

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

SUPERIOR COURT  
Civil Action No.

RECEIVED

DEC 31 2020

SUPERIOR COURT-CIVIL  
MICHAEL JOSEPH DONOVAN  
CLERK/MAGISTRATE

COMMONWEALTH OF MASSACHUSETTS

Plaintiff,

v.

TOWN SPORTS INTERNATIONAL, LLC,  
d/b/a BOSTON SPORTS CLUB and PATRICK  
WALSH, an individual

Defendants.

AMENDED COMPLAINT

I. INTRODUCTION

1. The Commonwealth of Massachusetts, by and through its Attorney General, Maura Healey (the "Commonwealth"), brings this action against the Defendant, Town Sports International LLC, d/b/a Boston Sports Club ("TSI") and, an individual, Patrick Walsh ("Walsh")(collectively, the "Defendants"), pursuant to G.L. c. 93A, § 4. The Commonwealth seeks civil penalties, restitution as appropriate, and other appropriate relief pursuant to Chapter 93A.
2. Town Sports International ("TSI") is a New York corporation with its principal place of business located at 399 Executive Boulevard, Elmsford, NY 10523. TSI owned and operated fitness centers in the United States under various trade names. TSI operated at least 31 health clubs in Massachusetts under the brand name Boston Sports Clubs ("BSC"). On or about November 30, 2020, TSI was purchased through an Asset Purchase Agreement to New TSI Holdings, Inc ("New TSI").

3. Patrick Walsh (“Walsh”) is an individual who, during the times relevant to this Amended Complaint, served as the Chief Executive Officer and Chairman of the Board of Directors of TSI.
4. Between March 2020 and when Walsh stepped down as CEO and Chairman, Walsh controlled, directed, and actively participated in the billing and the cancellation practices complained of herein.
5. Undoubtedly, the Defendants, like all people and businesses in Massachusetts, did not anticipate that daily life in 2020 would be upended by a global pandemic. However, the pandemic did not relieve the Defendants from their obligation to comply with state law – in this case, the Massachusetts Health Club Statute, G.L. c. 93 § 78, *et seq.* and the Massachusetts Consumer Protection Act, G.L. c. 93A.
6. On or around March 16, 2020, TSI closed all of its health clubs in Massachusetts due to the COVID-19 pandemic. The health club facilities remained closed until early July 2020 at which time they partially re-opened at 40% capacity in accordance with the Massachusetts’ Governor’s guidelines. Many of the health clubs’ amenities, including group exercise classes and pools, remained limited or prohibited for consumer use until early September or later.
7. Following TSI’s closure in March, hundreds of consumers canceled their memberships to avoid paying for facilities they could not access. To date, the Defendants have not honored a significant number of these cancellations, claiming either that the Defendants did not receive the cancellations or that the cancellations are not valid because consumers did not make them in-person at the club or by registered or certified mail. The Defendants

continued to automatically debit consumers' bank accounts for membership fees after consumers requested cancellation.

8. After facing a public backlash, the Defendants stopped charging members and froze their accounts beginning in April while the clubs remained closed. However, when the clubs resumed limited operations in the middle of July, TSI, at the direction of Walsh, began charging consumers again regardless of the consumers' attempts to cancel their memberships and without providing sufficient or timely notice to consumers that TSI planned to resume automatically debiting their bank accounts.
9. Over 2,000 Massachusetts consumers submitted complaints to the Attorney General's Office about the Defendants' practices between March 2020 and December 2020. This number of consumer complaints represents one of the most significant influx of complaints the Attorney General's Office has received in recent years.
10. While the Attorney General's Office was attempting to address the complaints and ensure the Defendants' cancellation and billing practices conformed to state law, TSI filed for Chapter 11 bankruptcy protection in the U.S. Bankruptcy Court, District of Delaware. The Commonwealth's action is subject to an exception to the automatic stay, 11 U.S.C. § 362(d)(4), which provides, in relevant part, that the automatic stay does not apply to the "...commencement or continuation of an action or proceeding by a governmental unit...to enforce such governmental unit's...police and regulatory power, including the enforcement of a judgment other than a money judgment."

11. The Commonwealth brings this action in the public interest to obtain penalties and restitution as appropriate for the Defendants' willful violation of the G.L. c. 93A, § 2 and G.L. c. 93, § 82 and to deter future consumer protection violations.

## **II. JURISDICTION AND VENUE**

12. The Attorney General is authorized to bring this action pursuant to G.L. c. 12, § 10 and G.L. c. 93A, § 4.
13. This Court has jurisdiction over the subject matter of this action pursuant to G.L. c. 12, § 10, and G.L. c. 93A, § 4.
14. This Court has personal jurisdiction over the Defendants pursuant to G.L. c. 223A, §§ 2 and 3.
15. Venue is proper in Suffolk County pursuant to G.L. c. 93A, § 4.

## **III. PARTIES**

16. The Plaintiff is the Commonwealth of Massachusetts, represented by Attorney General Maura Healey, who brings this action in the public interest.
17. The Defendant TSI is a New York corporation with its headquarters and principal place of business located at 399 Executive Boulevard, Elmsford, NY 10523.
18. The Defendant Patrick Walsh is an individual with the last known address at 1001 U.S. North Highway, 1-Suite 201, Jupiter, FL 33477.2



#### IV. FACTUAL ALLEGATIONS

##### **Boston Sports Club Shuts Down**

19. On March 10, 2020, Governor Charlie Baker declared a state of emergency in Massachusetts to support the Commonwealth's response to the coronavirus disease 2019 (COVID-19).
20. On or around March 16, 2020, TSI closed all of their locations in Massachusetts. Members immediately lost access to the health club facilities. The Commonwealth does not challenge the Defendants' necessary actions to close their health clubs to comply with the Governor's executive orders during the state of emergency or his phased reopening plan for businesses.
21. On or about March 16, 2020, members began notifying the Defendants that they wished to immediately cancel their membership, as is their right under G.L. c. 93 §82, which provides for cancellation without penalty when health clubs substantially change their operations. Members made these requests by phone, by mail, and by email and other electronic communication to TSI and to individual BSC locations. Some members emailed Walsh directly.
22. The Defendants refused to honor many of these cancellations. In some cases, the Defendants failed to answer their phones or respond to electronic communications.
23. In other instances, the Defendants informed members that cancellations could only be done in person or by certified or registered mail, despite the fact that clubs' physical locations were closed and TSI employees were not in the clubs to accept in-person or mailed cancellation requests. Even then, the Defendants notified members that

cancellations would only be honored if members made them according to the Defendants' cancellation policy, which required 30 or 45 days notice of cancellation and a cancellation fee between \$10 and \$25. This meant that members who canceled would be required to pay an additional month's membership fee in addition to the cancellation fee, despite being unable to access or use the facilities.

24. In his capacity as CEO and Chairman, Walsh personally participated in , directed and/or affirmed the conduct set forth in paragraphs 19 - 23, above.
25. Among other things, Walsh sent emails, or directed TSI to send emails in his name, to members promising account credits once the company reopened after the initial shutdown, and informed members that they could "freeze" their accounts.
26. Walsh provided his individual employee email address to members and invited members to email him directly with their concerns. Some members responded directly to Walsh outlining their difficulties cancelling and their concerns with unfair billing but received no response from him.
27. On April 1, 2020, the Defendants began charging its members for their April membership fee even though the health clubs remained closed. Many members were surprised and upset by this action because they had either already canceled their membership or because they reasonably assumed that TSI would not charge them while the clubs were completely shut down.
28. Walsh approved the decision to allow charges to go through on member's credit cards while the clubs were closed.

29. The Defendants knew or should have known their actions were unfair and violated G.L. c. 93, § 82.
30. Aware of their failure to honor consumers' cancellation requests and member complaints about being charged while the clubs were closed, the Defendants began sending emails to its members trying to persuade them not to move forward with their cancellations.
31. The Defendants, in a mass email sent to members, said they would "freeze" members' accounts – meaning that TSI ceased automatically debiting membership dues - at no cost to members and with no additional action required to enact the freeze. The communication did not inform consumers that the Defendants could unfreeze their accounts and begin automatically debiting them at any time. As a result, many consumers reasonably believed given the uncertainty of the ongoing pandemic that their memberships would remain frozen until and unless the consumers took some action.
32. The Defendants also promised in an email to members that members would "receive additional days of membership access equal to the number of days paid for while the clubs were closed in your area." This relief is meaningless for members who cancelled their memberships.
33. Walsh, as CEO, reviewed and approved all communications that were mass distributed to the member base.
34. In addition, Walsh was directly involved in TSI's policy decisions. During this time, Walsh was personally in communication with the Commonwealth regarding TSI's obligations to process cancellations based on TSI's substantially changed operations.

35. BSC locations opened with substantially changed operations in July. The health clubs opened at only 40% capacity, closed its pool, required masks, and canceled or limited in person fitness classes. Some members have existing medical conditions making them unable to comply with these provisions or receive full value for their membership. For example, some members had existing physical limitations so that they only used a particular facility's pool.
36. The Defendants' unilaterally unfroze consumers accounts when it partially reopened in July 2020, and immediately debited consumers' bank accounts for the month of July. Many of these consumers had already requested cancellation of their memberships and some members were unaware of the clubs' partial reopening.
37. The Defendants did not immediately apply a credit to all members who paid while the clubs were closed. Instead, the Defendants waited for members to inquire about the credit, usually while visiting a re-opened club. Therefore, members who did not visit a club because they wished to cancel were further penalized by not receiving the promised credit and paid for both April and July in full even though they were no longer using the facilities.
38. Many consumers requested cancellation in July after the Defendants began debiting their membership dues again, and TSI refused to honor those cancellations. The Defendants told members they could only cancel with 30 to 45 days notice and would have to pay the cancellation fee. The Defendants also told members they had to cancel in-person.



39. When members sent proof of their earlier attempts to cancel through their local gyms, TSI employees still refused to immediately cancel their memberships or refund any of the fees.
40. The Defendants also refused to process a new cancellation unless members paid a \$10 cancellation fee. If a member did not pay the \$10 fee, they continued to charge them monthly. As a result, many members who had canceled prior to July 31, 2020, were charged the full membership fee in August.
41. Some consumers canceled their credit cards in March to prevent further charges. TSI continued to attempt to collect payments that allegedly accrued in April or after, including sending harassing emails and threatening to refer this so-called debt to debt collection agencies.
42. The Defendants knew or should have known the failure to cancel and refund membership fees and its misrepresentation to consumers about the status of their cancellation request and accounts were unfair and deceptive act and practices in violation of G.L. c. 93A and G.L. c. 93, § 82.
43. On September 8, 2020, immediately before TSI filed for Ch. 11 bankruptcy, Walsh received from TSI a one-time cash payment of \$1.5 million pursuant to a Retention Award Agreement.<sup>1</sup> Walsh left the company on or about October 15, 2020.
44. Prior to filing this complaint, the Attorney General's Office provided the Defendants with the notice required by G.L. c. 93A, § 4.

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<sup>1</sup> Form 8-K, Town Sports International for September 8, 2020.

## V. CAUSES OF ACTION

### COUNT I

#### Unfair or Deceptive Acts or Practices in Violation of G.L. c. 93A, § 2 and G.L. c. 93, § 82

45. The allegations contained in paragraphs 1 through 44 are hereby re-alleged and incorporated herein.
46. The Defendants engaged in unfair or deceptive acts or practices when they failed to honor consumers' cancellation requests after their health clubs substantially changed operations beginning in March 2020.
47. The Defendants substantially changed their operations on or around March 16, 2020 when it closed all of their health clubs in Massachusetts. The health clubs remained closed for approximately four months.
48. The Defendants' operations remained substantially changed when they partially reopened in early July 2020 because they were is operating at only 40% capacity, such that the majority of its members cannot access their health clubs, and TSI has a prohibition on use of significant amenities including pools and group exercise classes.
49. In some cases, the Defendants told members they had to cancel their contracts in person or by sending a certified letter despite the on-going health risks because of the COVID-19 pandemic and despite the Defendants not having employees at the physical locations to cancel memberships.
50. The Defendants did not cancel consumers' memberships and provide a pro-rata refunds within 15 days of receipt of the consumers' cancellation requests as required by G.L. c. 93 § 82.

51. Walsh personally participated in, directed and/or affirmed the Defendants conduct.

**COUNT II**

Unfair or Deceptive Acts or Practices in Violation of G.L. c. 93A, § 2:  
False or Deceptive Statements

52. The allegations contained in paragraphs 1 through 44 are hereby re-alleged and incorporated herein.
53. The Defendants engaged in unfair or deceptive practices in violation of G.L. c. 93A by making misleading, false and deceptive statements, including but not limited to statements that:
- a. Gave the false impression that consumers could cancel their memberships by email when in fact TSI did not cancel consumers' memberships;
  - b. Gave the false impression that consumers could cancel by visiting health clubs in person when the clubs were closed with no employees available to cancel;
  - c. Gave the false impression that accounts would be frozen without telling consumers TSI could unilaterally unfreeze their memberships; and
  - d. Gave the false impression that consumers would receive credits for membership dues paid in April when in fact TSI did not provide or apply any credits when they resumed billing.
54. Members relied on these statements when making decisions about their memberships.
55. The Defendants knew or should have known that these statements were misleading, deceptive or false.

### COUNT III

#### Unfair or Deceptive Acts or Practices in Violation of G.L. c. 93A, § 2: Unfair Billing Practices

56. The allegations contained in paragraphs 1 through 44 are hereby re-alleged and incorporated herein.
57. The Defendants engaged in unfair or deceptive practices in violation of G.L. c. 93A by engaging in unfair billing practices whereby TSI charged members of services they knew they could not provide.
58. The Defendants did not refund any of the March 1, 2020 payments even though the health clubs were closed for half of March and members did not have access to the facilities.
59. The Defendants charged all members on April 1, 2020, even though they knew that health clubs were closed and that members did not have access to the facilities.
60. The Defendants also threatened to refer members to debt collection agencies when members did not continue to pay for the memberships they had previously canceled.
61. The Defendants unilaterally resumed automatically debiting members accounts in July 2020 even though the clubs' operations had significantly changed and members had not agreed to continue with their membership in light of the many changes brought by the COVID-19 emergency.
62. The Defendants' actions violate established concepts of unfairness, are unethical, oppressive or unscrupulous, and caused substantial injury to consumers.
63. Walsh personally participated in, directed and/or affirmed the Defendants' conduct.



## VI. PRAYERS FOR RELIEF

WHEREFORE, the Commonwealth requests that this Court, as authorized by G.L. c. 93A, § 4 and pursuant to its own equitable powers:

1. After a trial on the merits, order that the Defendants pay civil penalties, restitution as appropriate and costs of investigation and litigation of this matter, including reasonable attorney's fees, to the Commonwealth pursuant to G.L. c. 93A, § 4; and
2. Order such other and further relief as this Court deems just and proper.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS  
MAURA HEALEY, ATTORNEY GENERAL

By:

Shennan Kavanagh (BBO #655174)

Michael Lecaroz (BBO # 672397)

Sarah Petrie (BBO 684213)

Assistant Attorney General

Consumer Protection Division

One Ashburton Place

Boston, MA 02108

(617) 963-2514

[michael.lecaroz@mass.gov](mailto:michael.lecaroz@mass.gov)

[shennan.kavanagh@mass.gov](mailto:shennan.kavanagh@mass.gov)

[sarah.petrie@mass.gov](mailto:sarah.petrie@mass.gov)

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