

**NEW YORK STATE SUPREME COURT
NEW YORK COUNTY**

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CARLY PISARRI and AUBILY REMUS JASMIN,	:	
	:	
Plaintiffs, on behalf of themselves	:	Index No.
and all others similarly situated,	:	
	:	
-against-	:	
	:	<u>CLASS ACTION COMPLAINT</u>
TOWN SPORTS INTERNATIONAL, LLC and	:	
TOWN SPORTS INTERNATIONAL HOLDINGS,	:	
INC. d/b/a NEW YORK SPORTS CLUBS,	:	
BOSTON SPORTS CLUBS, WASHINGTON	:	<u>Jury Trial Demanded</u>
SPORTS CLUBS and PHILADELPHIA SPORTS	:	
CLUBS,	:	
	:	
Defendants.	:	
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Plaintiffs Carly Pisarri and Aubily Remus Jasmin, on behalf of themselves and the Class (defined below), allege against Defendants as follows:

NATURE OF THE CLAIMS

1. New York Sports Clubs is the ubiquitous gym brand that boasts more members than any other gym across the state. New York Sports Clubs is owned and operated by Town Sports International, LLC and/or Town Sports International Holdings, Inc. (together, “TSI”), which also own and operate Boston Sports Clubs, Washington Sports Clubs and Philadelphia Sports Clubs. TSI, through each of these brands, has sold to hundreds of thousands of customers a “Passport Membership,” which it has represented as providing “all access” to use and access “any TSI club at any time.” However, TSI has denied and continues to deny Passport Members “all access” usage of its gyms. TSI has attempted to re-branded many gyms as “Elite” or “Flagship” and denied Passport Members access to these gyms – perhaps in an ill-advised effort to create a false appearance that these gyms are “exclusive.” TSI has done this in an attempt to

generate more revenue by charging additional and/or premium fees for use of these locations.

Unfortunately, while lying to consumers may sometimes be useful to TSI for creating additional revenue, it is unlawful.

2. Plaintiffs bring this action seeking declaratory, injunctive and monetary relief, on behalf themselves and the Class, due to TSI's unlawful conduct in violation of General Business Law ("GBL") §349; D.C. Consumer Protection Procedures Act §§28-3901, *et seq.* ("DCCPPA"); Pennsylvania Unfair Trade Practices & Consumer Protection Law, Tit. 73 §201-1, *et seq.* ("PUTPCPL"); Mass. Consumer Protection Act, M.G.L.A. c. 93A §§1 *et seq.* ("MCPA") and/or for engaging in breach of contract and/or fraud as to hundreds of thousands of current and former TSI Passport Members.

JURISDICTION AND VENUE

3. Pursuant to CPLR §301 and/or §302, this Court has jurisdiction over Defendants because they are authorized to do business and contract to provide services within the State of New York.

4. Venue is proper in this county pursuant to CPLR §503, as Plaintiffs and Defendants reside in New York County.

PARTIES

5. Plaintiff Carly Pisarri is an adult resident of New York County, New York. Ms. Pisarri has been a Passport Member of TSI from approximately 2001 through the present. Ms. Pisarri was told and/or led to believe that the Passport Membership would provide her with "all access" to any TSI gym location in exchange for an agreed-upon membership fee. However, Ms. Pisarri has not been provided with "all access" to TSI's gym locations in exchange for the agreed-upon membership fee.

6. Plaintiff Aubily Remus Jasmin is an adult resident of New York County, New York. Mr. Jasmin has been a Passport Member of TSI from approximately 2009 through the present. Mr. Jasmin was told and/or led to believe that the Passport Membership would provide him with “all access” to TSI’s gym locations. However, Mr. Jasmin has not been provided with “all access” to TSI’s gym locations in exchange for the agreed upon membership fee.

7. Defendant Town Sports International, LLC d/b/a New York Sports Clubs is a domestic limited liability company with its primary business being the running and operating of gyms under the brands New York Sports Clubs, Boston Sports Clubs, Washington Sports Clubs and Philadelphia Sports Clubs, and which has a principal place of business located at 5 Penn Plaza, 4th Floor, New York, New York 10001.

8. Defendant Town Sports International Holdings, Inc. d/b/a New York Sports Clubs is a foreign corporation incorporated in Delaware with its primary business being the running and operating of gyms under the brands New York Sports Clubs, Boston Sports Clubs, Washington Sports Clubs and Philadelphia Sports Clubs, and which has a principal place of business located at 5 Penn Plaza, 4th Floor, New York, New York 10001.

FACTUAL ALLEGATIONS

9. Town Sports International, LLC is one of the largest owners/operators of fitness clubs in the country with approximately 544,000 current members of approximately 150 gyms located in New York, Pennsylvania, Massachusetts and Washington D.C.¹

10. Among other properties and brands, TSI owns and operates approximately 102 gyms under the brand “New York Sports Club” (“NYSC”), 30 gyms under the brand “Boston

¹ Information based on TSI’s most recent Securities and Exchange Commission Form 10-K, filed February 22, 2017 (the “2016 Annual Report”). Available here: http://www.annualreports.com/HostedData/AnnualReports/PDF/NASDAQ_CLUB_2016.pdf.

Sports Club” (“BSC”), 10 gyms under the brand “Washington Sports Club” (“WSC”) and five gyms under the brand “Philadelphia Sports Club” (“PSC”).²

11. TSI previously owned and operated a brand called “BFX Studio” (“BFX”) which is no longer in existence, and those gym locations have been converted to NYSC gyms.

12. TSI’s annual revenue is approximately \$400,000,000 per year. The bulk of TSI’s revenue comes from monthly and/or annual membership fees charged to gym members.

13. To become a TSI gym member, TSI expects that its customers execute written membership contracts.

14. However, upon information and belief, not all customers actually execute membership contracts.

15. TSI offers different membership options, including, but not limited to, Single Club Membership and Passport Membership.

16. While the Single Club Membership affords a member access to one “home” location only, the higher-priced Passport Memberships afford members “all-access” to TSI’s many locations.³

17. The Passport Membership is critical to TSI’s business model, as the ability to up-sell customers to the higher-priced membership provides for substantially increased revenue.

² Information based on offerings available at www.newyorksportsclubs.com/clubs. Not all gyms are located in the city or state represented by the brand name. For instance, certain BSC gyms are located outside of Boston and/or outside of Massachusetts.

³ According to the 2016 Annual Report, TSI also offers a Regional Passport Membership which provides for “all-access” within a particular geographic region. TSI also offers a “Gold Membership” which is all-access, but limited to off-peak times. For purposes of this Complaint, the term “Passport Membership” includes the Regional Passport Memberships and Gold Memberships.

18. For this reason, among others, TSI intentionally clusters its gym locations in dense and concentrated markets where customers will see value paying a premium to be able to access numerous geographically-convenient gym locations.

19. Approximately 45% of TSI's current members – or, approximately 243,000 members – have contracted with TSI and pay for the Passport Membership.

20. The membership agreements between TSI and its Passport Members expressly state that its members shall have the right to enter and use any TSI club location.

21. For instance, but only by way of example, Ms. Pisarri's contract provides that ***“if you have a Passport membership, you may use any TSI club at any time.”***

22. Upon information and belief, TSI has used and uses the same and/or similar language in contracts with other Passport Members.

23. Moreover, TSI has held out to the public – including Plaintiffs – that the Passport Membership provides for “all-access” to TSI's gym locations, including through statements on its website and advertisements.

24. However, despite having contracted with its Passport Members to provide them with all-access to any and all TSI locations, TSI has not provided Passport Members with that agreed upon scope of access.

25. To the contrary, Passport Members have not been and are currently not permitted access to numerous TSI locations, including, but not limited to:

- Passport Members have not been and are not permitted access to the NYSC gym located at 4 Astor Place, New York, NY 10003.
- Passport Members have not been and are not permitted access to the NYSC gym located at 30 Broad Street, New York, NY 10005.
- Passport Members have not been and are not permitted access to the NYSC gym located at 113 East 23rd Street, New York, NY 10010.

- Passport Members have not been and are not permitted access to the NYSC gym located at 1637 Third Avenue (91st Street), New York, NY 10128.
- Passport Members have not been and are not permitted access to the BSC gym located at 100 Summer Street, Boston, MA 02110.
- Passport Members have not been and are not permitted access to the BSC gym located at 840 Winter Street, Waltham, MA 02451.
- Passport Members have not been and are not permitted access to the BSC gym located at 140 Great Plain Avenue, Wellesley, MA 02482.

Upon information and belief, there are additional TSI clubs that Passport Members have not been and/or are not permitted access. Together, the above-referenced clubs are referred to herein as the “Inaccessible Clubs.”

26. TSI has denied and/or continues to deny Plaintiffs and all other Passport Members access to the Inaccessible Clubs.

27. Instead, TSI requires payment of a single usage fee above and beyond the Passport Membership fees for Passport Members to access the Inaccessible Clubs.

28. Upon information and belief, TSI reserves the right to deny Passport All-Access Members the right to enter any of the Inaccessible Clubs at its discretion.

29. TSI has misled customers about the nature of the Passport Membership through misrepresentations in the membership agreements and misrepresentations on its website and advertisements.

30. TSI’s Passport Members – including Plaintiffs – have suffered monetary damages as a result of TSI’s breach of its membership contracts and misleading and deceptive consumer practices.

CLASS ACTION ALLEGATIONS

31. Plaintiffs bring their claims as a class action pursuant to CPLR §901, *et seq.*, on behalf of themselves and on behalf of all other similarly situated persons who are or have been Passport Members during the applicable statutory limitation periods (the “Class”).

32. The claims of the Class are the same as or substantially similar to those of Plaintiffs, and the Class, like Plaintiffs, have been subject to the same unlawful conduct.

33. As a result of Defendants’ conduct as alleged herein, Defendants have engaged in a breach of contracts and fraud, and violations of GBL §349, DCCPPA, PUTPCPL and MCPA.

34. Defendants’ breach of contracts and fraud, and violations of GBL §349, DCCPPA, PUTPCPL and MCPA have been willful, repeated, knowing, intentional and without a good faith basis, and have significantly damaged Plaintiffs and the Class.

35. As a result of Defendants’ conduct, Defendants are liable to Plaintiffs and the Class for the full amount of any economic and monetary loss suffered by Plaintiffs and the Class, the full value of the services Plaintiffs and the Class have been denied and/or not had access to, and any and all other actual, statutory or other applicable damages.

36. Certification of the Class’s claims as a class action is the most efficient and economical means of resolving the questions of law and fact common to Plaintiffs’ claims and the claims of the Class.

37. Plaintiffs have standing to seek such relief because of the adverse effect that Defendants’ unlawful conduct has had on them individually and on members of the Class.

38. Without class certification, the same evidence and issues would be subject to re-litigation in a multitude of individual lawsuits with an attendant risk of inconsistent adjudications and conflicting obligations.

39. Certification of the Class is the most efficient and judicious means of presenting the evidence and arguments necessary to resolve such questions for Plaintiffs, the Class and Defendants.

40. Plaintiffs' claims raise questions of law and fact common to the Class. Among these questions are:

- a. Whether Defendants contracted with Plaintiffs and the Class to provide Passport Members with all-access to TSI's clubs;
- b. Whether Defendants engaged in deceptive and/or misleading consumer conduct towards Plaintiffs and the Class on its website;
- c. Whether Defendants engaged in deceptive and/or misleading consumer conduct towards Plaintiffs and the Class in its advertisements and marketing materials;
- d. Whether Plaintiffs and/or the Class were and/or are denied access to Defendants' Inaccessible Clubs;
- e. Whether Defendants' unlawful conduct towards Plaintiffs and the Class constitutes breach of contract; and
- f. Whether Defendants' unlawful conduct towards Plaintiffs and the Class constitutes a violation of GBL §349, DCCPPA, PUTPCPL and MCPA.

41. These common questions of law and fact arise from the same course of events, and each Class member will make similar legal and factual arguments to prove liability.

42. Plaintiffs are members of the Class that they seek to represent.

43. Plaintiffs' claims are typical of the claims of the Class.

44. The relief Plaintiffs seek for the unlawful conduct complained of herein is also typical of the relief sought on behalf of the Class.

45. Plaintiffs' interests are co-extensive with those of the Class that they seek to represent.

46. Plaintiffs are willing and able to represent the Class fairly and to vigorously pursue their similar individual claims in this action.

47. Plaintiffs have retained counsel who are qualified and experienced in class action litigation, and who are able to meet the time and fiscal demands necessary to litigate a class action of this size and complexity.

48. Defendants have acted or refused to act on grounds generally applicable to the Class, making final injunctive and declaratory relief appropriate with respect to the Class.

49. Injunctive and declaratory relief is a significant component of the relief sought by Plaintiffs on behalf of themselves and the Class.

50. The common issues of fact and law affecting Plaintiffs' claims and those of the Class members, including the common issues identified above, predominate over any issues affecting only individual claims.

51. The Class is so numerous that joinder of all members is impracticable. While the exact number of the Class is unknown at the present time, it is estimated that the Class is comprised of at least 250,000 members.

FIRST CLAIM FOR RELIEF
(General Business Law §349)
On Behalf of Plaintiffs and the Class

52. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by reference all preceding paragraphs as if they were set forth again herein.

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

54. Plaintiffs and the Class suffered and continue to suffer damages as a result of the deceptive conduct alleged herein, including, but not limited to, fees paid for access to TSI's clubs that was never actually provided and additional fees paid to TSI for access to the Inaccessible Clubs.

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

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

56. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by reference all preceding paragraphs as if they were set forth again herein.

57. As alleged herein, Defendants misrepresented, and continue to misrepresent, a material fact which has misled, and continues to mislead, Plaintiffs and the Class.

58. Plaintiffs and the Class suffered and continue to suffer damages as a result of the deceptive conduct alleged herein, including, but not limited to, fees paid for access to TSI's clubs that was never actually provided and additional fees paid to TSI for access to the Inaccessible Clubs.

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

THIRD CLAIM FOR RELIEF
(Pennsylvania Unfair Trade Practices & Consumer Protection Law, Tit. 73 §201-1, *et seq.*)
On Behalf of Plaintiffs and the Class

60. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by reference all preceding paragraphs as if they were set forth again herein.

61. Plaintiffs and the Class purchased goods and/or services from Defendants primarily for their personal use.

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

63. Plaintiffs and the Class suffered and continue to suffer damages as a result of the deceptive conduct alleged herein, including, but not limited to, fees paid for access to TSI's clubs that was never actually provided and additional fees paid to TSI for access to the Inaccessible Clubs.

64. Defendants' conduct constitutes a willful violation of Pennsylvania Unfair Trade Practices & Consumer Protection Law, Tit. 73 §201-1, *et seq.*

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

65. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by reference all preceding paragraphs as if they were set forth again herein.

66. As alleged herein, Defendants have been engaged, and continue to engage, in unfair and deceptive practices towards Plaintiffs and the Class in the conduct of commerce.

67. Plaintiffs and the Class suffered and continue to suffer damages as a result of the deceptive conduct alleged herein, including, but not limited to, fees paid for access to TSI's clubs that was never actually provided and additional fees paid to TSI for access to the Inaccessible Clubs.

68. Defendants' conduct constitutes a willful violation of Mass. Consumer Protection Act, M.G.L.A. c. 93A §§1 *et seq.*

FIFTH CLAIM FOR RELIEF
(Breach of Contract)
On Behalf of Plaintiffs and the Class

69. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by reference all preceding paragraphs as if they were set forth again herein.

70. As alleged herein, Defendants entered into contracts (both written and unwritten) with Plaintiffs and the Class to provide services to Plaintiffs and the Class in exchange for monetary consideration.

71. As alleged herein, Defendants agreed to provide all Passport Members with access to all of TSI's gym locations at any time.

72. As alleged herein, Defendants have breached their contracts with Plaintiffs and the Class by denying access and/or not permitting access to the Inaccessible Clubs.

73. As a result of Defendants' breach, Plaintiffs and the Class have suffered damages, including, but not limited to, fees paid for access to TSI's clubs that was never actually provided and additional fees paid to TSI for access to the Inaccessible Clubs.

SIXTH CLAIM FOR RELIEF
(Fraud)
On Behalf of Plaintiffs and the Class

74. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by reference all preceding paragraphs as if they were set forth again herein.

75. As alleged herein, Defendants engaged in fraudulent conduct by knowingly and/or intentionally making false and misleading statements to Plaintiffs and the Class, that the Passport Membership provided all-access to TSI's gym locations.

76. As alleged herein, Defendants' statements about the nature of the Passport Membership were and are false statements.

77. As alleged herein, Plaintiffs and the Class reasonably and justifiably relied on Defendants' false and misleading statements, to their detriment, including, but not limited to, by paying membership dues and paying additional fees for access to the Inaccessible Clubs.

78. As alleged herein, Plaintiffs and the Class have suffered damages as a result of Defendants' fraudulent conduct, including, but not limited to, fees paid for access to TSI's clubs that was never actually provided and additional fees paid to TSI for access to the Inaccessible Clubs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Class, respectfully requests that this Court:

- A. Declare that the practices complained of herein are unlawful under law;
- B. Certify this action as a class action pursuant to CPLR §901 et seq.;
- C. Designate Plaintiffs as representatives of the Class;
- D. Designate Plaintiffs' counsel as counsel of record for the Class;
- E. Determine the damages sustained by Plaintiffs and the Class as a result of Defendants' unlawful conduct, and award those damages against Defendants and in favor of the Plaintiffs and the Class, plus such pre-judgment and post-judgment interest as may be allowed;
- F. Award Plaintiffs and the Class any applicable statutory damages;
- G. Award Plaintiffs and the Class any and all other applicable damages;
- H. Award Plaintiffs and the Class their reasonable attorneys' fees and costs; and
- I. Grant Plaintiffs and the Class such other and further relief that the Court deems just and proper.


DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and the Class, hereby demand a trial by jury on all issues of fact and damages.

Dated: February 1, 2018
New York, New York

Respectfully submitted,

WIGDOR LLP

By: 
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