of each member of the Classes, because Plaintiff signed an agreement
26 with Defendants during the Class Period. Defendants' unlawful, unfair and/or
27 fraudulent actions concerns the same business practices described herein
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1 irrespective of where they occurred or were experienced. Plaintiff's claims are
2 typical of all members of the Classes as demonstrated herein.

3 49. Plaintiff will thoroughly and adequately protect the interests of the
4 Classes, having retained qualified and competent legal counsel to represent
5 himself and the Classes.

6 50. Common questions will predominate, and there will be no unusual
7 manageability issues.

8 **FIRST CLAIM FOR RELIEF**
9 **Unfair and Unlawful Business Practices in Violation of the Unfair**
10 **Competition Law,**
11 **Cal. Bus. & Prof. Code § 17200, *et seq.***
12 **(On Behalf of the Class)**

13 51. Plaintiff incorporates the above allegations by reference.

14 52. Defendants' conduct resulted from policies that Defendants
15 contrived, ratified, and implemented throughout its retail locations.

16 53. Defendants' conduct is unlawful, in violation of the UCL, because it
17 contravenes the legislatively declared policy against unfair methods of business
18 competition. Additionally, Defendants' conduct is unlawful because, as set forth
19 below, it violates the False Advertising Law and the Florida Deceptive and
20 Unfair Trade Practices Act.

21 54. Defendants engaged in unfair methods of competition and unfair
22 trade practices that violate the UCL in at least the following respects:

23 a. With the intent and effect of stifling open and vigorous
24 competition in the market for gym membership services, Defendants devised and
25 executed a scheme to mislead consumers throughout its retail locations.

26 b. Defendants intentionally caused the above referenced
27 misleading of consumers through purposeful, willful and intentional objectively
28 false statements and omissions.

1 c. Defendants made no action to rectify the above referenced
2 deception and provided no corrective advertising that was easily accessible to
3 consumers which would offset its blatantly false advertising.

4 d. By forcing Plaintiff and Class members believe that it would
5 charge its consumers less than it actually charges them, Defendants have obtained
6 an unfair advantage in the marketplace and has hindered competition for other
7 providers of gym facilities.

8 e. To induce purchases of Defendants' services, Defendants
9 provided misleading advertisements throughout its retail locations.

10 f. Defendants' conduct was designed to increase and maintain its
11 share of the market due to conditions separate from competitive factors like
12 pricing and quality of services.

13 55. Defendants acted to inhibit competition in a manner that is unfair
14 and substantially injurious to the consuming public. Defendants' unfair methods
15 of competition and unfair acts and practices are contrary to California law and
16 policy and constitute unscrupulous, unethical, outrageous, and oppressive
17 business practices.

18 56. Defendants have indicated that it considers itself free to commit
19 similar injurious acts of unfair competition in the future. It should be enjoined
20 from doing so pursuant to Business and Professions Code section 17203.

21 57. The gravity of the harm resulting from Defendants' conduct detailed
22 above outweighs any possible utility of this conduct. There are reasonably
23 available alternatives that would further Defendants' legitimate business interests.

24 58. Plaintiff and Class members could not have reasonably avoided
25 injury from Defendants' unfair business conduct. Plaintiff and Class members
26 did not know, and had no reasonable means of learning, that Defendants'
27 products did not have the price that Defendants represented.

28 59. As a direct and proximate result of Defendants' conduct, Plaintiff

1 and Class members have suffered injuries in fact, including because:

2 a. Defendants' unfair methods of competition and unfair acts and
3 practices have prevented Plaintiff and Class members from making purchasing
4 decisions on the basis of competitive factors in the marketplace for consumer and
5 business goods.

6 b. As a result of Defendants' unfair methods of competition and
7 unfair acts and practices, Plaintiff and Class members who purchased services
8 that they would not have purchased absent Defendant's false representations.

9 c. Defendants' unfair methods of competition and unfair acts and
10 practices have caused Plaintiff's and Class members' to purchase items that had
11 substantially less value than advertised.

12 60. All of Defendants' unlawful and unfair conduct occurred during
13 Defendant's business and was part of a generalized course of conduct.

14 61. Plaintiff and the Class accordingly are entitled to relief as provided
15 for under the UCL, including restitution, declaratory relief, and a permanent
16 injunction prohibiting Defendant from committing these violations. Plaintiff also
17 respectfully seek reasonable attorneys' fees and costs under applicable law,
18 including California Code of Civil Procedure section 1021.5.

19 **SECOND CLAIM FOR RELIEF**
20 **Fraudulent Business Practices in Violation of the Unfair Competition Law,**
21 **Cal. Bus. & Prof. Code § 17200, *et seq.***
22 **(On Behalf of the Class)**

23 62. Plaintiff incorporates the above allegations by reference.

24 63. Defendants' conduct resulted from policies that Defendants
25 contrived, ratified, and implemented systematically throughout its retail
26 locations.

27 64. Defendants' conduct violates the UCL's prohibition of fraudulent
28 business practices.

65. To induce purchases of Defendants' services, Defendant made
misleading statements in its advertisements that deceived Plaintiff and Class

1 members and reinforced its reasonable expectation and belief about the price of
2 its services.

3 66. A reasonable consumer would expect that they would be able to rely
4 on the price information provided by Defendant.

5 67. At the time Plaintiff and Class members purchased their Class
6 Products, Defendant was aware of consumers' widespread and common practice
7 of relying on the pricing information of Defendant. Defendant deliberately
8 furthered, fostered, and reinforced this expectation, through uniform
9 misrepresentations and material omissions.

10 68. Defendants' uniform listing of false pricing information
11 communicated to reasonable consumers through the use of tags, signages,
12 receipts, and other representations and omissions mislead these consumers into
13 believing that Defendant's services were different than advertised.

14 69. These multiple statements, together with (i) consumers' existing
15 reasonable expectations to rely on Defendants' representations, and (ii)
16 Defendant's suppression of the true, material fact that the services were of a
17 different price, completed Defendant's deceptive scheme.

18 70. Defendants' conduct had a strong tendency and likelihood to
19 deceive reasonable consumers. Defendant's conduct misled, deceived, and
20 tricked Plaintiff and Class members into purchasing Defendants' services they
21 would not have purchased in the absence of Defendants' deception.

22 71. When they purchased Defendants' services, Plaintiff and Class
23 members reasonably relied to their detriment on Defendant's misleading
24 statements in its advertisements, representations and omissions. These statements
25 deceived Plaintiff and Class members by, among other things, reinforcing their
26 reasonable expectation and belief that they could rely on Defendants' pricing
27 information.

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1 72. The pricing information was material and highly important to
2 Plaintiff and Class members in deciding to purchase Class Products.

3 73. Defendants have a duty to clearly and conspicuously disclose to
4 Plaintiff and Class members the true and accurate price of its services, because
5 (i) a reasonable consumer would find this information highly important and
6 material to the decision of whether to purchase a services instead of another
7 article services, and (ii) a reasonable consumer would expect that, unless
8 otherwise informed, he or she would be able to rely on Defendants'
9 representations of the price.

10 74. Defendants caused Plaintiff and Class members to forgo purchasing
11 services from other companies due to its false representations and concealment
12 of material facts.

13 75. At the direct expense of Plaintiff and Class members, Defendants
14 benefited and profited from its false representations and concealment of material
15 facts. As a direct and proximate result of Defendants' deception, more
16 consumers purchased Defendants' services.

17 76. Defendants' wrongful and injurious deception continued when it
18 failed to provide corrective advertising to Plaintiff and Class members

19 77. To induce purchases of Defendants' services, Defendants
20 intentionally caused the Class Services to be perceived as having a different
21 price content than they in fact had.

22 78. Defendants' misleading advertisements had a strong tendency to, and
23 actually did, deceive Plaintiff and Class members.

24 79. Plaintiff and Class members reasonably relied to their detriment on
25 Defendants' misleading advertisements. Defendants' misleading
26 misrepresentations and omissions caused actual harm to Plaintiff and Class
27 members by inducing them to purchase Defendants' items. Plaintiff and Class
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1 members purchased Defendants' services as a direct and proximate result of
2 Defendants' misleading statements and omissions.

3 80. All of Defendants' misleading and fraudulent conduct occurred
4 during Defendants' business and was part of a generalized course of conduct.

5 81. Plaintiff and the Class accordingly are entitled to relief as provided
6 for under the UCL, including restitution, declaratory relief, and a permanent
7 injunction. Plaintiff also respectfully seek reasonable attorneys' fees and costs
8 under applicable law, including California Code of Civil Procedure section
9 1021.5.

10 **THIRD CLAIM FOR RELIEF**
11 **Violations of the False Advertising Law,**
12 **Cal. Bus. & Prof. Code § 17500, *et seq.***

13 **(On Behalf of the Class)**

14 82. Plaintiff incorporates the above allegations by reference.

15 83. Defendants violated the FAL by using false and misleading
16 statements, and material omissions, to promote the sale of Class Products.

17 84. Class Products do not possess the level of quality or value that
18 Defendants promised.

19 85. Defendants made uniform representations and material omissions
20 that communicated to Plaintiff and Class members that Class Products were of a
21 different price.

22 86. Defendants knew, or in the exercise of reasonable diligence should
23 have known, that its representations and omissions were false and misleading at
24 the time it made them. Defendants deliberately provided false representations
25 and omissions to deceive reasonable consumers.

26 87. Defendants' false and misleading advertising of Class Products
27 deceived the general public.

28 88. As a direct and proximate result of Defendants' misleading and false

1 advertising, Plaintiff and Class members have suffered injury-in-fact and have
 2 lost money and property. Plaintiff and Class members reasonably relied to their
 3 detriment on Defendants' material misrepresentations and omissions that Class
 4 Products would be of lower price.

5 89. Plaintiff and Class members bring this action under Business and
 6 Professions Code section 17535 to enjoin the violations described herein and to
 7 require Defendants to issue appropriate corrective disclosures. Defendants' false
 8 advertising will continue to harm consumers unless and until it is enjoined.
 9 Plaintiff and Class members therefore seek: (a) an order requiring Defendants to
 10 cease its false advertising; (b) full restitution of all monies Defendants derived
 11 from its false advertising; (c) interest at the highest rate allowable by law; and
 12 (d) an award of reasonable attorneys' fees and costs under applicable law,
 13 including Code of Civil Procedure section 1021.5.

14 **FOURTH CLAIM FOR RELIEF**
 15 **Violations of the Florida's Deceptive and Unfair Trade Practices Act,**
 16 **Fla. Stat. Ann. § 501.201, et seq.**
 17 **(On Behalf of the Class)**

18 90. Plaintiff incorporates the above allegations by reference.

19 91. FSA §501.204 states in relevant part, "Unfair methods of
 20 competition, unconscionable acts or practices, and unfair or deceptive acts or
 21 practices in the conduct of any trade or commerce are hereby declared unlawful."

22 92. As explained above, Defendants have committed multiple acts with
 23 respect to Plaintiff and the class that constitute unfair methods of competition,
 24 unconscionable acts or practices, and unfair and deceptive acts and practices in
 25 violation of FSA §501.204.

26 93. Defendants' violations of the law were done knowingly and willfully
 27 and subject Defendants to \$10,000 in civil penalties to each and every class
 28 member as well as restitution, disgorgement of profits, and reasonable attorney's
 fees and costs, pursuant to F.S.A. § 501.2075.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of themselves and the Class and Subclass defined above, respectfully request that this Court:

A. Certify this case as a class action under the California Rules of Civil Procedure, appoint Plaintiff as Class representative, and appoint the undersigned counsel as Class counsel;

B. Enter injunctive and declaratory relief as appropriate under applicable law;

C. Order restitution or actual damages to Plaintiff and Class members;

D. Award Plaintiff and Class members trebled damages along with pre- and post-judgment interest, as prescribed by law;

E. Award punitive damages, as permitted by law, in an amount to be determined by the jury or the Court;

F. Order Defendants to provide notice to the Class of this action and the remedies entered by this Court;

G. Award reasonable attorneys' fees and costs as permitted by law; and

H. Enter such other and further relief as may be just and proper.

Dated: January 15, 2018

Respectfully submitted,

LAW OFFICES OF TODD M. FRIEDMAN , PC

By: /s Todd. M. Friedman

TODD M. FRIEDMAN, ESQ.

Attorney for Plaintiff