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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

BRIAN HUNT, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

PLEASANTON FITNESS, LLC d/b/a FIT
REPUBLIC,

Defendant.

Case No. 3:20-cv-2461-VC

**FIRST AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiff Brian Hunt (“Plaintiff”) brings this action individually and on behalf of all others
2 similarly situated, against Defendant Pleasanton Fitness, LLC d/b/a Fit Republic (“Fit Republic” or
3 Defendant”). Plaintiff makes the following allegations upon information and belief, except as to
4 allegations specifically pertaining to himself, which are based on their personal knowledge.

5 **PARTIES**

6 1. Plaintiff Brian Hunt is a citizen of California, residing in San Ramon, California.
7 Mr. Hunt is a current member at Defendant’s Fit Republic gyms, paying \$49.99 per month on a
8 month-to-month basis. Plaintiff has been a month-to-month member since December 7, 2018. On
9 March 18, 2020, Defendant closed all of its Fit Republic gyms nationwide, including the Fit
10 Republic gym in Tracy, CA that Plaintiff attended. However, on March 3, 2020, Defendant
11 charged Plaintiff’s debit card in the full amount of his month-to-month membership and his annual
12 member charge - \$88.99. Defendant has retained the full amount of his membership even though
13 Plaintiff does not have access to any of Defendant’s gyms. Further, Defendant has not refunded
14 Plaintiff any part of his monthly fee for March 18 through April 3, 2020, when Defendant’s gyms
15 were closed. Plaintiff signed up for Defendant’s month-to-month membership with the belief and
16 on the basis that he would have unlimited access to Defendant’s gyms. Plaintiff would not have
17 paid for the membership, or would not have paid for it on the same terms, had he known that he
18 would not have access to any of Defendant’s gyms. Plaintiff continues to face imminent harm, as
19 Defendant retains customers monthly fees while all of its gyms remain closed.

20 2. Defendant Pleasanton Fitness, LLC is a California limited liability company located
21 and headquartered in Livermore, California Defendant is the operator of over 30 gyms nationwide,
22 including 20+ gyms in California. Defendant’s fraudulent and wrongful retention of its customers
23 fees while its gyms are closed was conceived, reviewed, approved, and otherwise controlled from
24 Defendant’s California headquarters. All critical decisions regarding the unlawful retention of its
25 customers fees while its gyms are closed were made in California.

26 **JURISDICTION AND VENUE**

27 3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A)
28 because this case is a class action where the aggregate claims of all members of the proposed class

1 are in excess of \$5,000,000, exclusive of interest and costs, and most members of the proposed
2 nationwide class are citizens of states different from the states of Defendant.

3 4. This Court has general jurisdiction over Defendant because it is headquartered in
4 California. Further, the Court has general jurisdiction over Defendant because it conducts
5 substantial business within California such that Defendant has significant, continuous, and
6 pervasive contacts with the State of California.

7 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the challenged
8 fee practices have been committed in this District and because Plaintiff resides and suffered the
9 alleged harm in this District.

10 **FACTS COMMON TO ALL CAUSES OF ACTION**

11 6. Defendant Fit Republic has made the unconscionable decision to keep its thousands
12 of customer's monthly membership fees while closing 100 percent of its gyms as the novel
13 coronavirus, COVID-19, rages throughout the world and the United States economy has gone into
14 a deep recession.

15 7. Defendant is the operator of more than 30+ gyms or "health clubs" throughout the
16 United States, of which over 20 are located cities in California.¹ Defendant promises consumers
17 that it "lives to serve and [its] team is always looking for ways to make your experience better – by
18 providing membership with tremendous value that far outweighs its' costs."² To use Defendant's
19 gyms, all of Defendant's members sign up for month-to-month membership, paying a set fee every
20 month along with an initiation fee. Consumers have two options for their membership, the FIIT
21 Nation plan for \$49.99, or the Premium Plan for \$19.99.³ Both memberships assure members that
22 they will have "unlimited use of all locations."

23 8. To sign up for Defendant's month-to-month memberships, customers provide
24 Defendant with their credit card or bank account information. Defendant then automatically
25 charges its customers' credit or accounts, as payments are due on a monthly basis.

26 ¹ <https://fitrepublic.com/find-a-club> (last accessed April 9, 2020); *see also* <https://fitrepublic.com/>
27 (last accessed April 9, 2020).

² <https://fitrepublic.com/our-values> (last accessed April 9, 2020).

28 ³ <https://fitrepublic.com/join-now> (last accessed April 9, 2020).

1 this time but may be determined through discovery. Class Members may be notified of the
2 pendency of this action by mail and/or publication through the membership records of Defendant.

3 14. Common questions of law and fact exist as to all Class members and predominate
4 over questions affecting only individual Class members. Common legal and factual questions
5 include, but are not limited to whether Defendant has breached its contract with its customers and
6 whether its actions are fraudulent and unlawful.

7 15. Plaintiff's claims are typical of the claims of the Class in that they purchased the Fit
8 Republic memberships in reliance on the representations and warranties described above, and
9 suffered a loss as result of those purchases.

10 16. Plaintiff is an adequate representative of the Class because his interests do not
11 conflict with the interests of the Class Members he seeks to represent, he have retained competent
12 counsel experienced in prosecuting class actions, and he intends to prosecute this action
13 vigorously. The interests of Class Members will be fairly and adequately protected by Plaintiff and
14 his counsel.

15 17. The class mechanism is superior to other available means for the fair and efficient
16 adjudication of the claims of the Class Members. Each individual Class Member may lack the
17 resources to undergo the burden and expense of individual prosecution of the complex and
18 extensive litigation necessary to establish Defendant's liability. Individualized litigation increases
19 the delay and expense to all parties and multiplies the burden on the judicial system presented by
20 the complex legal and factual issues of this case. Individualized litigation also presents a potential
21 for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer
22 management difficulties and provides the benefits of single adjudication, economy of scale, and
23 comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment
24 of the liability issues will ensure that all claims and claimants are before this Court for consistent
25 adjudication of the liability issues

COUNT I

**Violation of California’s Consumers Legal Remedies Act,
California Civil Code §§ 1750, *et seq.*
(Injunctive Relief Only)**

18. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

19. Plaintiff brings this claim individually and on behalf of members of the proposed Nationwide Class against Defendant. Plaintiff also brings this claim individually and on behalf of members of the proposed California Subclass against Defendant.

20. Plaintiff and Class members are consumers who paid fees for use of Defendant’s gyms for personal, family or household purposes. Plaintiff and the Class are “consumers” as that term is defined by the CLRA in Cal. Civ. Code § 1761(d).

21. Defendant’s gym access that Plaintiff and Class members purchased from Defendant was a “service” within the meaning of Cal. Civ. Code § 1761(b).

22. Defendant’s actions, representations, and conduct have violated, and continue to violate the CLRA, because they extend to transactions that intended to result, or which have resulted in, the sale of services to consumers.

23. Defendant’s advertising that consumers would unlimited access to all of its gyms and that its customers would have access to its gyms upon paying a membership fee is false and misleading to a reasonable consumer, including Plaintiff, because Defendant in fact closed all of its gyms while continuing to retain the full price consumers’ gym memberships.

24. California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5), prohibits “[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have.” By engaging in the conduct set forth herein, Defendant violated and continue to violate Section 1770(a)(5) of the CLRA, because Defendant’s conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that Defendant misrepresent the particular characteristics, benefits and quantities of the services.

1 25. Cal. Civ. Code § 1770(a)(7) prohibits representing that goods or services are of a
2 particular standard, quality, or grade, or that goods are of a particular style or model, if they are of
3 another. By engaging in the conduct set forth herein, Defendant violated and continues to violate
4 Section 1770(a)(7) of the CLRA, because Defendant’s conduct constitutes unfair methods of
5 competition and unfair or fraudulent acts or practices, in that Defendant misrepresents the
6 particular standard, quality or grade of the services.

7 26. Cal. Civ. Code § 1770(a)(9) further prohibits “[a]dvertising goods or services with
8 intent not to sell them as advertised.” By engaging in the conduct set forth herein, Defendant
9 violated and continues to violate Section 1770(a)(9), because Defendant’s conduct constitutes
10 unfair methods of competition and unfair or fraudulent acts or practices, in that Defendant
11 advertises services with the intent not to sell the services as advertised.

12 27. Plaintiff and the Class acted reasonably when they purchased Defendant’s gym
13 membership on the belief that Defendant’s representations were true and lawful.

14 28. Plaintiff and the Class suffered injuries caused by Defendant because (a) they would
15 not have purchased or paid for Defendant’s gym memberships absent Defendant’s representations
16 and omission of a warning that it would retain members’ gym fees while all gyms nationwide are
17 closed; (b) they would not have purchased gym memberships on the same terms absent
18 Defendant’s representations and omissions; (c) they paid a price premium for Defendant’s gym
19 membership based on Defendant’s misrepresentations and omissions; and (d) Defendant’s gym
20 memberships did not have the characteristics, benefits, or quantities as promised.

21 29. Under California Civil Code § 1780(a), Plaintiff and members of the Class seek
22 injunctive and equitable relief for Defendant’s violations of the CLRA. Plaintiff has mailed an
23 appropriate demand letter consistent with California Civil Code § 1782(a). If Defendant fails to
24 take corrective action within 30 days of receipt of the demand letter, Plaintiff will amend his
25 complaint to include a request for damages as permitted by Civil Code § 1782(d).

26 30. Wherefore, Plaintiff seeks injunctive and equitable relief for these violations of the
27 CLRA.

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COUNT II

**Violation of California’s Unfair Competition Law,
California Business & Professions Code §§ 17200, *et seq.***

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3 31. Plaintiff hereby incorporates by reference the allegations contained in all preceding
4 paragraphs of this complaint.

5 32. Plaintiff brings this claim individually and on behalf of the members of the
6 proposed Nationwide Class against Defendant. Plaintiff also brings this claim individually and on
7 behalf of members of the proposed California Subclass against Defendant.

8 33. Defendant is subject to California’s Unfair Competition Law, Cal. Bus. & Prof.
9 Code §§ 17200, *et seq.* The UCL provides, in pertinent part: “Unfair competition shall mean and
10 include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or
11 misleading advertising”

12 34. Defendant’s advertising that its gyms members would have unlimited access to its
13 gym locations, and that its customers would have access to its gyms upon paying a membership fee
14 is false and misleading to a reasonable consumer, including Plaintiff, because Defendant in fact
15 closed all of its gyms while continuing to retain the full price of customers’ gym memberships.

16 35. Defendant’s business practices, described herein, violated the “unlawful” prong of
17 the UCL by violating the CLRA, the FAL, and other applicable law as described herein.

18 36. Defendant’s business practices, described herein, violated the “unfair” prong of the
19 UCL in that its conduct is substantially injurious to consumers, offends public policy, and is
20 immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct outweighs any
21 alleged benefits. Defendant’s advertising and its retention of membership fees while its gyms are
22 closed is of no benefit to consumers.

23 37. Defendant violated the fraudulent prong of the UCL by misleading Plaintiff and the
24 Class to believe that they would only owe fees when they would have access to Defendant’s gyms.

25 38. Plaintiff and the Class acted reasonably when they signed up for memberships based
26 on the belief that they would only owe fees when Defendant’s gyms were open and accessible.
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1 inducements to purchase gym memberships, and are statements disseminated by Defendant to
2 Plaintiff and Class members. Defendant knew that these statements were unauthorized, inaccurate,
3 and misleading.

4 44. Defendant's advertising that gym members would have unlimited access to all gym
5 locations and that its customers would have access to its gyms upon paying a membership fee is
6 false and misleading to a reasonable consumer, including Plaintiff, because Defendant in fact
7 closed all of its gyms while retaining the full price of customers' gym memberships.

8 45. Defendant violated § 17500, *et seq.* by misleading Plaintiff and the Class to believe
9 that they would be owe fees only when they have access to Defendant's gyms.

10 46. Defendant knew or should have known, through the exercise of reasonable care that
11 its advertising that customers would have unlimited access to all gym locations is false and
12 misleading. Further, Defendant knew or should have known that it was breaching its contracts
13 with its customers and fraudulently charging fees when it retained all gym fees while all of its
14 gyms were closed.

15 47. Plaintiff and the Class lost money or property as a result of Defendant's FAL
16 violation because (a) they would not have purchased or paid for Defendant's gym memberships
17 absent Defendant's representations and omission of a warning that it would retain membership fees
18 when all gyms nationwide are closed; (b) they would not have purchased gym memberships on the
19 same terms absent Defendant's representations and omissions; (c) they paid a price premium for
20 Defendant's gym membership based on Defendant's misrepresentations and omissions; and (d)
21 Defendant's gym memberships did not have the characteristics, benefits, or quantities as promised.

22 **COUNT IV**
23 **Breach of Express Warranty**

24 48. Plaintiff hereby incorporates by reference the allegations contained in all preceding
25 paragraphs of this complaint.

26 49. Plaintiff brings this claim individually and on behalf of the members of the
27 proposed Nationwide Class against Defendant. Plaintiff also brings this claim individually and on
28 behalf of the members of the proposed California Subclass against Defendant.

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CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)

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I, Brittany S. Scott, declare as follows:

1. I am an attorney at law licensed to practice in the State of California and I am member of the bar of this Court. I am an associate at Bursor & Fisher, P.A., counsel of record for Plaintiff in this action. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would competently testify thereto under oath.

2. The Complaint filed in this action is filed in the proper place for trial under Civil Code Section 1780(d) in that a substantial portion of the events alleged in the Complaint occurred in this District.

3. I declare under the penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this declaration was executed at Oakland, California this 17th day of April, 2020.

/s/ Brittany S. Scott
Brittany S. Scott