

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Amalia Sible, on behalf of herself and all others similarly situated

(b) County of Residence of First Listed Plaintiff Collin (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) BURLESON, PATE & GIBSON LLP

John E. Collins, Esq., 900 Jackson St., Ste. 330, Dallas, TX 75202 Phone: (214) 871-4900

DEFENDANTS

L.A. Fitness International, LLC (a/k/a Fitness International, LLC) 3161 Michelle Drive, Irvine, CA 92606

County of Residence of First Listed Defendant Orange County, CA (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known) EAGAN AVENATTI, LLP, Jason M. Frank, Esq., 450 Newport Center Drive, 2nd Fl., Newport Beach, CA 92660 Phone: (949) 706-7000

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

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

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

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Rights, and Labor.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)

Brief description of cause: Customers improperly charged monthly dues after attempting to cancel their memberships per contract terms.

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Michael Baylson, E.D. Pa. DOCKET NUMBER 10-cv-02326, 11-cv-02644

DATE October 17, 2012 SIGNATURE OF ATTORNEY OF RECORD John E. Collins

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE



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**I. NATURE OF ACTION**

1. Plaintiff brings this action on behalf of herself and all other similarly-situated persons who: (i) are former members of defendant L.A. Fitness International, LLC (“LA Fitness” or the “Company”) who have incurred at least one additional monthly billing charge after they timely cancelled their Monthly Dues Membership Agreements with LA Fitness, despite the fact that they were up to date with dues payments at the time they mailed their notice of cancellations; or (ii) are current members of LA Fitness who entered into Monthly Dues Membership Agreements which contain the misleading cancellation provisions set forth herein and who will be forced to pay dues for one or more months after they attempt to cancel their memberships (the “Class”).

2. Defendant LA Fitness owns and operates health and fitness clubs throughout the United States. A new member may enroll under the Company’s “Monthly Dues Membership Agreement” (also referred to herein as the “Monthly Contract”), in which case the new member pays an initiation fee, first month dues, and prepaid last month dues. Alternatively, a new member may enroll under the Company’s annual “Paid In Full Membership Agreement,” in which case the member pays an entire year’s dues up front (which amounts to several hundred dollars). This action focuses on the Monthly Dues Membership Agreement.

3. At all relevant times, through the terms of the Monthly Contract and through the systematic uniform representations of its sales representatives, LA Fitness represented to Class members that the Monthly Dues Membership Agreement was a monthly contract that members can sign up for, use the gym for their desired period of months, and then cancel at any time without incurring any further billing simply by following the Company’s cancellation

procedures. This is not the case.

4. Although LA Fitness sells monthly dues memberships through its local clubs, members cannot cancel their memberships at the clubs where their memberships were initiated (or at any other local LA Fitness location), nor can they cancel their memberships by telephone, or by facsimile, or by e-mail, or on the Company's Internet site. In fact, while it takes minutes for LA Fitness to sign up a person for a monthly dues membership, it is virtually impossible for a person to cancel the membership and stop paying dues when they want to.

5. LA Fitness breached its Monthly Contracts and/or engaged in unfair and deceptive practices for the following reasons:

- The Monthly Contract states: "If there are no back dues or a balance due on your membership, you may stop the billing of the monthly dues through EFT and cancel your membership **by providing written notice of your request** at least thirty days prior to your next billing date: **Send the written notice to** LA Fitness, P.O. Box 54170, Irvine, CA 92619-4170." (Emphasis added.) LA Fitness breaches its Monthly Contracts and commits deceptive acts when it systematically ignores and refuses to act on members' properly-submitted written cancellation notices and continues automatic billing of monthly dues from members' bank accounts and credit cards in blatant disregard of the Company's obligations under the Monthly Contract;
- LA Fitness also breaches the above provision because, as the Monthly Contract fails to disclose, members cannot send in their own written cancellation notices, but rather, they must use the Company's pre-printed notice of cancellation form obtainable primarily by visiting an LA Fitness facility in-person. This undisclosed requirement contradicts the terms of the Monthly Contract, is clearly intended to impede or delay members from cancelling their memberships, and enables LA Fitness to charge additional monthly fees after its services are no longer used or desired; and
- The Monthly Contract's 30-day notice period is misleading. In order for a person to have his last month's prepaid dues be applied to a month when he is still using the gym – **and not pay an extra month of dues for a period** after he has stopped using the gym – **he would have to cancel at least 61 days** before his desired termination date. Since consumers do not understand this 61-day requirement when reading the Monthly Contract,

they end up paying for at least an extra month for services that do not want or use.<sup>1</sup>

6. In short, LA Fitness has acted in an unlawful manner so as to extract dues from members for months after they attempt to cancel their Monthly Contracts and no longer wish to use the gyms.

7. Significantly, hundreds or thousands of consumers have complained about LA Fitness' cancellation practices and procedures on the Internet. These complaints demonstrate that consumers did not know that LA Fitness would be billing them after receipt of their cancellation notices and beyond their use of the gym. These complaints are corroborated by LA Fitness' own employees who greatly criticize LA Fitness' procedures and tactics. These hundreds of complaints show that LA Fitness has breached its Monthly Contracts and acted in an unfair and deceptive manner, and that Class members have been and are continuing to be harmed by such actions.

8. Plaintiff seeks damages suffered as a result of defendant's conduct, including but not limited to compensatory damages and injunctive relief.

## **II. JURISDICTION & VENUE**

9. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one class member is of diverse citizenship from at least one defendant; there are more than 100 class members nationwide; and the aggregate amount in controversy exceeds \$5 million. This Court has personal jurisdiction over the parties because defendant LA Fitness maintains offices in this state and conducts business here.

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<sup>1</sup> All allegations concerning the Contract's 30-day notice provision also apply to LA Fitness' newer Contracts that provide a 20-day notice period. Contracts with the 20-day notice period actually require a member to provide at least 51-days notice of cancellation before the desired termination date to avoid paying dues for services that are not wanted or used.

10. Pursuant to 28 U.S.C. § 1391(a)(2), venue is proper in the Northern District of Texas because a substantial part of the acts giving rise to Plaintiff's claims occurred in this District.

### **III. PARTIES**

11. Plaintiff Amalia Sible is a resident of Texas.

12. Defendant LA Fitness is a privately-owned limited liability company that operates health and fitness clubs throughout the United States and Canada, and sells memberships to the public for these clubs. LA Fitness is now known as "Fitness International, LLC." LA Fitness' mailing address is P.O. Box 54170, Irvine, CA 92619 and it maintains its principal executive offices at 3161 Michelle Drive, Irvine, CA 92606.

### **IV. SUBSTANTIVE ALLEGATIONS**

#### **A. Background Regarding Defendant LA Fitness**

13. LA Fitness was founded in 1984 to purchase and operate underperforming fitness clubs. Through the mid-1990's, the Company grew its club portfolio both by acquiring and turning around existing clubs and by developing, opening, and operating newly-constructed properties. In 1995, LA Fitness designed and built a new 45,000 square foot multipurpose health and fitness club that became the Company's signature look. In 1998, the Company began to rapidly increase its new club development and to expand into new geographic regions.

14. Currently, LA Fitness operates over approximately 360 fitness clubs from New York to California with over 1,000,000 members. Clubs range in size from 20,000 to 60,000 square feet and typically offer access to circuit training equipment, free weights, cardiovascular equipment, aerobics programs, swimming pools, whirlpools, saunas, and racquetball and basketball courts.

**B. Defendant LA Fitness' Monthly Dues Membership Agreement**

15. New members of LA Fitness may choose to enroll under the Company's Monthly Dues Membership Agreement, in which case membership is on a month-to-month basis and purportedly may be canceled at anytime by using the procedures set forth in the Monthly Contract.

16. If a member selects the monthly membership, and signs LA Fitness' Monthly Dues Membership Agreement, he is charged a one time initiation fee, plus first month dues and prepaid last month dues. Monthly dues are typically around \$35.00, but may vary. Additionally, a member must provide LA Fitness with a bank account or credit card from which additional monthly dues will be billed automatically by electronic funds transfer ("EFT"). Specifically, the Monthly Dues Membership Agreement states:

**YOUR EFT/CC BILLING DATE:** Your monthly dues will be automatically billed and collected electronically once a month, beginning roughly 30 days after your sign-up date. The monthly billing date is based on your sign-up date. However, all agreements entered into on the 28th – 31st will be billed on the 28th.

17. The Monthly Dues Membership Agreement also purports to explain how members can cancel their memberships and stop monthly dues billing. Specifically, the Monthly Contract in use when Plaintiff Amalia Sible joined LA Fitness requires members to mail a written notice of cancellation to an LA Fitness post office box in Irvine, California at least 30 days before the next billing cycle, stating:

**HOW TO CANCEL YOUR MONTHLY DUES MEMBERSHIP:** You may cancel your membership (and thereby the continued billing of the monthly dues through EFT/CC) by providing written notice of your request at least thirty days prior to your billing date. Send the written notice to: LA Fitness, P.O. Box 54170, Irvine, CA 92619-4170. If the notice is postmarked at least 30 days prior to your next billing date, *no further billing will occur*. If the notice is postmarked less than 30 days prior to your next billing date, one or more billings will occur. In either case, the last month's prepaid dues will extend your membership expiration



by an additional 30 days or more, depending on your original sign up date.<sup>2</sup>

(Emphasis added.)

18. Other versions of the Monthly Dues Membership Agreement require that a notice of cancellation be postmarked at least 20 days before the next billing date in order to avoid being billed an additional month, stating:

**HOW TO CANCEL YOUR MONTHLY DUES MEMBERSHIP:** You may cancel your membership and the continued billing of monthly dues through EFT or [credit card] by mailing written notice of your cancellation request to: LA Fitness, P.O. Box 54170, Irvine, CA 92619-4170 or such other address designated by LA Fitness. A cancellation notice postmarked a minimum of 20 days prior to your next Billing Date *will result in no further billing of monthly dues*. A cancellation notice postmarked less than 20 days prior to your next Billing Date will result in one more monthly billing. Then your last month's prepaid dues will be applied for your final monthly payment, extending your membership at least an additional 30 days, at which time your membership will expire.

(Emphasis added.)

19. The Monthly Dues Membership Agreements state that you may cancel your membership by "providing written notice of your request." The agreements do not state that a pre-printed form or any particular form of written cancellation is needed. The agreements also do not state that members need to provide any specific information in the written notice, such as their bar code number, address, telephone number or email address.

20. LA Fitness refuses to provide members with a facsimile number or e-mail address for its Irvine, California corporate office, which would allow members to immediately send cancellation notices via facsimile or e-mail and to obtain prompt confirmation that the notification was received by the Company. Also, LA Fitness clubs refuse to assist members by having the Company send cancellation notifications via facsimile or U.S. mail to the Company's

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<sup>2</sup> A true and correct copy of the LA Fitness Monthly Dues Membership Agreement with the 30-day notification provision signed by Ms. Sible is attached hereto as Exhibit A.

Irvine, California headquarters in the same manner in which membership initiations are communicated to its headquarters. Instead, members must send the cancellation notices themselves, via U.S. mail to a post office box.

21. At all times relevant to this action, LA Fitness required members to send written notice via U.S. mail to LA Fitness' Irvine, California post office box rather than allowing members to immediately cancel memberships at the clubs where their memberships were initiated (or any other LA Fitness location), or by telephone, or by facsimile, or by e-mail, or through the Company's Internet site. In this way, the Company substantially delayed consumers from cancelling their memberships and terminating their monthly dues billing.

22. Furthermore, requiring that written notice of cancellation be mailed to a post office box in Irvine, California, rather than an office staffed by LA Fitness employees during normal business hours when mail is delivered, prevents members from sending cancellation notices by any form of mailing that is subject to tracking and confirmation of receipt without incurring additional expenses, such as the cost of sending the notification via certified mail with a return receipt request. Indeed, the only method by which members can confirm that their cancellation request has been received and acted upon is by checking their next month's bank statement or credit card statement to see if they are still being billed by LA Fitness.

**C. Defendant LA Fitness' Cancellation Practices Are In Breach of the Monthly Contracts and Are Unfair and Deceptive**

23. Defendant LA Fitness has engaged in unlawful conduct by engaging in the practices set forth below.

**1. LA Fitness Regularly Breaches Its Monthly Contracts and Engages in Deceptive Acts by Systematically Ignoring Cancellation Requests So that It Can Continue Extracting Monthly Dues**

24. The Monthly Contract states:

You may cancel your membership (and thereby the continued billing of the monthly dues through EFT/CC) *by providing written notice of your request at least thirty days prior to your billing date*. Send the written notice to: LA Fitness, P.O. Box 54170, Irvine, CA 92619-4170. If the notice is postmarked at least 30 days prior to your next billing date, no further billing will occur.

(Emphasis added).

25. LA Fitness has a policy and practice of regularly and systematically ignoring members' cancellation notices which are sent in the manner prescribed by the Monthly Dues Membership Agreement. Although the Monthly Contract states that a member may cancel his membership and stop all billing by sending in any form of a written notice to a certain P.O. box, in actuality, LA Fitness systematically ignored cancellation requests, including those which were made using the Company's pre-printed form, and continued to bill its members. These practices and procedures are designed to extract additional monthly dues from LA Fitness members. By such conduct, LA Fitness has breached the Monthly Contracts and engaged in deceptive acts under the Florida Deceptive and Unfair Trade Practices Act and the Washington Consumer Protection Act.

**2. LA Fitness Regularly Breaches Its Monthly Contracts by Requiring Members to Use the Company's Pre-printed Cancellation Form**

26. LA Fitness also has breached the contract provision quoted above because, as the Monthly Contract fails to disclose, members are told that they cannot send in their own cancellation requests, but rather, they must use the Company's pre-printed notice of cancellation form, which is obtainable primarily by visiting an LA Fitness facility in-person. In other words, if a member sent in a typed or handwritten letter which clearly stated: "please terminate my membership now," LA Fitness would ignore such notice because it was not made on its pre-printed form. This undisclosed requirement contradicts the terms of the Monthly Contract and is

clearly intended to impede or delay members from cancelling their memberships. It also enables LA Fitness to charge additional monthly dues after its services are no longer used or desired.

27. While the Company's website purports to allow members to download the cancellation form, consumer complaints on the Internet report persistent computer glitches that prevented consumers from downloading the form from LA Fitness' website.

28. As a result of defendant's practices, LA Fitness members are delayed from cancelling their memberships until such time as they learn of the undisclosed requirement to use the Company's pre-printed cancellation form, which often occurs after sending a prior cancellation notice that was ignored.

### **3. The Monthly Contract's 30-Day Notice Provision Is Misleading**

29. The Monthly Contract's cancellation policy is misleading because it requires 61 days notice, rather than the agreement's stated 30 days notice, prior to cancellation in order to receive the benefit of the last month's pre-paid dues. In order for a person to have his last month's prepaid dues be applied to a month when he is still using the gym – **and not pay an** extra month of dues for a period after he stopped using the gym – **he would have to** cancel at least 61 days before his desired termination date. Consumers do not understand this 61-day requirement from reading the Monthly Contract, so they end up paying for at least an extra month of dues for services that do not want or use.

30. By signing an Agreement with LA Fitness, a member has committed to at least a two month membership. However, to limit one's membership to this two month period, a member must cancel the membership on the date that he signed up. To limit the member's obligation to three months, a member must cancel before the end of the first month. Moreover, reasonable members could infer from the "no further billing" and 30 day notice language of the Monthly Contract that they have acted diligently by mailing timely written notice 30 days prior

to the date upon which they wish their membership to cease. In fact, such members would be misled in understanding that they would not have to pay dues both for the month during which the cancellation notice is received *and* have their last month's dues applied for the next month. Such members who intend their memberships to cease at the end of a certain month, and cancel in the prior month, would not understand that they had to plan an additional month in advance and would not receive the benefit of their last month's prepaid dues.

31. The chart below demonstrates that at least 61 days notice is required to cancel. Specifically, this chart demonstrates that a customer who mails a cancellation request to LA Fitness using the Company's pre-printed cancellation form on July 14, would have his membership continue until September 15, *i.e.*, **63 days** after sending his cancellation request.

**The Monthly Contract Cannot be Cancelled in 30 Days;  
At Least 61-Days Notice is Required**

<b>DATE (2008)</b>	<b>PAYMENTS</b>	<b>ACTION TAKEN BY MEMBER</b>	<b>MEMBERSHIP STATUS</b>
<b>Thursday May 15</b>	Pays first & last months' dues (2 x \$35 = \$70) and an initiation fee (typically \$99)	Customer signs Monthly Dues Membership Contract at local LA Fitness Gym	Membership Begins
<b>Sunday June 15</b>	LA Fitness automatically bills customer \$35 monthly dues	N/A	Membership Continues
<b>Monday July 14</b>	N/A	Customer sends pre-printed cancellation form to LA Fitness' Irvine, California P.O. box	Membership Continues
<b>Tuesday July 15</b>	LA Fitness automatically bills customer \$35 monthly dues	N/A	Membership Continues
<b>Friday August 15</b>	Pre-paid last month's dues billed to extend membership <i>at least 30 days</i>	N/A	Membership Continues
<b>Monday September 15</b>	N/A	N/A	<i>Membership Expires</i>

**D. There Are Hundreds of Consumer Complaints About LA Fitness' Unlawful Practices That Substantiate Plaintiffs' Allegations**

32. Internet websites that allow consumers to post complaints about businesses, including the Better Business Bureau's national website, are filled with hundreds of grievances by current and former LA Fitness members who have experienced endless delays by LA Fitness in their attempts to terminate memberships and monthly dues billing, resulting in additional monthly dues charges after they have attempted to cancel. The common thread that runs through all of these complaints is that LA Fitness claims to have never received the cancellation notice, and continues monthly billing for one or more additional months.

33. The fact that hundreds or thousands of consumers have complained clearly demonstrates that LA Fitness has breached its Monthly Contracts and acted in a deceptive manner in a systematic and wide-spread basis, and that Class members have been harmed by LA Fitness' unlawful practices. The following excerpts below are just a few examples of existing complaints.

34. From the Better Business Bureau ("BBB") website, dated February 3, 2010, an LA Fitness member complained:

[W]hen I tried to cancel my membership, we went in to cancel and the girl did it for us, told us it was cancelled (although it might not have been early enough to escape the next month's payment. You have to cancel 20 days in advance, which is ripoff enough already. However, didn't everyone have to pay the first and last months' dues when you sign up? What's that for?) and gave us a receipt. 2 months later, they were still charging me. We went in to find out what was going on and were told that they never cancel memberships in the store, they can't do it; they give me a form I have to send in to corporate.

35. Also from the BBB website, dated December 26, 2009, an LA Fitness member vented:

When I signed up, it took them like 15 minutes to get me enrolled right there at my gym in Corona. When I decided to cancel however, and went back to the same gym in Corona - I was told that they did not have access to my account and

wouldn't be able to cancel it for me. They told me I'd have to deal directly with there Corporate office in Irvine. There's no phone contact. **I mailed in my request to cancel. 30 days later, they pretended they hadn't received it. So they continued to bill me. So I mailed in other request, and they pretended not to receive it - again. So I went to the post office and mailed out a 3rd one via certified mail, some time went by, and finally, I received an e-mail confirmation [sic] from them stating that my account would be billed as scheduled and canceled within 30 days.** Don't get me wrong, I love "going green" however, why do I have to mail in my request to cancel via certified mail, because there's no available phone number or e-mail address, but then they go ahead and e-mail me from an "unmonitored" address? How's that fair? Is because [sic] they didn't want my e-mail's in regards to why I'm still getting billed for a service I've been trying to cancel 3 months ago [sic]? (emphasis added.)

36. A complaint on the BBB website dated September 29, 2009, stated:

I am a very pro-business person. I ordinarily find, contrary to common belief, that large companies are the easiest to deal with and the most respectful of their customers, because that is the way they establish lasting relationships and achieve long term success. However, **after dealing with LA Fitness, I am pretty sure that their business is \*actually\* a scam.** They signed my husband and myself up for a joint "family plan" gym membership, on a single contract which referred to the membership as shared. **When we decided to cancel, we experienced all of the same run arounds that everyone else seems to have experienced,** but we did finally get them to cancel the membership (several months and several undeserved payments after we first initiated the process). The real problems came later. **Even AFTER sending us an email confirming that the account was closed, LA Fitness didn't stop the automatic debits from our account.** Instead, they \*halved\* them. We didn't realize this until 9 months later, because the debits were coming out of a bank account that we don't normally use very much. I called them to explain the "mistake" and get a refund. I assumed that my experience would be as it has been with numerous other companies that I have dealt with, and that I would simply explain what had happened and they would refund the money. Interestingly, when I spoke to the receptionist at the local branch, \*she\* was very respectful and helpful, and said, **"yes, we have a bad cancellation policy** – I'll get back to you within the week about this." But then what I got instead of a call back from her, was a call from corporate. The contrast was STRIKING. It was clear that their \*conscious and deliberate approach\* was to try to intimidate and badger me into just giving up. At first, the woman I spoke with refused to even cancel the account over the phone, much less refund the money. She wouldn't even let me speak, but just jumped in with some story about how we had two accounts not one, and we only closed one of them. (First I heard about it!) She was belligerent and patronizing. When she realized she was actually dealing with someone calm and articulate, she switched tacks a little and tried to get me to agree that if she cancelled the account over the phone, I would

“waive any claim to have past amounts refunded.” Pretty ballsy. Of course I refused that. I actually spent about an hour on the phone, and I made her give to me another representative to talk to. He took exactly the same approach. **Finally, I had to give up and just file in small claims court to get back the \$300 they stole. It really was an incredible experience. They are a very dishonest company.** I’m sure they won’t last, with these kinds of fraudulent practices, but until they gasp their last gasp I highly recommend that you stay away. (emphasis added.)

37. Another BBB complaint dated September 16, 2009, stated:

Don’t join LA Fitness. LA Fitness lie to their customers. They are not trustworthy to do business. Busines[s] practice is terrible. I join them for a few weeks and decided to cancel due to their business dishonesty. [O]nce they have your credit card, they will charge whatever they come up with the amounts and say you sign up for their training. **Their cancelation process took a few months to process even [if] you make it to cancel in the current month.** That’s a scam / red flag of their company. Be wise do not join LA Fitness. I joined just because their facility looks nice outside but it is very scary inside when it comes to payment. They are very greedy and fraudulent practice business. Better watch out... (emphasis added.)

38. Yet another LA Fitness member added this complaint to the BBB website on July 8, 2009:

LA fitness purposefully makes it extremely difficult to cancel membership. I have read many online reviews and it seems like many people went thru the exact same experience as me. **I had to go to the club to pickup the cancellation form (big RED flag). I mailed a certified letter 20 days prior to billing cycle but still got charged. Called into their 800 number and the representative immediately cancelled the membership but claimed he never received the letter.**

Many people have been through the same. **I believe LA fitness purposefully misleads people on their cancellation policy in hopes of continue to charge them.** In this day and age we shouldn’t have to drive/pickup/mail letters. It should be done either via phone or online. I understand the notice period but the whole certified letter and them claiming to many people that they never received it sounds like a big scam. (emphasis added.)

39. Another BBB website complaint dated April 16, 2009 reveals the same frustrations in cancelling membership:

L.A. Fitness seems like a good club, reasonably priced, unless you want to cancel.



**You have to fill out a form and mail it 20 days before you want to cancel. BUT when you sign up you have to pay the first and last months membership. So unless you have the keen insight that you want to cancel 50 days before you want to stop using LA Fitness you have to pay for that last months membership anyway...** seems a bit ridiculous that you have to mail in a certified letter in this day and age when canceling via the web is very easy... heck I can pay taxes online, but can't cancel my gym membership???? What gives.... **Seems like a nice way of keeping you paying when you don't even want to go.** (emphasis added.)

40. ComplaintsBoard.com reveals more of the same, including this complaint made on January 26, 2010:

I wasn't using my membership enough, so I decided to cancel it in July of 2009. I went in to cancel and they said you can't cancel here, you have to send in written cancellation and it will take a couple of months. That should have been my first clue.

**I got the form, and sent it off.** I also learned this, keep a copy and send registered mail!

Everything I do is electronic. I don't get paper copies of any bills to try and be more green. I rarely use my credit card anymore, so **when I logged on to check it the other day, I noticed that LA Fitness was on there and had been all of the previous bills.**

**I called immediately...and gee, guess what they said? Oh, it looks like we never received it.**

I hate dealing with dishonest people. **I played their game and did as I was told. They are the ones who got my letter and pitched it in the garbage. Why not? It wasn't registered, so I can't prove that I sent it.**

Sometimes it is really embarrassing [sic], or maybe just depressing to know that companies like this exist.

**I know I have no way to get back my fees for the past seven months.** What I am really hoping is that someone will read this and realize they are dealing with a dishonest company and take their business to someone who is trying to do a service rather than steal money from their customers. The people that run the individual clubs were great. It is just the people who call the shots that I am so disappointed with. (emphasis added.)

41. A complaint submitted to ComplaintsBoard.com, on December 21, 2009, stated:

I sent the membership cancellation form as instructed via certified mail. **LA Fitness claimed they never received it.** So after ripping their butts and 3 phone numbers later I got membership cancelled over the phone ... They make it very difficult so they can keep taking your money. (emphasis added.)

42. Yet another ComplaintsBoard.com post on September 22, 2009, complained:

**LA Fitness makes it impossible to cancel their membership.** I contacted them months ago to try to cancel their cancel anytime membership. In order to cancel online you must sign up for an online account. They make you sign in to your account at sign up. If you go with them save your sign in information. It is a nightmare to get through to them to get your information. This is a planned by the company so that you will have other things to do and forget about your 30.00 a month. It worked on me. It was such a problem that I did forget. **They have their cancellation form on line but for some planned reason you can not open the file.** I disputed it with my bank and ultimately they continued to charge my card. **Four months later I went through the steps again and once again you can not download their cancellation form.** Finally I went to their building where they try to talk you out of leaving but ultimately they gave me a cancellation form which you have to send in by regular mail. They also tell you that they need to receive it ten business days in advance to stop from charging you again on their next billing cycle. If they put as much time into customer service as they do into making sure you cant [sic] cancel they [would] be a much better company. (emphasis added.)

43. In a June 29, 2009 post on ComplaintsBoard.com, another former LA Fitness member relates being charged monthly membership dues after sending a cancellation notice:

I recently moved and a[m] now living far from the nearest LA Fitness center. I stopped by before I moved out to terminate my membership. They told me I need to send them a filled out form by mail. Ridiculous. **I printed it ou[t] and sent it. A month later I saw I am still being charged. I called them. They said “they have no record of my cancellation”. How convenient! I filled [out] the form again and sent it as a certified mail to have the proof of me mailing and them receiving.**

**The charges continued.** I closed my bank account, and now I am getting calls from LA Fitness asking me to update my banking account information. I said I canceled my membership but for some reason it’s still open. (emphasis added.)

44. In a June 8, 2009 post on ComplaintsBoard.com, a former LA Fitness member relates similar difficulties in cancelling monthly dues membership:

I complied to the letter with instructions in my contract for cancelling

membership...but I did not send the letter by certified mail. After about two months, I began receiving collection calls from LA Fitness. They “never received” my letter and want to collect additional months’ membership fees that I do not owe. I’m sending another letter...this time to the CEO, but I should not have to go through all of this hassle.

45. Similar consumer complaints are found on my3cents.com, including the following February 25, 2010 post:

Never trust the word of the people at LA Fitness when it comes to billing!!

**They keep giving me wrong instructions to cancel the membership purposely so that they can keep charging me every month even after 6 months!!!**

Total scam!! Worst dishonest business ever!!! (emphasis added.)

46. Significantly, former LA Fitness employees have corroborated the consumer complaints. For example, in a February 19, 2010 post on PissedConsumer.com, a former LA Fitness employee confirmed that the Company continues billing members after they have mailed a notice of cancellation, and advises members to cancel their credit cards, stating:

I worked for LA Fitness for 2 years, until I decided that I couldn’t handle all the lies, scams, injustices and harassment going on in this place. You would think nothing crazy really goes on here, but you’re in for a big surprise.

[P]ersonally, I think the people who suffer at LAF the most (besides the members) are the Operations and janitors. They are the ones who get paid the least and are the most unappreciated of the bunch. And yet they work the hardest.

Let’s break it down:

\* \* \*

**Cancellations: they give you a form and tell you to mail it. But you’re still getting billed? Cut off your credit card, cannot stress this enough.** You as a member don’t owe them anything, because with over 300 clubs opened nationwide, they don’t need your last payment of 34.99. **But they will sure as \*\*\* deny to help you.** (emphasis added.)

47. The above post is corroborated by another former LA Fitness employee, who posted the following on the PissedConsumer.com web site on January 27, 2010:

I love this I am a form[er] MSM who has been with the company for 10yrs and started as an opener and worked my way up. This is all very true what I hate Lafitness is saying when ever you call so called corp to complain your not really reaching CORP your reaching a manager at a local club across the usa thats [sic] why you hear gym music in the back ground and why its very loud. **LA [Fitness] does not care about there [sic] mbrs they only care about there [sic] money..In this day in age why would you have to cancel a membership by sending in a letter 30 days in advanced[.] I hated telling my members that[.] Well here is a little secret you can cxl at any point in time and they do have the abilty [sic] to cancel in the clubs by any Operations Manager so dont [sic] let them tell you u cant[.] [R]emember the whole sales pitch!! (by paying your first and last months dues there will be no contract but by the time they cxl by snail mail you have been billed again and they get your last months up front[.] [T]here [sic] CROOKS BEWARE[.] [I]f you would like secrets to canceling or even recieving [sic] a refund let me know..i will check back (emphasis added.)**

**E. Plaintiffs' Experiences with LA Fitness**

48. Plaintiff Amalia Sible signed and entered into a Monthly Dues Membership Agreement for herself and her minor daughter, Sarah Sible, with defendant LA Fitness on May 6, 2008. Ms. Sible initiated "Single Club" memberships in-person at an LA Fitness club located in Frisco, Texas. The form of written Monthly Dues Membership Agreements entered into by Ms. Sible is substantially identical in all material respects to that entered into with other members of the Class. *See Exhibit A.*

49. The monthly dues for Ms. Sible and her daughter was \$29.99 each (\$34.94 including sales tax), for a total of \$64.93 per month (\$69.88 including sales tax). Ms. Sible paid first and last months' dues upon initiation of her memberships. Thereafter, Ms. Sible paid monthly dues for herself and her daughter by a Visa credit card on or about the 6th day of each month.

50. In early February 2010, Ms. Sible decided that she wanted to cancel both memberships. Ms. Sible reviewed her Monthly Dues Membership Agreement in order to determine the proper procedure for cancelling her membership, and determined that she could

send her own cancellation letter to terminate the memberships.

51. On February 12, 2010, Ms. Sible mailed a letter to LA Fitness, P.O. Box 54170, Irvine, CA 92619-4170, which stated, *inter alia*: “I am writing this letter to request cancellation of mine and my daughter’s membership in your fitness club effective immediately.” A copy of Ms. Sible’s February 12 cancellation letter is attached hereto as Exhibit B. Ms. Sible’s cancellation letter also included her address and the unique bar code numbers for both memberships. Thus, Ms. Sible provided sufficient information for LA Fitness to process her cancellation requests for both memberships.

52. LA Fitness received Ms. Sible’s February 12, 2010 cancellation notice, and LA Fitness processed the cancellation request for Ms. Sible’s daughter. However, unbeknownst to Ms. Sible, who had followed all of LA Fitness’ cancellation procedures as set forth in the Monthly Contract; LA Fitness had ignored her cancellation request and continued billing Ms. Sible monthly dues until approximately April 6, 2011.

53. Ms. Sible discovered defendant’s improper dues billing when her husband was reviewing their monthly bank statement and brought to her attention that, despite sending a cancellation notice more than a year earlier, she was still being billed monthly dues by LA Fitness.

54. Ms. Sible immediately contacted the Frisco, Texas LA Fitness club and eventually spoke with the club’s Operations Manager, Maggie G. Yunker. Ms. Sible explained to Ms. Yunker that she followed the provisions of her Monthly Contract to the letter and sent a written cancellation request to LA Fitness’ Irvine, California P.O. Box on February 12, 2010, requesting that LA Fitness cancel both memberships, but LA Fitness only cancelled her daughter’s membership. Ms. Sible advised Ms. Yunker that, despite her cancellation notice, LA

Fitness had continued billing her monthly dues for 14 months. Since LA Fitness had processed the cancellation request for her daughter, Ms. Sible knew that the Company had received her written cancellation, and that LA Fitness had breached its obligations under the Monthly Contract. Accordingly, Ms. Sible requested a full refund of the 14 months of dues that were improperly billed by LA Fitness. Finally, Ms. Sible provided Ms. Yunker with a copy of her February 12, 2010 cancellation letter as further proof that she had complied with the cancellation provisions of the Monthly Contract.

55. Ms. Yunker's initial response to Plaintiff was that LA Fitness had no record of her cancellation request. However, when Ms. Yunker reviewed Ms. Sible's member notes on the Company's Front Desk Management Tool, she confirmed that Ms. Sible was correct that LA Fitness had cancelled the daughter's membership in February 2010, but had ignored her request to cancel her own membership.

56. Ms. Yunker then referred Plaintiff to an LA Fitness Member Services Manager named Rachel Payne. Faced with a copy of Plaintiff's cancellation notice and LA Fitness' own records, Ms. Payne offered to cancel Plaintiff's membership immediately. However, Ms. Payne offered a refund of only the last three months' dues. Ms. Sible advised Ms. Payne that this was not satisfactory and that she was prepared to take legal action against LA Fitness. Ms. Sible told Ms. Yunker the same thing. Despite the overwhelming evidence that Ms. Sible's membership should have been cancelled at the same time as her daughter's, in February 2010, LA Fitness offered Plaintiff a refund of only eight months' dues instead of the 14 months the Company owed her.

57. LA Fitness' wrongful conduct is revealed in an internal email from Ms. Yunker to her District Manager, Robert Vandercook, dated April 27, 2011, in which Ms. Yunker admits

that she believes that Ms. Sible's membership should have been cancelled in February 2010, when her daughter's membership was cancelled, and that LA Fitness owed her a full refund.

58. On April 27, 2011, Ms. Sible received an e-mail from LA Fitness confirming that LA Fitness had cancelled her membership, that her final billing date would be April 6, 2011, and that her memberships would expire on April 27, 2011. A copy of the LA Fitness cancellation receipt is attached as Exhibit C.

59. Because Ms. Sible's Monthly Dues Membership Agreements provided, "If the notice is postmarked at least 30 days prior to your next billing date, no further billing will occur," she reasonably expected that after she mailed her cancellations to LA Fitness on February 12, 2010, that her monthly dues billing would stop prior to the April 2010 billing date, and that her memberships would end no later than April 2010. Instead, LA Fitness disregarded Ms. Sible's cancellation notices and billed her for at least 14 months of dues after she mailed her cancellation notices. This conduct constitutes a breach of LA Fitness' Monthly Contract and a deceptive act.

60. As a result, Ms. Sible was damaged because she: (i) reasonably relied on LA Fitness' representations that the Monthly Dues Membership Agreement was a "monthly" contract that could be cancelled at any time without further billing; (ii) relied on the Monthly Contract's provision that "no further billing will occur" after giving timely notice, when in fact LA Fitness ignored such notice and continued to bill her for 14 months after such notice; (iii) did not know that she needed to provide at least 61-days notice to avoid paying dues for services she did not use or want; and (iv) could not understand the misleading terms of her Monthly Contracts.

## **V. CLASS ACTION ALLEGATIONS**

61. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this

class action individually and on behalf of all other persons similarly-situated who: (i) are former members of LA Fitness who have incurred at least one additional monthly billing charge after they timely cancelled their Monthly Dues Membership Agreements with defendant LA Fitness, despite the fact that they were up to date with dues payments at the time they mailed their notice of cancellations; or (ii) are current members of LA Fitness who entered into Monthly Dues Membership Agreements which contain the misleading cancellation provisions set forth herein and who will be forced to pay dues for one or more months after they attempt to cancel their memberships. The Class does not include defendant or its officers or directors or their immediate families.

62. The claim for breach of contract (Count I) is asserted on behalf of a nation-wide class, while the claim for violations of the Texas Health Spa Act, Tex. Occ. Code §§ 702.001 *et seq.*, and Texas Deceptive Trade Practices-Consumer Protection Act, Tex. Bus. & Com. Code Ann. §§ 17.41 *et seq.* (Count II) is asserted on behalf of a statewide class comprised of members residing in Texas and/or members who entered into Monthly Dues Membership contracts in Texas.

63. On information and belief, the Class is compromised of thousands of persons, making joinder of such cases impracticable. Disposition of the claims in a class action will provide substantial benefits to the parties and the Court.

64. The rights of each Class member were violated in a similar fashion based upon defendant's uniform actions. Some common issues present here are:

- a. Whether defendant participated in and pursued the course of conduct complained of herein;
- b. Whether defendant's conduct complained of herein constitutes a breach of the Monthly Dues Membership Agreement;
- c. Whether defendant's actions and Monthly Dues Membership Agreement



constitute a violation of the Texas Health Spa Act, Tex. Occ. Code §§ 702.001 *et seq.*, and Texas Deceptive Trade Practices-Consumer Protection Act, Tex. Bus. & Com. Code Ann. §§ 17.41 *et seq.*; and

- d. Whether Plaintiffs and Class members have sustained damages, and if so, what is the proper measure of those damages.

65. Plaintiff's claims are typical of the claims of the Class she seeks to represent.

66. Plaintiff will fairly and adequately represent and protect the interests of the Class.

Plaintiff has no interests that are antagonistic to or that irreconcilably conflict with those of other Class members.

67. Plaintiff has retained counsel competent and experienced in the prosecution of class action litigation.

68. A class action is superior to all other available methods for the fair and efficient adjudication of Plaintiff's and Class members' claims. Plaintiff and the members of the Class have suffered similar harm as a result of defendant's conduct. Certification of a class action to resolve these disputes will reduce the possibility of repetitious litigation involving thousands of Class members.

69. Class certification is appropriate under Fed. R. Civ. P. 23, as the Class satisfies the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3). Class certification is also appropriate under Fed. R. Civ. P. 23(b)(2) with respect to injunctive relief. Injunctive relief is required for current members of LA Fitness who have entered into Monthly Dues Membership Agreements with LA Fitness which contain the misleading provisions described above because money damages alone are insufficient to redress the irreparable harm that such Class members face.

## **VI. LEGAL CLAIMS**

### **COUNT I -- BREACH OF EXPRESS CONTRACT**

**(On Behalf of All Class Members Residing in the U.S.)**

70. Plaintiffs repeat and re-allege all preceding allegations as if fully set forth herein.

71. Plaintiffs bring this claim on their own behalf and on behalf of all Class members residing in the U.S. The relevant common law in each state of each Class member is materially uniform for purposes of this claim.

72. LA Fitness' entire agreement is contained in its Monthly Dues Membership Agreement entered into with Plaintiffs and Class members.

73. The Monthly Contract states that: "If there is no back dues or a balance due on your membership, you may stop the billing of the monthly dues through EFT and cancel your membership *by providing written notice of your request* at least thirty days prior to your next billing date: *Send the written notice to* LA Fitness, P.O. Box 54170, Irvine, CA 92619-4170."

74. LA Fitness breached this provision by systematically ignoring members' written cancellation notices, whether printed on the Company's pre-printed form or otherwise, and by continuing to bill them.

75. LA Fitness also breached this provision because members cannot send in their own written cancellation notices, but rather, they must use the Company's pre-printed notice of cancellation form obtainable only by visiting an LA Fitness facility in-person to terminate their membership. This additional undisclosed requirement contradicts the terms of the Monthly Contract, and is clearly intended to impede or delay members from cancelling. This enables LA Fitness to charge additional monthly fees after its services are no longer used or desired.

76. There is a duty of good faith and fair dealing implied in the Monthly Dues Membership Agreement between Plaintiffs and LA Fitness. Given LA Fitness' actions described above, LA Fitness has breached its duty of good faith and fair dealing implied in the Monthly Contract, and thus, withheld from Plaintiffs and the Class the benefits of the Monthly Contract.

77. Consideration existed here as Plaintiffs and Class members paid money to LA Fitness in exchange for LA Fitness' services under the Monthly Contracts.

78. As a direct and proximate result of LA Fitness' breaches of the Monthly Contract and breaches of the duty of good faith and fair dealing, Plaintiffs and the Class have suffered and will continue to suffer substantial monetary damages including, but not limited to, overcharges of monthly membership dues.

79. Plaintiffs and Class members continue to suffer harm, as LA Fitness has failed to refund Class members for dues charged to them after they sent in timely notices of cancelation of their memberships.

## COUNT II

### **VIOLATIONS OF TEXAS HEALTH SPA ACT, Tex. Occ. Code §§ 702.001 *et seq.*, and TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, Tex. Bus. & Com. Code Ann. §§ 17.41 *et seq.***

#### **On Behalf of All Class Members Residing in Texas and/or Members of LA Fitness Clubs Located in Texas)**

80. Plaintiff repeats and re-alleges all preceding allegations as if fully set forth herein.

81. This claim is brought on behalf of consumers residing in Texas and/or members of LA Fitness clubs located in Texas.

82. LA Fitness is a "health spa" as that term is defined under Texas' Health Spa Act ("HSA"), Tex. Occ. Code § 702.001 *et seq.*, which regulates health clubs operating within Texas. The HSA defines "Health Spa" as "a business that offers for sale, or sells, memberships that provide the members instruction in or the use of facilities for a physical exercise program." HSA §702.003 (4).

83. LA Fitness is a "seller" under HSA § 702.003 (13), which provides: "[S]eller[] means a person who: (A) owns or operates a health spa; or (B) offers for sale, or sells, the right

to use a health spa's services or facilities.”

84. Plaintiff is a “member” of LA Fitness under HSA § 702.003 (6) of the Health Spa Act, which provides: “Member[] means a person who is entitled to the benefits of membership in a health spa.”

85. LA Fitness' Monthly Dues Membership Agreement is subject to the provisions of the HSA because it is a “contract” as that term is defined under the HSA. Specifically, HSA § 2162 provides: “Contract[] means an agreement between a seller and purchaser by which the purchaser becomes a member of a health spa.”

86. For all of the reasons set forth above, LA Fitness' Monthly Dues Membership Agreement and the Company's practices related to the duration, cancellation, and automatic renewal of memberships are unfair, abusive, and deceptive. These practices include, but are not limited to: (1) LA Fitness systematically ignored all forms of cancellation notices in order to continue monthly dues billing to Plaintiffs and members of the Statewide Classes in Florida and Washington; and (2) the Monthly Contract represents that membership can be cancelled by giving 20 or 30-days' notice, but, in fact, it requires at least 51 or 61 days notice for the member to receive the benefit of his/her last month's prepaid dues.

87. Such misleading practices are expressly forbidden by the HSA. Specifically, the HSA § 702.402(a) prohibits “[a] seller” of health spa services from “mak[ing] a material misrepresentation to a member, prospective member, or purchaser regarding ... membership rights...”

88. As a result of the foregoing acts and practices, LA Fitness has violated and continues to violate the HSA, Tex. Occ. Code §§ 702.001 *et seq.*, which regulates health clubs operating within the State of Texas.

89. As a result of the foregoing acts and practices of LA Fitness, the Monthly Contract should be declared void pursuant to HSA § 702.311. HSA § 702.311 provides that “A contract is void if ... the purchaser enters into the contract in reliance on false, fraudulent, or misleading information willfully provided by, or a false, fraudulent, or misleading representation, notice, or advertisement willfully made by, the seller or the health spa owner or operator.”

90. Furthermore, HSA § 702.403 (a) provides that a violation of the HSA shall constitute a violation of the Texas Deceptive Trade Practices Act (“DTPA”), Tex. Bus. & Com. Code Ann. § 17.41. Section 702.403 (a) states:

Application of Deceptive Trade Practices Act

(a) A person who violates this chapter commits a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code.

Thus, by violating the HSA, defendant has violated the DTPA and is subject to all damages and remedies available to Plaintiff and the Class thereunder.

91. In addition, § 702.403 (b) provides for a private right of action to redress violations of the HSA and DTPA. Section 702.403 (b) states:

A public or private right or remedy under Chapter 17, Business & Commerce Code, may be used to enforce this chapter.

92. Plaintiff and the Class are “consumers” within the meaning of the DTPA § 17.45 (4), as they sought or acquired, goods or services, by purchase or lease from defendant LA Fitness. *See* Tex. Bus. & Com. Code § 17.45 (4).

93. As set forth above, defendant LA Fitness committed acts “in connection with the purchase or lease of any goods or services”

94. Section 17.46 (a) of the DTPA proscribes, *inter alia*, engaging in any “false,

misleading, or deceptive acts or practices in the conduct of any trade or commerce...” Tex. Bus. & Com. Code § 17.46.

95. The actions of LA Fitness, set forth above, constitute false, misleading, or deceptive acts or practices in the conduct of trade or commerce under the DTPA.

96. The actions of LA Fitness, set forth above, also constitute unconscionable actions or course of action within the meaning of Tex. Bus. & Com. Code § 17.45, as such acts and practices were to the detriment of consumers, including Plaintiff and the Class, as defendant LA Fitness has taken advantage of the lack of knowledge, ability, experience, or capacity of such consumers to a grossly unfair degree.

97. Plaintiff and the Class justifiably relied on LA Fitness’ false, misleading, deceptive and unconscionable Monthly Dues Membership Agreement and other representations concerning LA Fitness’ cancellation policies and procedures when they entered into their Monthly Dues Membership Agreements.

98. Plaintiff and the Class did not know, nor could they have known, that as a result of LA Fitness’ unfair and deceptive acts and practices, their Monthly Contracts were not “monthly” contracts, and they would incur additional charges for monthly dues when they attempted to cancel their memberships.

99. LA Fitness’ actions were a producing cause of the injuries suffered by Plaintiff and the Class, including financial and other harm.

100. By virtue of the foregoing violations of law, and pursuant to the HSA and DTPA, Plaintiff and the Class are entitled to an award of actual damages, damages for mental anguish, treble damages, an order enjoining such defendant LA Fitness from committing such acts, attorneys’ fees and costs of suit.

**VII. JURY TRIAL DEMANDED**

101. Plaintiff hereby demands a trial by jury on all issues so triable.

**VIII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, respectfully requests that the Court enter an Order:

- a. Certifying the proposed Class under Fed. R. Civ. P. 23 and appointing Plaintiffs and Plaintiffs' counsel to represent the Class;
- b. Finding that defendant is liable under all legal claims asserted herein for its improper billing of monthly membership dues, as alleged herein;
- c. Ordering injunctive relief, including but not limited to: (i) ordering LA Fitness to immediately cease and desist its practice of ignoring written cancellation requests; (ii) requiring LA Fitness to devise practices and procedures that allow consumers and the Company to track cancellation requests; (iii) revising the Monthly Dues Membership Agreement to clearly disclose the requirement for a pre-printed form or eliminate such undisclosed requirement; (iv) reducing the notification period required to cancel a membership from 20 or 30 days to 5 days; and (v) providing members with alternative methods to transmit their cancellation notifications, including without limitation, in-person at LA Fitness clubs, or via e-mail, or facsimile, or on the Internet;
- d. Awarding damages to Plaintiffs and Class members under the common law and statutory theories alleged herein, including compensatory damages, consequential damages, treble damages, punitive damages, and any other damages provided under relevant laws;
- e. Declaring that defendant has breached the Monthly Dues Membership Agreements and allowing Class members to terminate those Contracts;
- f. Awarding litigation costs and attorneys' fees;
- g. Awarding pre and post judgment interest; and
- h. Awarding any other legal or equitable relief as justice requires.

Dated: October 17, 2012

BURLESON, PATE & GIBSON LLP

By:       /s/John E. Collins        
John E. Collins  
900 Jackson Street  
Suite 330  
Dallas, TX 75202  
Phone: (214) 871-4900  
Fax: (214) 871-7543  
jcollins@bp-g.com

*Counsel for Plaintiffs and the Class*

BERGER & MONTAGUE, P.C.  
Sherrie R. Savett (*Pro Hac Pending*)  
Michael T. Fantini (*Pro Hac Pending*)  
Eric Lechtzin (*Pro Hac Pending*)  
1622 Locust Street  
Philadelphia, PA 19103  
Phone: (215) 875-3000  
Fax: (215) 875-4636  
ssavett@bm.net  
mfantini@bm.net  
elechtzin@bm.net

*Of Counsel*

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# EXHIBIT A

**L.A. FITNESS** BAR CODE

NAME Sible, Amalia

MEMBERSHIP AGREEMENT

ADDRESS 10418 Hunter Run, Frisco, TX, 75035

E-MAIL amy.sible@yahoo.com

BUSINESS PHONE 214-802-0824 Ext:

HOME PHONE 972-743-1756

CELL/OTHER PHONE

IMMEDIATE FAMILY MEMBERS INCLUDED ON MEMBERSHIP MUST LIVE AT THE SAME ADDRESS AND USE THE SAME SOURCE OF PAYMENT AS MEMBER. (MAX. 4)

#1 FAO NAME

#2 FAO NAME

#3 FAO NAME

It is agreed by and between L.A. Fitness International, LLC ("L.A. Fitness") and you, the undersigned Buyer (individually, if you are the Member, and/or as agent or guardian of the Member or responsible party), that you are purchasing a membership from L.A. Fitness according to the terms on both pages of this Membership Agreement and the current Membership Policies and Club Rules and Regulations ("Agreement").  <input type="checkbox"/> PAID IN FULL (PIF) MEMBERSHIP. EXPIRES _____ ANNUAL RENEWAL: \$ _____ (EXPIRES SAME DATE) Plus Applicable Sales Tax  <input checked="" type="checkbox"/> MONTHLY DUES = \$ 29.99 + APPLICABLE TAX. Your dues will be billed monthly by electronic funds transfer to your bank account ("EFT") or credit card ("CC") (collectively, "EFT/CC"). IF THERE ARE ANY FAMILY ADD-ONS TO THIS AGREEMENT, BE ADVISED THAT IF YOU CHOOSE IN THE FUTURE TO PAY FOR ANY SUCH FAMILY ADD-ONS THROUGH MULTIPLE ACCOUNTS WITHIN THIRTY DAYS FROM PURCHASE, YOU MUST PAY THE FULL INITIATION FEE AS ADVERTISED FOR A CURRENT "EASY START" MEMBERSHIP FOR EACH ACCOUNT ADDED. IF YOU MAKE THIS CHOICE AFTER THIRTY DAYS FROM PURCHASE, A SPLIT FEE OF \$79 WILL BE CHARGED PER ACCOUNT ADDED.	<b>PAYMENT</b>		<b>AUTHORIZED INITIAL PAYMENTS</b>			
			DATE	PAY TYPE	LAST 4 DIGITS OF ACCT. NO.	AMOUNT
	INITIATION FEE	\$ 0.00	05/06/08	CHECK	2806	. \$ 64.93
	FIRST/LAST MONTHS' DUES	\$ 59.98				
	PREPAID DUES (PIF)	\$				
	SUBTOTAL	\$ 59.98				
	SALES TAX	\$ 4.95				
	TOTAL DUE	\$ 64.93	<b>SERVICES</b>			
	TOTAL PAID	\$ 64.93	<input type="checkbox"/> TENNIS		\$	mo.
	BALANCE DUE	\$ 0.00	<input checked="" type="checkbox"/> RACQUETBALL		\$	0 mo.
MEMBERSHIP TYPE:	Single Club	<input type="checkbox"/> TOWEL/SERVICE		\$	mo.	
		<input type="checkbox"/> KID'S KLUB		\$	mo.	

**YOUR EFT/CC BILLING DATE:** Your monthly dues will be automatically billed and collected electronically once a month, beginning roughly 30 days after your sign-up date. The monthly billing date is based on your sign-up date. However, all agreements entered on the 28th – 31st will be billed on the 28th.

**HOW TO CANCEL YOUR MONTHLY DUES MEMBERSHIP:** You may cancel your membership (and thereby the continued billing of the monthly dues through EFT/CC) by providing written notice of your request at least thirty days prior to your billing date. Send the written notice to: L.A. Fitness, P.O. Box 54170, Irvine, CA 92619-4170. If the notice is postmarked at least 30 days prior to your next billing date, no further billing will occur. If the notice is postmarked less than 30 days prior to your next billing date one or more billings will occur. In either case the last month's prepaid dues will extend your membership expiration by an additional 30 days or more, depending on your original sign up date.

**\*EFT/CC REQUEST.** Buyer (individually and as agent or guardian of Member) hereby authorizes L.A. Fitness to make periodic charges to or withdrawals from (a) the account used to pay the initial payment(s) described above, or (b) a replacement account hereafter used for payment of any sums due L.A. Fitness under this Agreement, including but not limited to Buyer's balance due if not paid by the due date, or for any other use by Buyer of L.A. Fitness facilities or services (the "EFT"), as follows: Monthly membership dues beginning the month following your membership sign up date, as described above. In the event sufficient funds are not available in Buyer's account or debits are otherwise not accepted, L.A. Fitness may resubmit the charge. If the resubmittal is returned uncollected, the rejected amount plus a \$10.00 service charge may be added to Buyer's next regularly scheduled debit. Buyer understands that Buyer is entitled to notice of all varying charges and withdrawals under the EFT, but Buyer waives the right to receive prior notice for charges or withdrawals with respect to any uncollected monthly dues payments or portions of the balance due described above and the corresponding service charges, both of which Buyer agrees are not varying charges or withdrawals. Buyer understands that Buyer is in full control of Buyer's payment and that this EFT/CC Request will remain in effect until L.A. Fitness receives written notice of termination of this Agreement and has a reasonable opportunity to act on that notice. If you decide to change your billing information, a 30-day notice is required. Buyer may timely notify the financial institution in control of Buyer's account to terminate this EFT/CC Request, but such notification will not otherwise affect this Agreement and Buyer's obligations herein.

Buyer agrees that LAF may provide Buyer's personal contact information to independently operated businesses within the Club and Buyer consents that such businesses may contact Buyer (including by phone) concerning available services or promotions.

Buyer hereby consents to the use of an electronic signature to record Buyer's commitment to the terms of this Agreement.

By signing this Agreement, Buyer acknowledges that Buyer is of legal age, has received a filled-in and completed copy of this Agreement, identifying the membership type and services purchased, has read and understands the entire Agreement, including but not limited to the \*EFT/CC Request (if applicable), the Release and Waiver of Liability and Indemnity, and Club Rules and Regulations provided herewith. This Agreement constitutes the entire agreement of the parties and no other agreement or understanding exists between Buyer and L.A. Fitness. L.A. Fitness has made no express or implied warranties or representations, other than those expressly set forth in this Agreement to induce Buyer to enter into this Agreement. L.A. Fitness recommends that you consult your physician prior to beginning any exercise or weight loss program. Any conflict between the original Agreement and any copy of the original Agreement shall be controlled by the original Agreement.

**NOTICE TO PURCHASER: Do not sign this contract until you read it or if it contains blank spaces. This Agreement contains a full and complete release of claims on page 2.**

**If you decide you do not wish to remain a member of this health spa, you may cancel this contract by mailing to the health spa by midnight of the third business day after the day you sign this contract a notice stating your desire to cancel this contract. The written notice must be mailed by certified mail to the following address: P.O. Box 54170, Irvine, CA 92619-4170 or delivered to the L.A. Fitness facility. For a speedy refund, visit the nearest L.A. Fitness location; be sure to get a receipt.**

Executed at: (Club of enrollment)

FRISCO

Texas

*Amalia Sible*

05/06/2008

L.A. FITNESS EMPLOYEE ID NUMBER

1845236

MEMBER'S / BUYER'S SIGNATURE

DATE

On a Monthly Dues membership, I hereby authorize L.A. Fitness to (a) use the information from my check to create the automatic monthly payment draft on the date(s) indicated above; or, (b) charge the above-listed amounts to the credit card I provided on the date(s) indicated above. If I provided a check for these payments, funds may be withdrawn from my account as soon as the same day I provide this check and, for future payments, on the date payment is due, without receiving a check back from my financial institution.

Except as otherwise stated herein, all notices to L.A. Fitness hereunder shall be mailed (certified or registered, return receipt requested) to P.O. BOX 54170, Irvine, CA 92619-4170 or to such other address designated for notice as posted at L.A. Fitness club facilities. All notices to member hereunder shall be mailed to the address member has provided in this Agreement or to such other address which member agrees to notify L.A. Fitness of in writing and in accordance with this paragraph. If any part of this Agreement is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the terms and provisions of this Agreement shall remain in full force and effect and shall not be affected.

You (individually, if you are the Member, and as agent and/or guardian of Member) agree that Member, and Member's family members, and any guests and invitees shall be bound by this Agreement and the L.A. Fitness Membership Policies and Club Rules and Regulations provided herewith for the usage of L.A. Fitness Club facilities. You agree that the Membership Policies and Club Rules and Regulations may be revised, supplemented or amended in the sole and absolute discretion of L.A. Fitness and any such changes shall become immediately effective upon posting in the L.A. Fitness Club facilities.

Except as otherwise provided in this Agreement, the initiation fee is non-refundable. The initiation fee is not a prepaid sum for services; it merely entitles you to buy services by paying monthly dues and other applicable charges. Monthly dues also will be in the amount indicated hereinabove. It is guaranteed that your monthly membership dues will not increase for three years from the date of enrollment. You agree to pay dues in advance, for the first and last months of Membership. Termination of Membership will be effective only if the procedures described herein are followed. In case of a multi-member Membership, termination by one Member may cause the monthly dues rates applicable to the remaining Members to increase to the prevailing individual rates. Failure by any Member to use the Membership will not relieve you of your payment obligation regardless of the circumstances, except as provided for below. If any payment of dues or other charges is not made on time, L.A. Fitness may, but is not obligated to, suspend or terminate your Membership. No refunds shall be made for Membership dues paid, except as specifically provided in this Agreement. In no event shall this Agreement require payments or financing or extend for a period that would give rise to a retail installment contract or be greater than that permitted under the laws of the State of Texas.

**IMPORTANT: RELEASE AND WAIVER OF LIABILITY AND INDEMNITY.** You hereby acknowledge and agree that Member's use of L.A. Fitness' facilities, services, equipment or premises, involves risks of injury to persons and property, including those described below, and Member assumes full responsibility for such risks. In consideration of being permitted to enter any facility of L.A. Fitness (a "Club") for any purpose including, but not limited to, observation, use of facilities, services or equipment, or participation in any way, Member agrees to the following: Member hereby releases and holds L.A. Fitness, its directors, officers, employees, and agents harmless from all liability to Member and Member's personal representatives, assigns, heirs, and next of kin for any loss or damage, and forever gives up any claim or demands therefore, on account of injury to Member's person or property, including injury leading to the death of Member, whether caused by the active or passive negligence of L.A. Fitness or otherwise, to the fullest extent permitted by law, while Member is in, upon, or about L.A. Fitness premises or using any L.A. Fitness facilities, services or equipment. Member also hereby agrees to indemnify L.A. Fitness from any loss, liability, damage or cost L.A. Fitness may incur due to the presence of Member in, upon or about the L.A. Fitness premises or in any way observing or using any facilities or equipment of L.A. Fitness whether caused by the negligence of Member or otherwise. You represent (a) that Member is in good physical condition and has no disability, illness, or other condition that could prevent Member from exercising without injury or impairment of health, and (b) that Member has consulted a physician concerning an exercise program that will not risk injury to Member or impairment of Member's health. Such risk of injury includes (but is not limited to): injuries arising from use by Member or others of exercise equipment and machines; injuries arising from participation by Member or others in supervised or unsupervised activities or programs at a Club; injuries and medical disorders arising from exercising at a Club such as heart attacks, strokes, heat stress, sprains, broken bones, and torn muscles and ligaments, among others; and accidental injuries occurring anywhere in Club dressing rooms, showers and other facilities. Member further expressly agrees that the foregoing release, waiver and indemnity agreement is intended to be as broad and inclusive as is permitted by the law of the State of Texas and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full force and effect. Member has read this release and waiver of liability and indemnity clause, and agrees that no oral representations, statements or inducement apart from this Agreement have been made.

L.A. Fitness makes no warranties or representations, express or implied, other than those set forth herein, and your sole and exclusive remedy in the event of any breach of this Agreement shall be cancellation of this Agreement. **IN NO EVENT SHALL L.A. FITNESS BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.** In addition to the other dues, fees and charges provided for in this Agreement, you agree to pay a \$10.00 service fee for any item or direct charge memo not paid by your financial institution or account when presented for payment by L.A. Fitness.

Any active membership in good standing may be placed on an inactive status (frozen) pursuant to L.A. Fitness' current policy. L.A. Fitness may assign this Agreement, including Member's payment obligation herein.

L.A. Fitness, in its sole and absolute discretion, reserves the right to close any L.A. Fitness club and/or change existing L.A. Fitness Club rules, regulations, conditions, guidelines, facilities, classes, programs and hours of operation. Classes, facilities, parking and equipment are available subject to demand and may be crowded at peak hours or may be discontinued or times changed if demand fluctuates. Other Clubs may be built, acquired, reopened or converted after the date of your Agreement which may be excluded from your membership at the sole discretion of L.A. Fitness.

**If the health spa goes out of business and does not provide facilities within 10 miles of the facility in which you are enrolled or if the health spa moves more than 10 miles from the facility in which you are enrolled, you may cancel this contract by mailing a notice to the health spa stating your desire to cancel this contract, accompanied by proof of payment on the contract. The written notice must be mailed by certified mail to the following address: P.O. Box 54170, Irvine, CA 92619-4170.**

**You may also be entitled to file a claim for a refund of your unused membership fees against the bond or other security posted by the health spa with the Texas Secretary of State. To make a claim against the security, send a copy of your contract together with proof of payments made on the contract to the Texas Secretary of State. The written notice must be mailed by certified mail to the following address: Office of The Secretary of State Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711-2887.**

**If you die or become totally and permanently disabled after the date this contract takes effect, you or your estate may cancel this contract and receive a partial refund of your unused membership fee by mailing a notice to the health spa stating your desire to cancel this contract. The health spa may require proof of disability or death. The written notice must be mailed by certified mail to the following address: P.O. Box 54170, Irvine, CA 92619-4170.**

In the event Member, or any of Member's family or an invitee of Member, violates any of the terms or provisions of this Agreement or the L.A. Fitness Membership Policies and Club Rules and Regulations, L.A. Fitness may suspend their right to use the Club facilities and the services until such time as Member, or Member's family Members, have abided by and fully complied with the terms and provisions of this Agreement and the L.A. Fitness Membership Policies and Club Rules and Regulations. Member shall not be entitled to any refund, credit or abatement of Membership dues for the period during which the Membership was suspended. If Member, or Member's family or an invitee of Member, thereafter violates any of the terms and provisions of this Agreement or the L.A. Fitness Membership Policies and Club Rules and Regulations, L.A. Fitness may terminate Member's Membership and the right to use the L.A. Fitness facilities without reimbursement. L.A. Fitness also reserves the right to terminate the Membership for any reason whatsoever upon written notice and a refund of the pre-paid dues, if any.

The following Membership Policies and Club Rules and Regulations ("Rules and Regulations") are a part of the Membership Agreement. You, the Member, agree abide by the Rules and Regulations and other rules as posted which may vary depending on the club location and services offered. LA Fitness may change the Rules and Regulations without notice at any time. LA Fitness will post any such changes at the clubs. The Rules and Regulations and the individual club rules apply to Members as well as their family members, guests and invitees (collectively, "guests") while in, on or about the club premises.

#### MEMBERSHIP TYPES AND SERVICES

Membership types and services are subject to change without notice and are not necessarily available at all clubs. If a service is eliminated and additional fees are charged for that service, the fees will be discontinued upon Member's request. No fee reductions will be made if services that are provided at no additional charge are discontinued. Club classifications are subject to change without notice or fee adjustment.

**Elite Membership:** A Membership valid at all LA Fitness clubs in all states, including "Elite" clubs. Refer to [www.lafitness.com](http://www.lafitness.com) for current "Elite" club listings and locations.

**Premier Membership:** A Membership valid at all LA Fitness clubs in the state of enrollment, except "Elite" clubs. Refer to [www.lafitness.com](http://www.lafitness.com) for current club listings and locations.

**Classic Membership:** A Membership valid only at "Classic" clubs which are identified as such due to the club facilities available and club location.

**Single:** A Membership valid only at the club of enrollment.

**Racquetball Courts:** This service entitles the member to use racquetball courts (subject to club reservation policies and court availability) at any LA Fitness club that offers racquetball courts where member has a valid L.A. Fitness membership.

#### RULES AND REGULATIONS

1. Upon entering the club, all Members are required to present their active membership card or driver's license or other government issued picture identification. If you do not have your Membership card or proper identification, LA Fitness may prohibit your use of the facilities or may charge a guest fee for use of the facilities for that day.
2. All guests must sign a medical and injury release form prior to using the club facilities and follow all Rules and Regulations. All guests must prove that they are at least 18 years of age or older **unless** they have paid a guest fee or a Platinum member guest who is at least 14 years of age and accompanied by a parent or legal guardian. All guests using a Guest Pass may only do so one time during any six month period and must arrange for a brief tour of the club at least 24 hours in advance of their arrival and provide proof that their residence is within 25 miles of the club. Guest fees are subject to change without notice. LA Fitness may restrict the number of guests brought by a Member and reserves the right to discontinue guest privileges in its sole and absolute discretion.
3. During Club use, all Members and guests will refrain from engaging in loud, foul or slanderous language or molesting, badgering or harassing other Members or club employees, agents and contractors. Threatening or violent conduct is prohibited.
4. Members and guests will abide by and fully comply with the LA Fitness dress code for proper attire on the Club premises. In addition for safety reasons, clubs may post recommended, but not required, attire. For example, LA Fitness recommends shower shoes or sandals in all wet tile areas and eye guards during racquetball activities.
5. No Member or guest may coach or train other Members or guests (as determined solely by LA Fitness). Members may not engage in any type of business or enterprise while at the LA Fitness Clubs.
6. From time to time, LA Fitness may permit independent contractors to offer products or services to Members. LA Fitness does not stand behind or in any way make any representations or warranties concerning, or guarantee the quality or reliability of, these products or services, including whether or not these independent contractors will remain in business for any period of time.
7. Members should not bring valuables, including money, onto the club premises, lockers or parking areas. Each member understands and agrees that LA Fitness will not be liable for the loss, theft of, damage to, the personal property of Member or guests.
8. Members and guests may not bring illegal drugs or alcoholic beverages onto LA Fitness premises.
9. The front desk telephone may only be used by guests or members in the event of an emergency.
10. Members and guests will abide by any additional LA Fitness rules and regulations posted at the Clubs.

**WARNING: USE OF STEROIDS TO INCREASE STRENGTH OR GROWTH CAN CAUSE SERIOUS HEALTH PROBLEMS. STEROIDS CAN KEEP TEENAGERS FROM GROWING TO THEIR FULL HEIGHT; THEY CAN ALSO CAUSE HEART DISEASE, STROKE, AND DAMAGED LIVER FUNCTION. MEN AND WOMEN USING STEROIDS MAY DEVELOP FERTILITY PROBLEMS, PERSONALITY CHANGES, AND ACNE. MEN CAN ALSO EXPERIENCE PREMATURE BALDING AND DEVELOPMENT OF BREAST TISSUE. THESE HEALTH HAZARDS ARE IN ADDITION TO THE CIVIL AND CRIMINAL PENALTIES FOR UNAUTHORIZED SALE, USE, OR EXCHANGE OF ANABOLIC STEROIDS.**

# EXHIBIT B

161

Amalia Sible  
10418 Hunter Run  
Frisco, Texas 75035

February 12, 2010

I am writing this letter to request cancellation of mine and my daughters membership in your fitness club, effective immediately. As stated in my contract no further billing should occur if postmarked 30 days prior to the next billing date or if less than 30 days only one more billing should occur. In addition, the contracts have no penalty for cancellation.

Thank you,

Amalia Sible

MEMBER NAME: AMALIA SIBLE DOB: 07/23/1966

10418 HUNTER RUN

FRISCO, TEXAS 75035

#11363189

MEMBER NAME: SARAH SIBLE DOB: 10/19/1991

10418 HUNTER RUN

FRISCO, TEXAS 75035

#5254096

# EXHIBIT C



**LA Fitness Confirmation : Cancel Membership - Email Reference=18655029.**

Wednesday, April 27, 2011 9:43 PM

From: "lafitnessmembershipservices@lafitness.com"  
<lafitnessmembershipservices@lafitness.com>  
To: amy.sible@yahoo.com

**Receipt For Membership Cancellation**

Today's date: 4/27/2011

Customer #: 11363189

Membership Barcode #: f3473392

Member Name: Amalia Sible

Dues: \$29.99

Final Billing Date: 4/6/2011

This confirms cancellation of your membership. This membership will expire on 4/27/2011.

If you have any questions regarding this notice, please call your local club during normal business hours.

Thank you for choosing LA Fitness.

**\*\*Please Note: This email is automatically generated. Please don't reply.\*\***