

JS 44 (Rev. 12/07)

### 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 THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Joshua Vaughn, on behalf of himself and all others similarly situated,

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

Barker, Rodems & Cook, P.A., 400 N. Ashley Dr., Ste. 2100, Tampa, FL 33602 (813) 489-1001

**DEFENDANTS**

L.A. Fitness International, LLC.,

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

**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)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input checked="" type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
			IMMIGRATION	FEDERAL TAX SUITS	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**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
- 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. § 1332 (d)

Brief description of cause: Breach of Contract, FDUTPA, Unjust Enrichment

**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 \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE \_\_\_\_\_ SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

March 3, 2011

*[Signature]*

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

<hr/>		:	
JOSHUA VAUGHN,		:	Case No.
on behalf of himself and		:	
all others similarly situated,		:	JURY TRIAL DEMANDED
		:	
Plaintiff,		:	
		:	
v.		:	
		:	
L.A. FITNESS INTERNATIONAL, LLC,		:	
		:	
Defendant.		:	
<hr/>		:	

CLASS ACTION COMPLAINT

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## I. NATURE OF ACTION

1. Plaintiff Joshua Vaughn (“Plaintiff”) brings this action on behalf of himself 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 egregious 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 a month or 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 representation is deceptive and misleading.

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. LA Fitness' cancellation procedures are structured in such an egregious, confusing, and misleading way so as to guarantee that persons will be charged for one or two months of dues beyond their desired cancellations. In other words, LA Fitness has created a contract that is purposefully designed to extract money from people for services that they do not want and do not use. This is blatantly unfair and unlawful.

5. In addition to the allegations of the named plaintiff, as alleged herein, the Internet contains hundreds or thousands of consumer complaints about LA Fitness' cancellation practices and procedures. 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' Monthly Contracts are ambiguous, misleading, and unfair, and that Class members have been and are continuing to be harmed by such Monthly Contracts.

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

- The Monthly Contract is not a "monthly" contract. In actuality, it obligates a member to at least a 3 month term. This is because LA Fitness requires upfront payment of first and last months' dues, then automatically bills members for a third month if they do not send a notice of cancellation at least 30 days before the next billing date (*i.e.*, meaning that members would have to cancel their memberships on the same day they enroll for

membership). Since most reasonable persons do not cancel a gym membership on the same day that they join a gym, and since same-day cancellation is impossible in light of a 3-day rescission period prescribed by law, LA Fitness' Monthly Contract commits members to at least a 3 month membership;

- The Monthly Contract's 30-day notice period is misleading and has been breached.<sup>1</sup> 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 they do not want or use;
- The 30-day notice period is unfair and abusive because, when combined with LA Fitness' other egregious cancellation procedures set forth herein, which are all aimed at delaying members' cancellations, it virtually assures that members cannot cancel within the 30-day period. This results in LA Fitness electronically billing members for at least one additional month of dues after the member has sent in a written cancellation notice in accordance with the procedures specified in the Monthly Contract;
- LA Fitness' representation in the Monthly Contract that ***“no further billing will occur”*** after timely mailing a written notice of cancellation, is misleading and has been breached because in all cases LA Fitness bills members for at least one more month by applying the member's prepaid last month's dues to unduly prolong the Monthly Contract by at least another 30 days;
- The Monthly Contract's cancellation provisions are contradictory and confusing. Specifically, the Monthly Contract's provision that ***“your last month's prepaid dues will extend your membership expiration by an additional 30 days or more, depending on your original sign up date,”*** is misleading because: (i) it is inconsistent with the preceding provision that ***“no further billing will occur”*** after timely mailing of the notice of cancellation; and (ii) it implies that the prepaid last month's dues will be applied to pay for the month in which timely notice of cancellation was given. When consumers see the preceding contract language that ***“no further billing will occur,”*** they justifiably assume that if they comply with the 30-day notice procedure, the membership will end and no further dues will be imposed against them. Yet this is not the case;

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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.

- The Monthly Contract's 30-day notice requirement is also unfair and abusive because it is purposely designed to allow the Company to extract additionally monthly dues from its members. The Company has the ability to stop monthly dues billing almost immediately after it receives a member's cancellation request. Indeed, when LA Fitness was sued by consumers in California, LA Fitness adopted a new membership agreement for its California clubs that *requires only 5 days notice of cancellation and that provides refunds for any additional billing*. Although the California provisions are much fairer to consumers, LA Fitness did not adopt these procedures until after it was sued in California, and it still is not using that contract in other states;
- The Monthly Contract is deceptive and has been breached where it falsely 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 next billing date. *Send the written notice to: LA Fitness, P.O. Box 54170, Irvine, CA 92619-4170.*" (Emphasis added.) This statement is false and has been breached because, as the Monthly Contract fails to disclose, members cannot send their own cancellation notices, but rather, they must use the Company's preprinted notice of cancellation form obtainable only 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, and enables LA Fitness to charge additional monthly fees after its services are no longer used or desired;
- LA Fitness also breaches its Monthly Contracts when it systematically ignores and refuses to act on members' properly-submitted written cancellation notices, and it 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; and,
- Through the systematic uniform representations of its sales representatives, LA Fitness represents to Class members that they can cancel their memberships at the gym where they initiated their memberships. This is not true as LA Fitness actually requires Class members to mail in a preprinted notice of cancellation form. Such representations lead to further delays in cancellation and causes Class members to pay additional monthly dues.

7. Thus, despite its representation to the Class that it offers monthly membership contracts that can be cancelled at any time by following the cancellation provisions in the Monthly Contract, LA Fitness has structured and implemented its Monthly Dues Membership Agreement in an unfair, abusive, and deceptive manner that is designed to extract dues from



members for months after they attempt to cancel their Monthly Contracts and no longer wish to use the gyms.

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 Florida and conducts business here.

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

## **III. PARTIES**

11. Plaintiff Joshua Vaughn was a resident of Florida from the time he initiated his membership with LA Fitness in January 2008, until the end of August 2010. He is presently a resident of New York.

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' mailing address is P.O. Box 54170, Irvine, CA 92619 and it maintains its principal executive offices at 2880 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 350 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 annual Paid In Full Membership Agreement, in which case the member pays an entire year's dues up front, or to enroll under its Monthly Dues Membership Agreement, in which case membership purportedly is on a month-to-month basis and may be canceled at anytime by using the procedures set forth in the Monthly Contract.

16. If a member selects the monthly dues 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 on \_\_\_\_\_ and continuing on that same day each month thereafter until terminated in the manner provided on page 2 of this Agreement.

17. The Monthly Dues Membership Agreement in use when Plaintiff joined LA Fitness purports to explain how members can cancel their memberships and stop monthly dues billing. Specifically, the Monthly Contract in use until approximately June 2008 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 next 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 billing will occur. In either case, your 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. Newer 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

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<sup>2</sup> A true and correct copy of Plaintiff's LA Fitness Monthly Dues Membership Agreement is attached hereto as Exhibit "A." Plaintiff's home address, e-mail address, home phone number and cell phone number have been redacted from Exhibit "A."

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 effect of these provisions is that a member will usually incur dues for at least an additional 2 months following the date the member attempts to terminate his Monthly Dues Membership Agreement and stops using the services of LA Fitness – *i.e.*, one additional monthly dues billing via EFT if notice is not given before the 30-day period (or 20-day period for newer contracts), and application of prepaid last month’s dues to extend the Monthly Contract by another month. As a result, the member is foreclosed from terminating the Monthly Contract for at least 61 days after mailing his notice of cancellation (or 51 days for newer contracts). During this period, the Class member may not wish to use the services of LA Fitness, but is still paying for these services.

**C. Defendant LA Fitness’ Cancellation Practices Are In Breach of the Monthly Contract, and Are Unfair, Abusive, and Deceptive**

20. Defendant LA Fitness has engaged in unlawful conduct by engaging in the practices set forth below. Such unlawful conduct includes violations of Florida’s Deceptive and Unfair Trade Practices Act (hereinafter “FDUTPA”), Fla. Stat. §§ 501.201 *et. seq.*

**1. The Monthly Dues Membership Agreement is Not a “Monthly” Contract**

21. Defendant LA Fitness’ Monthly Dues Membership Agreement is deceptive and misleading because it is not a “monthly” contract which can be cancelled along with monthly dues billing simply by following the Monthly Contract’s cancellation procedures. In actuality, it obligates a member to a contract that is at least 3 months in duration. This is because LA Fitness requires upfront payment of first and last month’s dues. LA Fitness then automatically bills members via EFT for an additional month if they do not send notice of cancellation at least 30

days before the next billing cycle (meaning that members unknowingly must cancel on the very same day that they join if they wish to use the gym for only three months), and LA Fitness charges all members the last month prepaid dues even though they are current in their payments and have stopped using the facilities. This clearly is not a “monthly” contract. Indeed, Plaintiff paid monthly dues for more than three months.

22. As demonstrated in the chart below, the Monthly Contract’s minimum possible duration is at least 3 months. Specifically, a member who signed a Monthly Contract on the first day of any given month and then attempted to cancel just 4 days later (after the expiration of the 3-day rescission period set forth by law), would be billed by LA Fitness for at least 2 additional months. (Since attempting to cancel on the very first day of joining the gym would result in a complete rescission of the Monthly Contract, and not a cancellation, the first opportunity to cancel the membership is 4 days later. This 4 day gap makes it impossible to send a cancellation notice 30 days before the next billing date, thereby resulting in additional billing.)

23. As demonstrated in the chart below, even Monthly Contracts with the 20-day notice period are virtually impossible to cancel without incurring at least 3 months of dues. This is because a consumer would have to wait until the expiration of the 3-day recession period before he could attempt to cancel. This consumer would then have to discover LA Fitness’ undisclosed requirement to use the Company’s pre-printed cancellation form, obtain the form by travelling to an LA Fitness gym, and, as shown in the chart below, mail the form within an impossibly short 4-day window after the end of the rescission period.

24. Thus, the chart below illustrates that the Monthly Contract has a duration of at least 3 months, that the 30-day notice period is blatantly unfair, and that LA Fitness is able to extract additional dues from members who no longer wish to use the gyms:

**The Monthly Contract's Minimum Possible Duration is at Least 3 Months**

DATE (2007)	PAYMENTS	ACTION TAKEN BY MEMBER	MEMBERSHIP STATUS
Friday June 1	<ul style="list-style-type: none"> <li>• Pays first &amp; last months dues (2 x \$35 = \$70)</li> <li>• Pays initiation fee (typically \$99)</li> </ul>	Customer signs Monthly Dues Membership Contract at local LA Fitness Gym	<ul style="list-style-type: none"> <li>• Membership begins immediately</li> <li>• Statutory 3-day revocation period (which excludes weekends and holidays) under Florida Health Studio Law ("HSL"), Fla. Stat. § 501.017, begins</li> </ul>
• Wednesday June 6 (first day cancellation notice can be mailed)	N/A	<ul style="list-style-type: none"> <li>• Customer inquires about cancelling membership</li> <li>• Contract requires customer to send a "notice of cancellation at least 30 days before the next billing date," which is impossible to do before next billing date of July 1</li> <li>• Customer travels to LA Fitness gym, since one can only obtain the preprinted Cancellation form in-person, and gets a copy of the form</li> <li>• Customer mails form to Irvine, CA post office box</li> <li>• 30-day notice period begins</li> </ul>	<ul style="list-style-type: none"> <li>• Statutory revocation period under HSL § 501.017 expires at mid-night of third business day after signing contract</li> <li>• Membership is now irrevocable</li> <li>• First day that Contract can be cancelled rather than revoked</li> <li>• Even 20-day contract would only have until Saturday, June 9 to send notice to avoid next billing</li> </ul>
Sunday July 1	Impossible to give 30-days notice, thus LA Fitness automatically bills a customer's credit card \$35 in monthly dues	N/A	Membership Continues
Wednesday August 1	Pre-paid last month's dues billed to extend membership at least 30 days	N/A	Membership Continues
Saturday September 1	N/A	N/A	<b><i>Membership Expires</i></b>

**2. Contrary to the Monthly Contract's Terms, the Monthly Contract Cannot be Cancelled by Giving 30-Days Notice**

25. The Monthly Contract's 30-day notice period (and newer 20-day period) is misleading and has been breached. The Monthly Contract cannot be cancelled by giving 30-days notice. Under LA Fitness' self-serving interpretation of the Monthly Contract, at least 61 days notice is needed (or 51 days for newer Monthly Contracts with the 20-day period). 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.

26. In addition, the 30-day notice period (and newer 20-day period) is unfair and abusive because, when combined with LA Fitness' other egregious cancellation procedures set forth below, it virtually assures that members cannot cancel within this time frame and that LA Fitness will be able to bill members for at least one additional month of dues via EFT after the member has sent a written cancellation notice to LA Fitness' Irvine, California post office box, in accordance with the procedures specified in the Monthly Contract.

27. The chart below demonstrates that 61 days notice is required to cancel, and that members are typically delayed from cancelling by the Monthly Contract's failure to disclose the need to use the Company's preprinted cancellation form:

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

DATE (2008)	PAYMENTS	ACTION TAKEN BY MEMBER	MEMBERSHIP STATUS
Thursday May 15	<ul style="list-style-type: none"> <li>• Pays first &amp; last months dues (2 x \$35 = \$70)</li> <li>• Pays initiation fee (typically \$99)</li> </ul>	Customer signs Monthly Dues Membership Contract at local LA Fitness Gym	• Membership begins immediately
Sunday June 15	LA Fitness automatically bills customer \$35 monthly dues	N/A	Membership Continues
Tuesday July 15	LA Fitness automatically bills customer \$35 monthly dues	<ul style="list-style-type: none"> <li>• A month before return to college, customer reviews contract and sends written request to terminate membership</li> <li>• Written cancellation request is ignored by LA Fitness because it is not on preprinted form and monthly dues billing continues</li> </ul>	Membership Continues
Friday August 15	<i>LA Fitness automatically bills customer an extra \$35 monthly dues</i>	N/A	Membership Continues
Saturday August 30		<ul style="list-style-type: none"> <li>• Customer gets credit card statement and realizes that he is still being billed monthly dues</li> <li>• Customer calls LA Fitness to inquire why he is still being billed monthly dues and learns of need to get preprinted form at the gym</li> </ul>	Membership Continues
Tuesday September 2 (day after Labor Day)		<ul style="list-style-type: none"> <li>• Customer travels to LA Fitness gym, since one can only obtain the preprinted Cancellation form in-person, and gets a copy of the form</li> <li>• Customer mails form to Irvine, CA post office box and 30-day notice period begins</li> </ul>	Membership Continues
Monday September 15	<i>LA Fitness automatically bills customer an extra \$35 monthly dues</i>	N/A	Membership Continues
Wednesday October 15	Pre-paid last month's dues billed to extend membership <i>at least 30 days</i>	N/A	Membership Continues
Saturday November 15	N/A	N/A	<i>Membership Expires</i>



**3. The Monthly Contract's Provision That "No Further Billing Will Occur" Is False**

28. LA Fitness' representation in the Monthly Contract that "*no further billing will occur*" after timely mailing a written notice of cancellation, is misleading and has been breached because, in all cases, LA Fitness bills members for at least one more month by applying the member's prepaid last month's dues to unduly prolong the Monthly Contract by at least another 30 days.

29. Also, the Monthly Contract's cancellation provisions are contradictory and confusing. Specifically, the Monthly Contract's provision that "*your last month's prepaid dues will extend your membership expiration by an additional 30 days or more, depending on your original sign up date,*" is misleading because: (i) it is inconsistent with the preceding provision that "*no further billing will occur*" after timely mailing of the notice of cancellation; and (ii) it implies that the prepaid last month's dues will be applied to pay for the month in which timely notice of cancellation was given. When consumers see the preceding contract language that "no further billing will occur," they justifiably assume that if they comply with the 30-day notice procedure, the membership will end and no further dues will be imposed against them. This is not the case.

30. Accordingly, it is unfair and abusive for LA Fitness to apply prepaid last-month's dues to extend the expiration of the monthly dues membership for an additional 30 days beyond the date when membership would otherwise end, and to charge consumers for a service that they no longer wish to use. This practice is, in effect, a cancellation penalty, in that consumers must pay an extra month of dues while receiving nothing in return.

**4. The Monthly Contract's 30-Day Notice Period (and Newer 20-Day Notice Period) Is Abusive**

31. LA Fitness' 30-day notification requirement (and its newer 20-day notice

requirement) is also abusive and unfair because it is purposely aimed to allow LA Fitness to extract additional monthly dues from members long after they request that their monthly dues billing be stopped. Indeed, LA Fitness imposes this requirement even though the Company clearly has the ability to stop dues billing almost immediately after receiving a cancellation notice. Indeed, when the Company was sued by California residents, LA Fitness adopted a new membership agreement for its California locations which requires only 5 days notice of cancellation and which provides refunds of any extra dues paid after giving notice. Specifically, the California contracts now state:

A cancellation notice postmarked at least *5 business days* before your next billing date should result in no further Monthly Dues billing. A cancellation notice postmarked less than *5 business days* before your next billing date may result in one more Monthly Dues billing. In either case, if such an additional Monthly Dues billing occurs, *LA Fitness will refund that billing.*

(Emphasis added.) Clearly, these cancellation provisions are much more fair to consumers and do not result in additional monthly billing. However, LA Fitness has not used this contract in other states during the time period relevant to this action.

**5. LA Fitness' Monthly Dues Membership Agreement is Misleading and Has Been Breached Because, Contrary to the Monthly Contract's Terms, the Company Requires that Members Use the Company's Preprinted Cancellation Form**

32. The Monthly Contract is deceptive and has been breached where it falsely 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 next billing date. *Send the written notice to:* LA Fitness, P.O. Box 54170, Irvine, CA 92619-4170.

(Emphasis added.) This provision is false and has been breached because, as the Monthly Contract fails to disclose, members cannot send their own cancellation requests, but rather, they must use the Company's preprinted notice of cancellation form, which is obtainable only 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 preprinted form. This undisclosed requirement contradicts the terms of the Monthly Contract, and is clearly intended to impede or delay members from cancelling. It also enables LA Fitness to charge additional monthly dues after its services are no longer used or desired.

33. While the Company’s web site 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.

34. As a result of defendant’s deceptive practices, LA Fitness members are delayed from cancelling their membership until such time as they learn of the undisclosed requirement to use the Company’s preprinted cancellation form, which often occurs after sending a prior cancellation notice that was ignored.

**6. LA Fitness Regularly Breaches Its Contractual Obligations by Systematically Ignoring Cancellation Requests So that It Can Continue Extracting Monthly Dues**

35. 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 often ignored cancellation requests, including those which were made using the Company’s preprinted form, and continues automatically billing monthly dues. These practices and procedures are designed to extract additional monthly dues from LA Fitness members.

36. Defendant LA Fitness has admitted in a recent court filing in *Boeynaems v. L.A. Fitness Int’l, LLC*, 2:10-cv-2326-MMB (E.D. Pa.), a substantially similar class action pending

against LA Fitness, that this precise conduct constitutes a breach of its Monthly Contract.

Specifically, LA Fitness stated:

In order to state a claim for breach of contract, Plaintiffs would need to allege they *mailed* their written notice of cancellation to LA Fitness and LA Fitness refused to accept it, resulting in billing for monthly dues beyond what Plaintiffs agreed to in their contracts.

*Boeynaems*, 2:10-cv-2326-MMB (Dkt. 26-2, at 5), Brief in Support of Defendant L.A. Fitness International, LLC's Motion to Dismiss Plaintiffs' Second Amended Class Action Complaint Under Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6), at 1 (emphasis in original).

**7. LA Fitness Impedes Members from Cancelling By Refusing to Disclose Contact Information for Its Corporate Headquarters – Purportedly the Only Office Authorized to Cancel Memberships**

37. In order to further delay and impede members' attempts to cancel their memberships, LA Fitness has established a Company-wide policy and practice of refusing 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 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.

38. By requiring 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 and monthly dues billing in-person at the club where their membership was initiated (or any other LA Fitness location), or by telephone, or by facsimile, or by e-mail, or through the Company's Internet site, the Company has built into its Monthly Contract a manipulative and deceptive

device that substantially delays consumers from cancelling their memberships and terminating their monthly dues billing.

39. 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.

**D. There Are Hundreds of Consumer Complaints About LA Fitness' Deceptive and Abusive Practices That Substantiate Plaintiff's Allegations**

40. 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.

41. The unfair and deceptive nature of LA Fitness' Monthly Contracts is reflected in these complaints. The fact that hundreds or thousands of consumers have complained clearly demonstrates that the Monthly Contract's terms regarding how to cancel a membership and terminate additional billing are ambiguous, misleading and unfair, and that Class members have been harmed by LA Fitness' unlawful practices. The following excerpts below are just a few

examples of existing complaints.

42. 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.

43. 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 becasue [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 aga [sic]? (emphasis added.)

44. 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.)

45. 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.)

46. 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.)

47. 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.)

48. 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.)

49. 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.)

50. 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.)

51. 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.)

52. 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.

53. 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.)

54. 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.)

55. 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. Plaintiff's Experiences With LA Fitness**

56. Plaintiff Joshua Vaughn signed and entered into a Monthly Dues Membership Agreement with defendant LA Fitness on January 25, 2008. Plaintiff initiated his membership at an LA Fitness club located at 4550 East Michigan Street, Orlando, Florida. At the time, Plaintiff

resided in Orlando, Florida. The form of written Monthly Dues Membership Agreement entered into by Plaintiff is substantially identical in all material respects to that entered into with other members of the Class. Plaintiff's monthly dues was then \$34.99, but it later increased to \$37.26. Plaintiff paid an initiation fee as well as first and last months' dues upon initiation of his membership.

57. Plaintiff paid his monthly dues by EFT from a bank account, however, his billing date often changed from month to month. For instance, Plaintiff was billed monthly dues on the following dates: August 17 and September 17, 2010; but was billed on October 18, 2010; December 6, 2010; January 3, 2011; February 2, 2011, and February 16, 2011.

58. In late July or early August 2010, Plaintiff inquired about canceling in-person at the LA Fitness gym where he initiated his membership. Specifically, Plaintiff told the LA Fitness representative at the front desk of the gym that he was moving out of the State of Florida and wanted to cancel his membership. The LA Fitness representative told Plaintiff that he could not cancel his membership in-person at the gym, but would have to send a notice of cancellation form to Irvine, California.

59. Plaintiff obtained a cancellation form that day, and mailed it via U.S. mail to LA Fitness' Irvine post office box on the following day. Plaintiff's notice of cancellation was postmarked more than 30 days before the September 17, 2010 billing date.

60. At the end of August 2010, Plaintiff moved to a new residence in Portland, Oregon. Because Plaintiff's membership was a "Single Club" membership that allowed him access only to the gym he joined in Orlando, his membership did not allow him to use any LA Fitness facilities in the Portland area.

61. Unbeknownst to Plaintiff, who had followed all of LA Fitness' cancellation

procedures as set forth in the Monthly Contract (as well as the undisclosed requirement of using the Company's preprinted cancellation form), LA Fitness continued billing Plaintiff monthly dues via EFT. Plaintiff did not discover that LA Fitness had failed to cancel his membership until approximately February 14, 2011, when he was reviewing his monthly bank statement and realized that, despite sending a notice of cancellation at least 6 months earlier, he was still being billed monthly dues by LA Fitness.

62. Plaintiff immediately went to LA Fitness' website in an attempt to find contact information for customer service or any other information that could assist him in stopping LA Fitness' monthly dues billing.

63. Plaintiff was unable to find any contact information for the Company's corporate headquarters or customer service, so he telephoned the gym in Orlando where he initiated his membership. Plaintiff told the LA Fitness representative in Orlando that he had attempted to cancel his membership in late July or early August 2010 by sending a notice of cancellation form to LA Fitness' Irvine post office box, but he was still being billed monthly dues more than 6 months later. The LA Fitness representative's response was that Plaintiff needed to talk to the operations manager, but no operations manager was available. Plaintiff pressed the issue and was put on hold while the LA Fitness representative purportedly discussed the issue with the District Manager. The LA Fitness representative then told Plaintiff that LA Fitness would cancel the membership immediately, but refund only his "most recent billing." Plaintiff advised the LA Fitness representative that he was not satisfied with that resolution.

64. On February 15, 2011, Plaintiff received an e-mail from LA Fitness stating that his final EFT billing date would be February 16, 2011, and that his membership would finally expire on February 15, 2011.

65. On February 18, 2011, Plaintiff received an e-mail from LA Fitness confirming that LA Fitness would refund Plaintiff only \$37.26 (*i.e.*, the amount he had been billed on February 16, 2011), and that this refund was being processed that day.

66. Because Plaintiff's Monthly Dues Membership Agreement provided, "If the notice is postmarked at least 30 days prior to your next billing date, *no further billing will occur*," Plaintiff reasonably expected that after he mailed his cancellation to LA Fitness in late July or early August 2010, that his monthly dues billing would stop in August 2010, and that his membership would expire by September 2010. Instead, LA Fitness disregarded Plaintiff's cancellation and billed Plaintiff for at least *7 months* of dues after he mailed his notice of cancellation.<sup>3</sup> As LA Fitness admits in a recent court filing in related litigation, this precise conduct constitutes a breach of its Monthly Contract. Specifically, LA Fitness stated:

In order to state a claim for breach of contract, Plaintiffs would need to allege they *mailed* their written notice of cancellation to LA Fitness and LA Fitness refused to accept it, resulting in billing for monthly dues beyond what Plaintiffs agreed to in their contracts.

*Boeynaems*, 2:10-cv-2326-MMB (Dkt. 26-2, at 5) (emphasis in original).

67. As a result, Plaintiff was damaged because he: (i) could not understand the ambiguous and misleading terms of his Monthly Contract; (ii) 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; (iii) did not know that he needed to provide at least 61-days notice to avoid paying dues for services he did not use or want; and (iv) 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 him after such notice.

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<sup>3</sup> This 7 months includes Plaintiff's prepaid last month's dues, which was never applied to pay dues for any billing period in which Plaintiff resided in Orlando, Florida and was able to use the gym. Thus, he never received the benefit of his prepaid last month's dues.

V. CLASS ACTION ALLEGATIONS

68. 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 egregious 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.

69. The claims for breach of contract and unjust enrichment (Counts I and III) are asserted on behalf of a nation-wide class, while the claim for violations of the Florida Deceptive and Unfair Practices Act (Count II) is asserted on behalf of members of LA Fitness clubs in Florida only.

70. 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.

71. 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 Monthly Dues Membership Agreement constitutes a

violation of the FDUTPA, Fla. Stat. §§ 501.201 *et seq.*;

- d. Whether defendant has been unjustly enriched; and
- e. Whether Plaintiff and Class members have sustained damages, and if so, what is the proper measure of those damages.

72. Plaintiff's claims are typical of the claims of the Class he seeks to represent.

73. 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.

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

75. 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.

76. 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 egregious 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 / BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING (On Behalf of All Class Members Residing in the U.S.)**

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

78. Plaintiff brings this claim on his 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.

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

80. LA Fitness breached its Monthly Contracts because the Monthly Contracts are not "monthly" contracts, but rather, obligate members to at least a term of 3 months.

81. LA Fitness also breached its Monthly Contract's 30-day notice provisions (and newer 20-day notice provision). In order for a member to have his last month's prepaid dues be applied to a month when he is still using the gym, he must cancel at least 61 days before his desired termination date (or 51 days for newer Monthly Contracts).

82. LA Fitness also breached the Monthly Contract provision stating that "no further billing will occur" after timely mailing of cancellation notices, because in all cases LA Fitness charges Class members an additional month beyond their cancellation by charging them their prepaid last months dues.

83. LA Fitness also breached its Monthly Contract's provision stating that: "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 next billing date. *Send the written notice to:* LA Fitness, P.O. Box 54170, Irvine, CA 92619-4170."

This statement is false and has been breached because, as the Monthly Contract fails to disclose, members cannot send in their own cancellation notices, but rather, they must use the Company's preprinted 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.

84. LA Fitness also breached the Monthly Contract provisions in the preceding paragraph by systematically ignoring members' written cancellation notices, whether printed on the preprinted form or otherwise, and continuing to automatically bill monthly dues.

85. There is a duty of good faith and fair dealing implied in the Monthly Dues Membership Agreement between Plaintiff and LA Fitness.

86. Given LA Fitness' unfair and deceptive practices, described above, LA Fitness has breached its duty of good faith and fair dealing implied in the Monthly Contract, and thus, withheld from Plaintiff and the Class the benefits of the Monthly Contract.

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

88. 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, Plaintiff and the Class have suffered and will continue to suffer substantial monetary damages including, but not limited to, overcharges of monthly membership dues.

89. Plaintiff 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 FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT (On Behalf of All Class Members Residing in Florida and/or Members of LA Fitness Clubs Located in Florida)**

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

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

92. This is a claim for violation of FDUTPA, Fla. Stat. §§ 501.201 *et. seq.*

93. FDUTPA provides that unfair methods of competition, unconscionable acts and practices, and unfair or deceptive acts or practices in the conduct "of any trade or commerce" are unlawful. Fla. Stat. § 501.204.

94. Plaintiff and the Class are "persons" as defined and construed under FDUTPA, Fla. Stat. §§ 501.201-501.213.

95. The conduct of LA Fitness as set forth above in paragraphs 3-7 and 20-39 constitutes unfair or deceptive acts or practices. This conduct includes, but is not limited to: (1) the Monthly Dues Membership Agreement is not a "monthly" contract as represented, but has a minimum 3 month duration; (2) the Monthly Contract cannot be cancelled by giving 30-days notice, but requires at least 61 days notice in order to receive the benefit of the last month's prepaid dues; (3) the Monthly Contract's provision that "no further billing will occur" after giving timely notice of cancellation is false because LA Fitness bills members for at least one additional month in all cases; (4) the Monthly Contract's 30-day notice provision (and newer 20-day notice provision) are abusive because they are designed to allow LA Fitness to extract additional monthly dues from members and because LA Fitness has the clear ability to impose only a 5-day notice period; (5) the Monthly Contract is deceptive where it expressly states that

any written notice of cancellation will suffice. In actuality, and as undisclosed, LA Fitness will only accept cancellations on its preprinted form; and (6) LA Fitness systematically ignores cancellation notices in all forms, whether on its preprinted form or otherwise, in order to continue improperly billing members.

96. Defendant's conduct as alleged herein occurred in the course of trade or commerce.

97. Defendants' actions are deceptive and in clear violation of FDUTPA, entitling Plaintiff and the Class to damages and relief under Fla. Stat. §§ 501.201-213.

98. Plaintiff and the Class were consumers within the meaning of FDUTPA.

99. Florida Statutes § 501.211 creates a private right of action for individuals who are aggrieved by an unfair and/or deceptive trade practice by another person.

100. Florida Statutes § 501.213 provides that any remedies available under Chapter 501 are in addition to any other remedies otherwise available for the same conduct under state or local law.

101. Florida Statutes § 501.203 (3)(c) states that a person has violated FDUPTA if he violates "any law, statute, rule, regulation, or ordinance which proscribes unfair, deceptive, or unconscionable acts or practices."

102. Defendant's practices constitute trade and commerce as defined by Fla. Stat. § 501.203(8), and is therefore subject to FDUPTA.

103. Defendant's acts constitute unconscionable, deceptive, or unfair acts or practices in violation of FDUTPA.

104. As a result of defendant's unfair and deceptive trade practices, Plaintiff and the Class are entitled to an award of attorney's fees pursuant to FDUTPA, Fla. Stat. §501.2105, if

they prevail.

105. Plaintiff and the Class suffered actual damages and ascertainable losses as a result of defendant's deceptive and/or unfair trade practices, and therefore, Plaintiff and the Class are entitled to an award of actual damages, an order enjoining such defendant LA Fitness from committing such acts.

### COUNT III

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

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

107. Plaintiff brings this claim on his 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.

108. Pleading in the alternative, LA Fitness has been unjustly enriched through the collection of monthly membership dues that, as alleged herein, it was not entitled to collect.

109. LA Fitness has been unjustly enriched at the expense of, and to the detriment of, Plaintiff and each member of the Class by improperly charging monthly membership dues as alleged herein. Through its practices, LA Fitness charges monthly dues for services which members do not use. Plaintiff and each member of the Class are therefore entitled to recover from LA Fitness, as restitution, all money they paid for improper monthly membership dues, any benefit received by LA Fitness as a result of such charges, plus interest thereon from the time of payment.

110. A constructive trust should be established over the funds created by the aforementioned payments, fees, charges, interest and benefits generated in connection with the improper billing of monthly membership dues. The funds are clearly identifiable for each Class member and for the Class as a whole. Accordingly, restitution and disgorgement of such

amounts should be ordered.

**VII. JURY TRIAL DEMANDED**

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

**VIII. PRAYER FOR RELIEF**


WHEREFORE, Plaintiff, 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 Plaintiff and Plaintiff's 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 ordering LA Fitness to revise the Monthly Dues Membership Agreement in order to reduce the notification period required to cancel membership from 20 days to 5 days, terminate the imposition of dues beyond the members' reasonable cancellation of their memberships, and provide 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 Plaintiff 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 the Monthly Dues Membership Agreement void;
- f. Declaring that defendant has breached the Monthly Dues Membership Agreements and allowing Class members to terminate those Contracts;
- g. Awarding litigation costs and attorneys' fees;
- h. Awarding pre and post judgment interest; and
- i. Awarding any other legal or equitable relief as justice requires.

Dated: March 3, 2011

BARKER, RODEMS & COOK, P.A.

By:



Chris A. Barker  
400 N. Ashley Drive  
Suite 2100  
Tampa, Florida 33602  
Phone: (813) 489-1001  
Fax: (813) 489-1008  
[cbarker@barkerrodemsandcook.com](mailto:cbarker@barkerrodemsandcook.com)

*Liaison Counsel for Plaintiff and the Class*

BERGER & MONTAGUE, P.C.

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Michael T. Fantini  
Eric Lechtzin  
1622 Locust Street  
Philadelphia, PA 19103  
Phone: (215) 875-3000  
Fax: (215) 875-4636

*Counsel for Plaintiff and the Class*

# EXHIBIT A



080255346D2

**LA FITNESS.**

BAR CODE

F3406267

MEMBERSHIP AGREEMENT

NAME Vaughn, Joshua

L.A. Fitness is registered with the State of Florida as a health studio facility. Registration No. HSS217

ADDRESS  
BUSINESS PHONE

HOME PHONE

E-MAIL  
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																																																																						
<p>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").</p> <p><input type="checkbox"/> PAID IN FULL (PIF) MEMBERSHIP; EXPIRES _____ ANNUAL RENEWAL: \$ _____ (EXPIRES SAME DATE) Plus Applicable Sales Tax</p> <p><input checked="" type="checkbox"/> MONTHLY DUES = \$ 39.99 + 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 \$70 WILL BE CHARGED PER ACCOUNT ADDED.</p>																																																																								
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**YOUR EFT/CC BILLING DATE:** Your monthly dues will be automatically billed and collected electronically once a month beginning on 02-23-08 and continuing on that same day each month thereafter until terminated in the manner provided on page 2 of this Agreement.

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.

Should you (the buyer) choose to pay for more than one (1) month of this Agreement in advance, be aware that you are paying for future services and may be risking loss of your money in the event this health studio and/or this business location ceases to operate. This health studio is not required by Florida law to provide any security, and there may not be other protections provided to you should you choose to pay in advance.

You may cancel this Agreement and obtain a full refund if the Club of enrollment goes out of business, or moves its facilities more than 5 driving miles from the Club of enrollment, at no additional cost to you.

Should L.A. Fitness go out of business, Member is advised to contact the Florida Department of Agriculture and Consumer Services ("Department") for information within 60 days. An L.A. Fitness club shall not be deemed out of business when temporarily closed for repairs and renovation of the premises; (a) Upon Sale, for not more than 14 consecutive days; or (b) during ownership, for not more than 7 consecutive days and not more than 2 periods of 7 consecutive days in any calendar year.

Any notice of intent to cancel given by the Member shall be given in writing to L.A. Fitness. Such a notice of cancellation from the Member shall also terminate automatically the Member's obligation to any entity to whom L.A. Fitness has subrogated or assigned the Member's contract. If L.A. Fitness wishes to enforce such contract after receipt of such showing, it may request the Department to determine the sufficiency of the showing. Membership card must be presented upon admittance to the club facilities, such card shall be provided through the club facilities.

The Florida law states: "The initial contract will not be for a period in excess of 36 months, and thereafter it shall only be renewable annually. Such renewal agreement may not be executed and the fee therefore paid until 60 days or less before the preceding contract expires." This Agreement is for the initial terms as stated above.

You or your estate may cancel this Agreement if you become physically unable to avail yourself of a substantial portion of the services which you used from the commencement of the Agreement until the time of disability, or upon your death. Such cancellations shall be authorized only upon you or your estate furnishing a certification of such disability by a physician licensed under Florida State Chapter 458, 459, 460 or 461 or certification of your death. For a PIF membership, the refund shall be computed by dividing the Agreement price by the number of weeks in the Agreement term and multiplying the result by the number of weeks remaining.

If the Department determines that a refund is due the Buyer, such refund shall be computed by dividing the Agreement price by the number of weeks in the Agreement term and multiplying the result by the number of weeks remaining.

You, the Buyer, may cancel this Agreement penalty free within 3 days, exclusive of holidays and weekends of its making, upon the mailing of written notice to L.A. Fitness at: P.O. Box 64170, Irvine, CA 92619-4170 or by personal delivery or by mail to the club of enrollment. Upon such notice, a refund will be made of all moneys paid under the Agreement, except that L.A. Fitness may retain an amount computed by dividing the number of complete days in the Agreement term or, if appropriate, the number of occasions club services are to be rendered into the total Agreement price and multiplying the result by the number of complete days that have passed since the making of the Agreement, or, if appropriate, by the number of occasions that club services have been rendered. A refund shall be issued within 30 days after receipt of the notice of cancellation made within the 3-day provision. However, for a quolker refund, go to nearest club location to cancel in person and receive a receipt.

Executed at: (Club of enrollment) CONWAY @ MICHIGAN Florida

EMPLOYEE IDENTIFICATION NUMBER 3840718  
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.

[Signature]  
MEMBER'S / BUYER'S SIGNATURE DATE 01/25/2008

**ADDITIONAL TERMS AND PROVISIONS**

**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 4170, Irvine, CA 92618-4170. 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 monthly 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 (a) to the account used to pay the initial payment 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 will begin on either the 1st or 15th of the month following your membership sign up date, as described above. In the event sufficient funds are not available in Buyer's account, L.A. Fitness may resubmit the charge. If the re-submission 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 or 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.

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 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.

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 4170, Irvine, CA 92618-4170 or to such other address designated for notices as posted at L.A. Fitness club facilities. All notices to member heretofore that be mailed to the address number has provided in this Agreement 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 pay 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 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 of 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 Florida.

**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 therefor, 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, strains, 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 effective as is permitted by the law of the State of Florida 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 form 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.

If the L.A. Fitness Club facilities are unavailable to Member for a continuous period in excess of 72 hours, the L.A. Fitness Club Membership time (upon request) shall be extended for a period equal to the time of such unavailability. Alternatively, at the election of L.A. Fitness, it may make available to Member, at no additional cost, comparable Club facilities within a radius of 25 miles of the Club.

L.A. Fitness, in its sole and absolute discretion, reserves the right to close any Club facility and/or change existing facility rules, regulations, conditions, guidelines, club facilities, classes, programs and hours of operation. Classes, Club facilities, parking and equipment are available subject to demand and may be crowded at peak times 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.

At the option of Buyer, this Agreement is voidable in the event that the health club and the services to be provided herein are not available within one year from the date the contract is executed by the Buyer.

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 Member, 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 it is a 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 is entitled to the pre-paid dues, if any.

## LA FITNESS

## MEMBERSHIP POLICIES AND CLUB RULES AND REGULATIONS

The following Membership Policies and Club Rules and Regulations ("Rules and Regulations") are a part of the Membership Agreement. You, the Member, agree to 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 at that 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 the 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.**