

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

SUPERIOR COURT

<p>COMMONWEALTH OF MASSACHUSETTS</p> <p>Plaintiff,</p> <p>v.</p> <p>TOWN SPORTS INTERNATIONAL, LLC, f/k/a BOSTON SPORTS CLUB; TOWN SPORTS INTERNATIONAL HOLDINGS, INC.; NEWTSI HOLDINGS, INC., d/b/a BOSTON SPORTS CLUB; V FITNESS GROUP LLC, ONE FITNESS GROUP, LLC d/b/a WORK OUT WORLD; PATRICK WALSH; and MICHAEL POIRIER,</p> <p>Defendants.</p>	<div data-bbox="889 373 1307 667" style="border: 1px solid black; padding: 5px; text-align: center;"> <p>SUFFOLK SUPERIOR COURT CIVIL CLERK'S OFFICE FILED</p> <p>JUN 24 2021</p> <p>MICHAEL JOSEPH DONOVAN CLERK OF COURT</p> </div> <p>Civil Action No. 2084-CV-02713 BLS1</p> <p>SECOND AMENDED COMPLAINT</p>
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I. INTRODUCTION

1. The Commonwealth of Massachusetts, by and through its Attorney General, Maura Healey (the "Commonwealth"), brings this action against the Defendants, Town Sports International LLC, f/k/a Boston Sports Club ("TSI LLC"), Town Sports International Holdings, Inc. ("TSIH"), Patrick Walsh, an individual, ("Walsh"), NewTSI Holdings, Inc., ("NewTSI"), d/b/a Boston Sports Club, V Fitness Group, LLC and One Fitness Group, both d/b/a Work Out World ("WOW"), and Michael Poirier ("Poirier"), an individual (collectively, the "Defendants"), pursuant to G.L. c. 93A, § 4. With respect to TSI LLC, which is in bankruptcy, the Commonwealth seeks civil penalties and other appropriate relief pursuant to Chapter 93A. With respect to the other Defendants, the

Commonwealth seeks injunctive relief, restitution, civil penalties, attorneys fees and costs, and other appropriate relief pursuant to Chapter 93A.

2. TSI LLC was 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 NewTSI Holdings, Inc. ("NewTSI").
3. TSIH was the parent company of TSI. It is a publicly traded Delaware corporation with its principal place of business in Florida. Before TSI LLC filed for bankruptcy, TSIH was the 100% owner of all of TSI's membership contracts and TSIH had full authority to manage and operate TSI's business. Unless otherwise noted, TSI LLC and TSIH will collectively be referred to as "TSI".
4. Patrick Walsh ("Walsh") is an individual who, during the times relevant to this Second Amended Complaint, served as the Chief Executive Officer and Chairman of the Board of Directors of TSI, and as the CEO of TSIH.
5. Between March 2020 and when Walsh stepped down as CEO and Chairman of TSI LLC, Walsh controlled, directed, and actively participated in the billing and cancellation practices complained of herein.
6. Poirier was the Vice President of Operations at TSI LLC and is now the CEO of WOW. Poirier controlled, directed, and actively participated in the billing, cancellation and transfer practices complained of herein.

7. 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.
8. On or around March 16, 2020, TSI closed all of the health clubs it owned and operated 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.
9. 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 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.
10. After facing a public backlash, TSI, Walsh and Poirier stopped charging members and froze their accounts beginning in April 2020 while the clubs remained closed. However, when the clubs resumed limited operations in the middle of July 2020, TSI and Poirier, at the direction of its CEO, 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.

11. Over 2,000 Massachusetts consumers submitted complaints to the Attorney General's Office about the Defendants' practices between March 2020 and April 2021. This number of consumer complaints represents one of the most significant influx of complaints the Attorney General's Office has received in recent years.
12. While the Attorney General's Office was attempting to address the complaints and ensure that TSI's, Walsh's and Poirier's cancellation and billing practices conformed to state law, TSI LLC filed for Chapter 11 bankruptcy protection in the U.S. Bankruptcy Court, District of Delaware. The Commonwealth's action with respect to TSI LLC 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."
13. On or about November 30, 2020, NewTSI purchased all or substantially all of TSI's assets, including consumers' health club memberships, and certain of its liabilities. NewTSI rejected many of TSI's old real estate leases and closed many Boston Sports Clubs. For example, NewTSI closed a BSC health club in Waltham, Massachusetts. At the same time, NewTSI assigned and sold the health club memberships of all BSC

Waltham members, and potentially others, to WOW, an unrelated health club owned and operated by One Fitness Group, LLC.

14. WOW and Poirier emailed the former BSC Waltham members that they would be enrolled as members of WOW unless the consumers affirmatively acted to opt out of a membership with WOW. WOW and Poirier then began drafting consumers' bank accounts automatically each month for membership dues using the payment information the consumers had originally provided to TSI, Walsh and/or New TSI.
15. NewTSI has transferred membership accounts from consumers' chosen BSC location to other locations without providing meaningful notice or obtaining consumers' consent and began drafting their bank accounts automatically each month for membership dues at a different BSC location.
16. NewTSI has transferred membership accounts when it knew or should have known that consumers have not been using the health clubs, have attempted to cancel their memberships or believed BSC had put their accounts on freeze.
17. Some consumers have complained to the Attorney General's Office that when they contacted NewTSI and WOW to challenge the fees being charged, their employees threatened to send their accounts to a debt collection agency for collection.
18. The Commonwealth brings this action in the public interest to obtain penalties for the Defendants' willful violation of the G.L. c. 93A, § 2 and G.L. c. 93, §§ 80 and 82, and to deter future consumer protection violations.

II. JURISDICTION AND VENUE

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

III. PARTIES

23. The Plaintiff is the Commonwealth of Massachusetts, represented by Attorney General Maura Healey, who brings this action in the public interest.
24. The Defendant TSI is a New York corporation with its headquarters and principal place of business located at 399 Executive Boulevard, Elmsford, NY 10523.
25. The Defendant Patrick Walsh is an individual with the last known address at 1001 U.S. North Highway, 1-Suite 201, Jupiter, FL 33477.
26. The Defendant, TSI Holdings, Inc. is a publicly traded Delaware corporation with its principal place of business at 1001 U.S. North Highway 1, Suite 201, Jupiter, FL 33477.
27. The Defendant NewTSI Holdings, Inc. ("NewTST") is a Delaware corporation with its headquarters and principal place of business located at 399 Executive Boulevard, New York, New York 10523, that began operating health clubs in Massachusetts under the trade name, Boston Sports Clubs or "BSC" in or around November 30, 2020.

28. The Defendants V Fitness Group, LLC and One Fitness Group, LLC do business as Work Out World and are Massachusetts corporations with their headquarters and principal place of business both at 51 Diauto Drive, Randolph, MA 02368.
29. The Defendant Michael Poirier is an individual with a last known address at 2 Musket Road, Swansea, MA 02777.

IV. FACTUAL ALLEGATIONS

30. 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).
31. On or around March 16, 2020, TSI closed all its locations in Massachusetts. Members immediately lost access to the health club facilities. The Commonwealth does not challenge TSI's, Walsh's or Poirier's 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.
32. On or about March 16, 2020, members began notifying TSI, Walsh and Poirier 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. Some members emailed Walsh and Poirier directly.
33. TSI, Walsh and Poirier refused to honor many of these cancellations. In some cases, TSI, Walsh and Poirier failed to answer their phones or respond to electronic communications.

34. In other instances, TSI 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, TSI notified members that cancellations would only be honored if members made them according to TSI's 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.
35. In his capacity as CEO and Chairman, Walsh personally participated in, directed and/or affirmed the conduct set forth in paragraphs 31- 34, above.
36. 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.
37. 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.
38. In his capacity as the Vice President of Operations at TSI and as a regional director, Poirier participated in, directed and/or affirmed the conduct set forth in paragraphs 31- 34, above.

39. Poirier was the conduit between Walsh and the regional managers as well as the general managers at individual clubs, communicating his and Walsh's policies, directives and practices relating to TSI's cancellation, billing and debt collection practices, including those used during the pandemic. Poirier interacted with regional managers and general managers at individual clubs on a regular basis while overseeing his region.
40. Poirier had discretion to determine the outcome of consumers' cancellation requests and directed general managers not to process or allow the requests.
41. On April 1, 2020, TSI began charging 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.
42. Walsh approved the decision to allow charges to go through on member's credits cards while the clubs were closed. When Poirier discussed the decision to continue to charge members while the gyms were closed, he told employees that it was necessary to keep the business running.
43. A regional manager under Poirier's supervision instructed general managers to create fake Yelp accounts and make up positive reviews to put BSC in a positive light to attract more business while it was engaging in the unfair and deceptive conduct complained of herein.
44. TSI, Walsh and Poirier knew or should have known their actions were unfair and violated G.L. c. 93, § 82.

45. Aware of their failure to honor consumers' cancellation requests and member complaints about being charged while the clubs were closed, TSI began sending emails to its members trying to persuade them not to move forward with their cancellations.
46. TSI, 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 TSI 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.
47. TSI 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 canceled their memberships.
48. Walsh, as CEO, reviewed and approved all communications that were mass distributed to the member base.
49. In addition, Walsh and Poirier were directly involved in TSI's policy decisions. During this time, Walsh and Poirier were personally in communication with the Commonwealth regarding TSI's obligations to process cancellations based on TSI's substantially changed operations.
50. 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.

51. TSI, Walsh and Poirier unilaterally unfroze consumers accounts when some BSC locations 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.
52. TSI, Walsh and Poirier did not immediately apply a credit to all members who paid while the clubs were closed. Instead, TSI 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.
53. Many consumers requested cancellation in July after TSI, Walsh and Poirier began debiting their membership dues again, and TSI, Walsh and Poirier refused to honor those cancellations. TSI employees told members they could only cancel with 30 to 45 days notice and would have to pay the cancellation fee. TSI also told members they had to cancel in-person.
54. 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.

55. TSI, Walsh and Poirier 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.
56. 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 these so-called debts to collection agencies.
57. TSI, Walsh and Poirier 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 acts and practices in violation of G.L. c. 93A and G.L. c. 93, § 82.
58. 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.¹ Walsh left the company on or about October 15, 2020.
59. On or around November 30, 2020, TSI sold its assets to NewTSI including membership information and member contracts for all BSC members. Many of those members belonged to BSC gym locations that were shut down or abandoned by NewTSI.
60. NewTSI transferred membership contracts of consumers whose health clubs BSC closed to other BSC gyms operated by NewTSI in alternative locations.

¹ Form 8-K, Town Sports International for September 8, 2020.

61. NewTSI did not provide meaningful notice to consumers of the transfer of their health club contracts to different BSC locations or obtain consumers' written consent to transfer them, in violation of Massachusetts' Health Club Act, which expressly requires consumer consent before assigning health club membership contracts. G.L. c. 93 § 80.
62. NewTSI also assigned and sold all consumers' membership contracts who used the BSC Waltham location, and potentially other locations, to WOW and Poirier.
63. NewTSI and WOW did not provide meaningful notice to consumers of the transfer of their health club contracts or obtain consumers' written consent to transfer them, in violation of Massachusetts' Health Club Act, which expressly requires consumer consent before assigning health club membership contracts. G.L. c. 93 § 80.
64. WOW and Poirier did not even seek, let alone obtain, consumers' consent to charge them for a WOW membership they never signed up for. Instead, WOW and Poirier employed a deceptive "opt out" procedure requiring consumers to take affirmative action to prevent these former BSC members from automatically becoming WOW members and having their bank accounts drafted automatically for monthly membership fees.
65. WOW sent a mass email to affected consumers falsely stating that BSC Waltham had "relocated". The lengthy email offered various freebies encouraging consumers to test out the facilities. Only at the end of the email did WOW inform consumers they had to opt out if they did not wish to be WOW members.
66. Many consumers were unaware their contracts had been assigned to WOW prior to seeing a charge from WOW on the consumers' credit card.

67. As CEO of WOW, Poirier was directly involved in WOW's policy decisions and reviewed and approved all communications that have been mass distributed to WOW's member base.
68. NewTSI and Work Out World knew or should have known this conduct violates G.L. c. 93, § 80, which provides, in relevant part, that, "[n]o contract [for health club services] may be assigned by one health club to another health club without written consent of the buyer."
69. Prior to filing its Second Amended Complaint, and for each subsequent amendment, the Commonwealth provided each Defendant with the notice required by G.L. c. 93A, § 4.

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

(As against Defendants TSI, Patrick Walsh, Michael Poirier)

70. The allegations contained in paragraphs 1 through 69 are hereby re-alleged and incorporated herein.
71. TSI, Walsh and Poirier 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.
72. TSI, Walsh and Poirier substantially changed their operations on or around March 16, 2020 when it closed all their health clubs in Massachusetts. The health clubs remained closed for approximately four months.

73. TSI's, Walsh's and Poirier's operations remained substantially changed when they partially reopened in early July 2020 because they were 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.
74. In some cases, TSI, Walsh and Poirier 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 TSI and Walsh not having employees at the physical locations to cancel memberships.
75. TSI 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.
76. Walsh and Poirier personally participated in, directed and/or affirmed TSI's conduct.

COUNT II

Unfair or Deceptive Acts or Practices in Violation of G.L. c. 93A, § 2:
False or Deceptive Statements
(As against Defendants TSI, Patrick Walsh and Michael Poirier)

77. The allegations contained in paragraphs 1 through 76 are hereby re-alleged and incorporated herein.
78. TSI, Walsh and Poirier 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;
 - 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; and
 - e. Created fake Yelp accounts to post positive reviews of TSI that appeared to come from consumers, when they actually were written by TSI employees.
79. Members relied on these statements when making decisions about their memberships.
80. TSI, Walsh and Poirier 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

(As Against Defendants TSI, Patrick Walsh and Michael Poirier)

81. The allegations contained in paragraphs 1 through 80 are hereby re-alleged and incorporated herein.
82. TSI, Walsh and Poirier 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.

83. TSI, Walsh and Poirier 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.
84. TSI, Walsh and Poirier 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.
85. TSI, Walsh and Poirier also threatened to refer members to debt collection agencies when members did not continue to pay for the memberships they had previously canceled.
86. TSI, Walsh and Poirier 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.
87. TSI's, Walsh's and Poirier's actions violate established concepts of unfairness, are unethical, oppressive or unscrupulous, and caused substantial injury to consumers.
88. Walsh and Poirier personally participated in, directed and/or affirmed the Defendants' conduct.

COUNT IV

Unfair or Deceptive Acts or Practices in Violation of G.L. c. 93A, § 2
and G.L. c. 93, § 80
(As Against Defendant NewTSI)

89. The allegations contained in paragraphs 1 through 88 are hereby realleged and incorporated herein.

90. NewTSI transferred membership accounts from consumers' chosen BSC location to other BSC locations without providing meaningful notice or obtaining consumers' consent and began drafting their bank accounts automatically each month for membership dues.
91. NewTSI transferred membership accounts when it knew or should have known that consumers have not been using the health clubs, have attempted to cancel their memberships or believed BSC had put their accounts on freeze.
92. NewTSI knew or should have known their conduct violated G.L. c. 93, § 80.

COUNT V

Unfair or Deceptive Acts or Practices in Violation of G.L. c. 93A, § 2
and G.L. c. 93, § 80
(As Against Defendants NewTSI, WOW and Poirier)

93. The allegations contained in paragraphs 1 through 92 are hereby realleged and incorporated herein.
94. NewTSI transferred health club contracts to WOW and Poirier without obtaining consumers' written consent, as required by G.L. c. 93, § 80.
95. Many of the contracts that NewTSI transferred to WOW and Poirier were of former BSC members and had either been cancelled or were in dispute.
96. NewTSI, WOW and Poirier did not provide consumers with meaningful notice of the transfers.
97. NewTSI, WOW and Poirier knew or should have known their conduct violated G.L. c. 93, § 80.
98. Poirier personally participated in, directed and/or affirmed this conduct.

COUNT VI

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

Unfair Billing Practices

(As to Defendants NewTSI, WOW and Poirier)

99. The allegations contained in paragraphs 1 through 98 are hereby realleged and incorporated herein.
100. NewTSI, WOW and Poirier engaged in unfair or deceptive practices in violation of G.L. c. 93A by engaging in unfair billing practices, whereby they sought to charge members whose accounts they wrongfully transferred and who never agreed to purchase their services.
101. NewTSI transferred consumers' memberships to different BSC locations and to WOW and Poirier so that NewTSI, WOW and Poirier could continue to charge consumers for these health club services, even though the memberships were cancelled, in dispute, or were transferred without consumers' consent.
102. NewTSI, WOW and Poirier knew or should have known this conduct was unfair and violated G.L. c. 93A, § 2.
103. Poirier personally participated in, directed and/or affirmed this conduct.

COUNT VII

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

False or Deceptive Statements

(As to Defendants WOW and Poirier)

104. The allegations contained in paragraphs 1 through 103 are hereby realleged and incorporated herein.

105. WOW and Poirier engaged in unfair or deceptive practices in violation of G.L. c. 93A by making misleading, false and deceptive statements to former BSC members regarding the consumers' relationship with WOW, including:
- a. Statements that described the assignment of memberships from BSC Waltham to WOW as BSC's "relocation", even though NewTSI and WOW are separate companies;
 - b. Statements that consumers were being offered a free trial even though WOW and Poirier had purportedly purchased the members contracts and planned to auto charge the consumer's bank accounts and credit cards; and
 - c. Statements that if consumers failed to send an email to a specific WOW address, the consumers would become "active member[s] of WOW" on January 15, 2021 even though WOW and Poirier knew these members had never agreed to purchase health club services from WOW.
106. WOW and Poirier knew or should have known these statements were false or deceptive and violated G.L. c. 93A, § 2.
107. Poirier personally participated in, directed and/or affirmed this 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:

As to TSI only (as a debtor in bankruptcy):

1. After a trial on the merits, order that TSI pay civil penalties 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.

As to all Defendants:

1. After a trial on the merits order that the Defendants pay restitution for any and all consumers who have been injured by any acts and practices found to have violated G.L. c. 93A, § 2(a), including those known to the Attorney General and those yet to be determined;

2. Order that the Defendants pay civil penalties 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

3. Order such other and further relief as this Court deems just and proper.

As to NewTSI and WOW and Poirier:

1. Order a permanent injunction pursuant to G.L. c. 93A, § 4, prohibiting the NewTSI, WOW and Poirier from further violations of G.L. c. 93A, § 2, or G.L. c. 93, §§ 78–88, including, without limitation, enjoining NewTSI, WOW and Poirier from assigning or transferring other membership contracts and from charging consumers for membership contracts that have been cancelled, were on freeze, were in dispute, or were wrongfully transferred;

2. Enter a declaratory judgment that the health club contracts that NewTSI, WOW and Poirier transferred was in violation of the Health Club Act G.L. c. 93 § 80, and are void.

3. Order such other and further relief as this Court deems just and proper.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS
MAURA HEALEY, ATTORNEY GENERAL

By: /s/ Shennan Kavanagh

Shennan Kavanagh (BBO #655174

Ann Lynch (BBO # 667462)

Assistant Attorneys General

Consumer Protection Division

One Ashburton Place

Boston, MA 02108

(617) 963-2654

(413) 523-7710

shennan.kavanagh@mass.gov

ann.lynch@mass.gov

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