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12 **UNITED STATES DISTRICT COURT**
 13 **CENTRAL DISTRICT OF CALIFORNIA**

)	Case No. 2:21-cv-02272-CBM
EDWIN BAZARGANFARD and)	
BARAK GOLAN, on behalf of	)	<u>CLASS ACTION</u>
themselves and all others similarly)	
situated,	)	SECOND AMENDED COMPLAINT
	)	FOR VIOLATIONS OF:
Plaintiffs,)	
	)	1. VIOLATIONS OF
vs.	)	ELECTRONIC FUNDS
	)	TRANSFER ACT, 15 U.S.C.
	)	§1693 ET SEQ.
CLUB 360 LLC; ABC FINANCIAL	)	2. VIOLATIONS OF
SERVICES, LLC; JEHANGIR	)	CALIFORNIA BUSINESS
MEHER; VALLEY GYM CORP.;	)	AND PROFESSIONS CODE
NORTH HOLLYWOOD FITNESS	)	§ 17200, ET SEQ.
LLC; VAN NUYS FITNESS CENTER	)	<u>DEMAND FOR JURY TRIAL</u>
LLC and DOES 1 through 10, inclusive,)	
and each of them,)	
)	
Defendant.)	
)	
)	

1 Plaintiffs Edwin Bazarganfard (“Plaintiff Bazarganfard”) and Barak Golan
2 (“Plaintiff Golan,” and with Plaintiff Bazaraganfard, “Plaintiffs”) on behalf of
3 themselves and all others similarly situated, alleges the following against
4 Defendants CLUB 360 LLC, ABC FINANCIAL SERVICES, LLC, JEHANGIR
5 MEHER, VALLEY GYM CORP., NORTH HOLLYWOOD FITNESS LLC, and
6 VAN NUYS FITNESS CENTER LLC upon information and belief based upon
7 personal knowledge:

8 **INTRODUCTION**

9 1. Plaintiffs’ Second Amended Class Action Complaint is brought
10 pursuant to the Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et seq.* (“EFTA”)
11 and the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*

12 2. Plaintiff Barak, individually, and on behalf of all others similarly
13 situated, brings this Complaint for damages, injunctive relief, and any other
14 available legal or equitable remedies, resulting from the illegal actions of
15 Defendants in debiting Plaintiff Barak and the putative EFTA Class members’ bank
16 accounts on a recurring basis without obtaining a written authorization signed or
17 similarly authenticated for preauthorized electronic fund transfers from Plaintiffs’
18 and also the putative Class members’ accounts, thereby violating Section 907(a) of
19 the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R.
20 § 205.10(b).

21 3. Plaintiffs additionally jointly bring an action on behalf of the UCL
22 Class for Defendants CLUB 360 LLC, VALLEY GYM CORP., NORTH
23 HOLLYWOOD FITNESS LLC, VAN NUYS FITNESS CENTER LLC, and
24 JEHANGIR MEHER’s (collectively, “Gym Defendants”) policy of continuing to
25 charge consumers for its gym services even while Gym Defendants’ gyms were
26 closed and those no services were being provided.

27 4. Plaintiffs allege as follows upon personal knowledge as to themselves
28 and their own acts and experiences, and, as to all other matters, upon information

1 and belief, including investigation conducted by her attorneys.

2 **JURISDICTION & VENUE**

3 3. This Court has jurisdiction under 28 U.S.C. 1331, because this action
4 is brought pursuant to the EFTA, 15 U.S.C. 1693 et seq.

5 4. Jurisdiction of this Court arises pursuant to 15 U.S.C. 1693(m), which
6 states that, “without regard to the amount in controversy, any action under this
7 section may be brought in any United States district court.”

8 5. Venue and personal jurisdiction in this District are proper pursuant to
9 28 U.S.C. 1391(b) because Plaintiffs reside within this District and Defendants do
10 or transact business within this District, and a material portion of the events at issue
11 occurred in this District.

12 **PARTIES**

13 6. Plaintiff Edwin Bazarganfard is a natural person residing in Los
14 Angeles County in the state of California, and is a “consumer” as defined by 15
15 U.S.C. §1693a(6) and a “person” as defined by Cal. Bus. & Prof. Code § 17201.

16 7. Plaintiff Barak Golan is a natural person residing in Los Angeles
17 County in the state of California, and is a “person” as defined by Cal. Bus. & Prof.
18 Code § 17201

19 8. At all relevant times herein, Defendant CLUB 360 LLC (“Club 360”)
20 was a Delaware Corporation engaged in the business of providing a gym facility in
21 Los Angeles, California.

22 9. At all relevant times herein, Defendant VALLEY GYM CORP.
23 (“Valley”) was a California Corporation engaged in the business of providing a
24 gym facility in Los Angeles, California.

25 10. At all relevant times herein, Defendant NORTH HOLLYWOOD
26 FITNESS LLC (“Hollywood”) was a California Corporation engaged in the
27 business of providing a gym facility in Los Angeles, California.

28 11. At all relevant times herein, Defendant VAN NUYS FITNESS

1 CENTER LLC (“Van Nuys”) was a California Corporation engaged in the business
2 of providing a gym facility in Van Nuys, California.

3 12. At all relevant times herein, Defendant ABC FINANCIAL
4 SERVICES, LLC (“ABC”) was an Arkansas Corporation engaged in the business
5 of providing automatic fund transfers from credit and debit cards to Club 360 in
6 Los Angeles, California.

7 13. At all relevant times herein, Defendant JEHANGIR MEHER
8 (“Meher”) was the owner, operator, and manager of Club 360, Valley, Hollywood,
9 and Van Nuys.

10 14. On information and belief, Gym Defendants are a single enterprise
11 and alter egos of one another. Gym Defendants are owned and operated by Meher
12 under a common scheme to overcharge consumers, and the policies and procedures
13 at issue in the instant litigation were all implemented by the ownership in the same
14 manner across the single enterprise.

15 15. In fact, at his deposition, Meher testified that there are multiple
16 locations all doing business under the U. S. A. Fitness brand, beyond those named
17 in the original Complaint. *See* Meher Dep. 158:24-159:12.

18 16. The billing services agreement entered into by ABC and Gym
19 Defendants is a single agreement that includes Club 360, Valley, and Hollywood.
20 ABC00011-ABC00012.

21 17. Additionally, all Gym Defendants operating under the U. S. A. Fitness
22 brand used the same website domain name and communicated the same emails
23 from that website domain. Meher Dep. 174:8-12.

24 18. On information and belief, Gym Defendants all engaged in
25 substantially the same course of conduct in overcharging consumers at the direction
26 of Meher. As such, Gym Defendants are a single enterprise and alter egos of one
27 another and should be treated as such for the purposes of the instant litigation.

28 19. Each above named Defendant, and its subsidiaries and agents, are

1 collectively referred to as “Defendants.” The true names and capacities of the
2 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
3 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
4 names. Each of the Defendants designated herein as a DOE is legally responsible
5 for the unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend
6 the Complaint to reflect the true names and capacities of the DOE Defendants when
7 such identities become known.

8 20. Plaintiffs are informed and believe that at all relevant times, each and
9 every Defendant was acting as an agent and/or employee of each of the other
10 Defendants and was acting within the course and scope of said agency and/or
11 employment with the full knowledge and consent of each of the other Defendants.
12 Plaintiff is informed and believes that each of the acts and/or omissions complained
13 of herein was made known to, and ratified by, each of the other Defendants.

14 **FACTUAL ALLEGATIONS**

15 21. Plaintiffs had gym memberships with Club 360 at its facility in
16 Reseda, California.

17 22. Plaintiff Golan was charged \$39.99 per month on his debit card as a
18 recurring electronic fun transfer by Club 360, which was processed and withdrawn
19 by ABC.

20 23. Plaintiff Bazarganfard was charged \$49.99 per month on his credit
21 card as a recurring transfer by Club 360, which was processed and withdrawn by
22 ABC.

23 24. In March 2020, Gym Defendants closed their gym locations and
24 stopped providing services to either Plaintiff or anyone else.

25 25. Gym Defendants were closed from March 2020 to June 2020 and July
26 2020 to September 2020, but during this time continued to charge their members a
27 “freeze fee” of \$9.99.

28 26. Nothing in Defendants contracts with Plaintiffs or anyone authorized

1 the institution and charging of a “freeze fee” by Defendants.

2 27. Despite being closed, Gym Defendants and ABC continued to debit
3 Plaintiff Golan and charge Plaintiff Bazarganfard for recurring fees in the amount
4 of \$9.99 per month.

5 28. By closing its facilities, Gym Defendants reduced or eliminated the
6 scope of facilities advertised and offered and accordingly owes Plaintiffs and the
7 UCL Class a pro rata refund for the time period during which its facilities were
8 closed.

9 29. Further, by closing its facilities and ceasing to provide the agreed to
10 services, Gym Defendants and ABC did not have authorization to deduct sums of
11 money on a regular recurring basis from Plaintiff Golan’s banking account for a
12 “freeze fee” which was not authorized by the contract.

13 30. Defendants continued to deduct this monthly sum from Plaintiff Golan
14 for several months without Plaintiff’s authorization.

15 31. Plaintiff Golan alleges such activity to be in violation of the
16 Electronic Funds Transfer Act, 15 U.S.C. 1693 *et seq.* (“EFTA”), and its
17 surrounding regulations, including, but not limited to, 12 C.F.R. §§ 1005.7, 1005.8,
18 and 1005.9.

19 32. Plaintiffs both allege that Gym Defendants’ conduct is an unfair and
20 unlawful business practice under the California Unfair Competition Law, Cal. Bus.
21 & Prof. Code § 17200, *et seq.*

22 33. The material circumstances surrounding this experience by Plaintiffs
23 were the same, or nearly the same, as the other class members Plaintiffs propose to
24 represent, and Plaintiffs and all putative class members were required to pay, and
25 did pay, money for the services sold by Gym Defendants that were failed to be
26 provided.

27 34. Meher oversaw, directed, and controlled Defendants Club 360,
28 Valley, Hollywood, and Van Nuys’s actions as set forth above and is thus both

1 directly liable for participating in the misconduct and vicariously liable for the
2 misconduct of his agents Club 360, Valley, Hollywood, and Van Nuys for whom
3 he is the principal.

4 **CLASS ALLEGATIONS**

5 35. Plaintiffs bring this action on behalf of themselves and all others
6 similarly situated, as members of two proposed classes (jointly “The Classes”). The
7 first Class (hereafter “The EFTA Class”) is defined as follows:

8 All persons in the United States whose bank accounts were
9 debited on a reoccurring basis by Defendants without
10 obtaining a written authorization signed or similarly
11 authenticated for preauthorized electronic fund transfers in
12 March 14, 2020 to June 2020 or July 2020 to September
2020 for fees at any of the USA Fitness gyms.

13 36. The second Class (hereafter “the UCL Class”) is defined as follows:

14 All persons in California who were charged or caused to be
15 charged by Gym Defendants for fees at any of the USA
16 Fitness Gyms during the closures in March 2020 to June
17 2020 or July 2020 to September 2020..

18 37. Plaintiff Barak Golan represents, and is a member of The EFTA Class,
19 consisting of all persons within the United States whose bank account were debited
20 on a recurring basis by Defendants without Defendants obtaining a written
21 authorization signed or similarly authenticated for preauthorized electronic fund
22 transfers in March 14, 2020 to June 2020 or July 2020 to September 2020 for fees
23 at any of the USA Fitness gyms..

24 38. The EFTA Class is alleged against all Defendants.

25 39. Plaintiffs represent and are each a member of The UCL Class,
26 consisting of all persons in California who were charged or caused to be charged
27 by Gym Defendants for fees at any of the USA Fitness Gyms during the closures
28 in March 2020 to June 2020 or July 2020 to September 2020..

1 40. The UCL Class is only alleged against Gym Defendants.

2 41. Defendants, any entity in which any Defendants have a controlling
3 interest, and Defendants' legal representatives, heirs and successors, and any judge
4 to whom any aspect of this case is assigned, and any member of such a judge's
5 immediate family are excluded from The Classes. Plaintiffs do not know the
6 number of members in The Classes, but believe the Classes members number in
7 the hundreds, if not more. Thus, this matter should be certified as a Class Action to
8 assist in the expeditious litigation of the matter.

9 42. The Classes are so numerous that the individual joinder of all of their
10 members is impractical. While the exact number and identities of The Classes
11 members are unknown to Plaintiffs at this time and can only be ascertained through
12 appropriate discovery, Plaintiffs are informed and believes and thereon alleges that
13 The Classes includes thousands of members. Plaintiffs allege that The Classes
14 members may be ascertained by the records maintained by Defendants.

15 43. This suit is properly maintainable as a class action pursuant to Fed. R.
16 Civ. P. 23(a) because the Classes are so numerous that joinder of the Classes
17 members is impractical and the disposition of their claims in the class action will
18 provide substantial benefits both to the parties and to the Court.

19 44. There are questions of law and fact common to the EFTA Class
20 affecting the parties to be represented. The questions of law and fact to the EFTA
21 Class predominate over questions which may affect individual EFTA Class
22 members and include, but are not necessarily limited to, the following:

- 23 a. Whether the members of the EFTA Class had preauthorized electronic
24 fund transfers withdrawn from their accounts by Defendants without
25 their authorization for such recurring electronic payments;
- 26 b. Whether Defendants committed an unlawful practice under the UCL
27 by violating EFTA.
28

1 45. There are questions of law and fact common to the UCL Class
2 affecting the parties to be represented. The questions of law and fact to the UCL
3 Class predominate over questions which may affect individual UCL Class
4 members and include, but are not necessarily limited to, the following:

5 a. Whether Gym Defendants charged Plaintiffs and the UCL Class for
6 gym services that were not provide due to the closure of Defendant
7 Club 360's gym.

8 b. Whether such practices constitute unfair or unlawful business
9 practices.

10 46. As someone whose bank account was debited on a reoccurring basis
11 by Defendants without authorization, Plaintiff Golan is asserting claims that are
12 typical of The EFTA Class. As individuals who were charged for gym services
13 while Gym Defendants were closed and failed to provide such services, Plaintiffs
14 are asserting claims that are typical of The UCL Class.

15 47. Plaintiffs will fairly and adequately protect the interests of the
16 members of The Classes. Plaintiffs have retained attorneys experienced in the
17 prosecution of class actions.

18 48. A class action is superior to other available methods of fair and
19 efficient adjudication of this controversy, since individual litigation of the claims
20 of all Classes members is impracticable. Even if every Classes member could
21 afford individual litigation, the court system could not. It would be unduly
22 burdensome to the courts in which individual litigation of numerous issues would
23 proceed. Individualized litigation would also present the potential for varying,
24 inconsistent, or contradictory judgments and would magnify the delay and expense
25 to all parties and to the court system resulting from multiple trials of the same
26 complex factual issues. By contrast, the conduct of this action as a class action
27 presents fewer management difficulties, conserves the resources of the parties and
28 of the court system, and protects the rights of each Class member.

1 49. The prosecution of separate actions by individual Classes members
2 would create a risk of adjudications with respect to them that would, as a practical
3 matter, be dispositive of the interests of the other Classes members not parties to
4 such adjudications or that would substantially impair or impede the ability of such
5 non-party Classes members to protect their interests.

6 50. Defendants have acted or refused to act in respects generally
7 applicable to The Classes, thereby making appropriate final and injunctive relief
8 with regard to the members of the Class as a whole.

9 **COUNT I:**

10 **VIOLATION OF ELECTRONIC FUNDS TRANSFER ACT**

11 **INDIVIDUALLY BY PLAINTIFF GOLAN AND ON BEHALF OF THE**
12 **EFTA CLASS AGAINST ALL DEFENDANTS**

13 51. Plaintiff reincorporates by reference all of the preceding paragraphs.

14 52. Section 907(a) of the EFTA, 15 U.S.C. §1693e(a), provides that a
15 “preauthorized electronic fund transfer from a consumer’s account may be
16 authorized by the consumer only in writing, and a copy of such authorization shall
17 be provided to the consumer when made.”

18 53. Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the
19 term “preauthorized electronic fund transfer” means “an electronic fund transfer
20 authorized in advance to recur at substantially regular intervals.”

21 54. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides that
22 “[p]reauthorized electronic fund transfers from a consumer’s account may be
23 authorized only by a writing signed or similarly authenticated by the consumer.
24 The person that obtains the authorization shall provide a copy to the consumer.”

25 55. Section 205.10(b) of the Federal Reserve Board's Official Staff
26 Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that “[t]he
27 authorization process should evidence the consumer’s identity and assent to the
28 authorization.” Id. at ¶10(b), comment 5. The Official Staff Commentary further

1 provides that “[a]n authorization is valid if it is readily identifiable as such and the
2 terms of the preauthorized transfer are clear and readily understandable.” Id. at
3 ¶10(b), comment 6.

4 56. In multiple instances, Defendants have debited Plaintiff Golan and
5 also the putative EFTA Class members’ bank accounts on a recurring basis without
6 obtaining a written authorization signed or similarly authenticated for
7 preauthorized electronic fund transfers, thereby violating Section 907(a) of the
8 EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. §
9 205.10(b).

10 57. In doing so, Defendants have violated EFTA.

11 **COUNT II:**

12 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200**
13 **INDIVIDUALLY AND ON BEHALF OF THE CLASSES AGAINST**
14 **DEFENDANTS**

15 58. Plaintiffs incorporate by reference all of the above paragraphs of this
16 Complaint as though fully stated herein.

17 59. Actions for relief under the unfair competition law may be based on
18 any business act or practice that is within the broad definition of the UCL. Such
19 violations of the UCL occur as a result of unlawful, unfair or fraudulent business
20 acts and practices. A plaintiff is required to provide evidence of a causal connection
21 between a defendant's business practices and the alleged harm--that is, evidence
22 that the defendant's conduct caused or was likely to cause substantial injury. It is
23 insufficient for a plaintiff to show merely that the defendant's conduct created a risk
24 of harm. Furthermore, the "act or practice" aspect of the statutory definition of
25 unfair competition covers any single act of misconduct, as well as ongoing
26 misconduct.

27 60. Plaintiffs alleges that Gym Defendants engaged in unfair acts as set
28 forth below against the UCL Class.

1 systematic scheme is tantamount to theft. Thus, the injury suffered by Plaintiffs and
2 the members of the UCL Class is not outweighed by any countervailing benefits to
3 consumers.

4 66. Finally, the injury suffered by Plaintiffs and members of the UCL
5 Class is not an injury that these consumers could reasonably have avoided. Gym
6 Defendants misappropriated funds from Plaintiffs and other consumers
7 automatically and without notice. As such, Gym Defendants took advantage of
8 Gym Defendants' position of perceived power in order to deceive Plaintiffs and the
9 UCL Class members. Therefore, the injury suffered by Plaintiff and members of
10 the UCL Class is not an injury which these consumers could reasonably have
11 avoided.

12 67. Thus, Gym Defendants' conduct has violated the "unfair" prong of
13 California Business & Professions Code § 17200.

14 **UNLAWFUL**

15 68. California Business and Professions Code Section 17200, et seq.
16 prohibits "any unlawful...business act or practice."

17 69. Defendants' acts, as pled herein, are an "unlawful" business practice
18 or act under Business and Professions Code Section 17200 et seq. for violating
19 EFTA as to the EFTA Class.

20 70. Defendants' conduct caused and continues to cause economic harm to
21 Plaintiffs and Classes Members.

22 **TRIAL BY JURY**

23 71. Pursuant to the seventh amendment to the Constitution of the United
24 States of America, Plaintiffs are entitled to, and demand, a trial by jury.
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28

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually, and on behalf of all others similarly situated, respectfully request judgment be entered against Defendants, for the following:

- a. That this action be certified as a class action on behalf of The Classes and Plaintiff Golan be appointed as a representative of the EFTA Class and both Plaintiffs be appointed as the representatives of The UCL Class;
- b. Statutory damages of \$1,000.00, per EFTA Class Member, pursuant to the Electronic Fund Transfer Act, §916(a)(2)(A);
- c. Actual damages;
- d. Restitution of the funds improperly obtained by Defendants;
- e. Any and all statutory enhanced damages;
- f. All reasonable and necessary attorneys’ fees and costs provided by statute, common law or the Court’s inherent power;
- g. For equitable and injunctive and pursuant to California Business and Professions Code § 17203;
- h. For prejudgment interest at the legal rate; and
- i. Any other relief this Honorable Court deems appropriate.

Respectfully Submitted this 28th Day of October, 2022.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
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Attorney for Plaintiffs

1 Filed electronically on this 28th Day of October, 2022, with:
2 United States District Court CM/ECF system.
3 Notification sent electronically on this 28th Day of October, 2022, to:
4
5 Honorable Consuelo B. Marshall
6 United States District Court
7 Central District of California
8
9 And All Counsel of Record as Recorded On The Electronic Service List
10

11 /s/ Todd M. Friedman, Esq.
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TODD M. FRIEDMAN