



April 3, 2020

**VIA EMAIL AND U.S. MAIL**

Patrick Walsh  
Chairman and Chief Executive Officer  
Town Sports International Holdings, Inc.  
399 Executive Boulevard  
Elmsford, New York 10523  
[patrick.walsh@tsiclubs.com](mailto:patrick.walsh@tsiclubs.com)

**Re: Town Sports International Holdings, Inc.'s Unlawful Response to the COVID-19 Pandemic and National Emergency**

Dear Mr. Walsh:

On behalf of the State of New York, the Commonwealth of Pennsylvania, and the District of Columbia ("States"), we write to demand immediate changes to the unlawful manner in which Town Sports International Holdings, Inc. ("TSI") has responded to the mandatory closing of its health clubs due to the COVID-19 pandemic. Based on hundreds of complaints filed with our offices, it appears that TSI – which does business in our States as New York Sports Club, Philadelphia Sports Club, and Washington Sports Club – has violated multiple State laws by charging consumers membership dues for services TSI no longer offers, imposing punitively high cancellation and freezing fees that are unconscionable under the circumstances, misleading consumers about their rights to cancel or freeze their memberships, withholding information from consumers about how they can cancel or freeze their memberships, and refusing to honor cancellation requests.

The COVID-19 pandemic has plunged our country into an unprecedented public health and economic crisis. Thousands of people have died from COVID-19, hundreds of thousands are confirmed infected, millions of people have lost their jobs, millions of businesses are subject to mandatory closures, and we all face an uncertain future. We understand that TSI's business faced economic uncertainty prior to the spread of the pandemic, and we are sensitive to the fact that the mandatory closure of its clubs presents even further strains. But neither a national emergency nor dire financial straits relieves TSI of its obligation to follow the law. TSI's conduct is particularly disappointing because many TSI members may have lost their jobs or seen their income reduced, and need every penny to provide for their basic needs. We hope TSI will voluntarily adopt the

measures discussed below, not only because it is what the law requires, but because it is the right thing to do.

### TSI's Response to Mandatory Club Closures in the States

Beginning on March 15, 2020, each of our States issued executive orders requiring all gyms and fitness centers to cease operations until further notice due to the COVID-19 pandemic.<sup>1</sup> The vast majority of gyms in our States responded by automatically freezing memberships at no cost to members until the gyms reopen, and promptly communicating this fact to members.<sup>2</sup> TSI did neither. Instead, it posted an "Emergency Alert" on its website informing members that clubs were closed, but did not address how memberships would be handled going forward.<sup>3</sup> Unsurprisingly, members began to contact TSI by telephone, email, and via social media platforms to try to obtain more information,<sup>4</sup> but due to TSI's termination of the majority of its workforce, members were unable to obtain any information.<sup>5</sup> In a few rare cases where members were able to reach someone at TSI's corporate office, they were told they could only cancel or freeze their memberships in person – which would be impossible, as the clubs were closed – or by sending a letter via certified or registered mail – which would require members to leave their homes in violation of orders requiring people to remain in their homes except for essential purposes.

On March 19, 2020, New York contacted TSI to try to obtain more information, and learned that TSI was not automatically freezing memberships, was requiring members who wish to freeze or cancel their memberships to do so by mail, was charging members a \$10 fee to cancel and a \$15 per month fee to freeze, and had no plan for communicating any of these facts to members. On March 27, 2020, TSI informed New York that it would permit members to cancel or freeze memberships electronically, but that it was not changing any other policy. On March 30, 2020, TSI informed New York that it planned to issue refunds for the part of March when clubs were closed, was

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<sup>1</sup> See N.Y. Exec. Order No. 202.3 (Mar. 16, 2020), *available at* <https://www.governor.ny.gov/news/no-2023-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>; Pa. Exec. Order (Mar. 19, 2020), *available at* <https://www.scribd.com/document/452416027/20200319-TWW-COVID-19-Business-Closure-Order>; D.C. Mayor's Order No. 2020-048 (Mar. 16, 2020), *available at* <https://mayor.dc.gov/sites/default/files/dc/sites/mayoromb/publication/attachments/MO-Prohibition-on-Mass-Gatherings-During-Public-Health-Emergency.pdf>.

<sup>2</sup> For example, within hours of New York Governor Andrew Cuomo's issuance of an executive order closing all gyms, the fitness chains Equinox and Planet Fitness sent emails to their members informing them of the mandatory closure and assuring them that their memberships would be frozen at no cost to the members until the clubs reopen.

<sup>3</sup> The alert remains on TSI's New York Sports Club website as of this writing and reads in full as follows: "Emergency Alert! In adherence with State and Federal guidelines concerning COVID-19, also known as Coronavirus, we will be temporarily closing all of our NY, NJ and Connecticut clubs starting 8PM on March 16th until further guidance from the state government. We will miss all of our valued members and whenever this passes we'll be back at our clubs waiting for you." <https://www.newyorksportsclubs.com/>.

<sup>4</sup> According to multiple consumer complaints, not only did TSI fail to respond to inquiries on social media, it deleted public comments seeking information and criticizing TSI for its response.

<sup>5</sup> See TSI, 2019 Annual Report (Form 10-K), Mar. 20, 2020, p. 10, *available at* <http://www.townsportsinternational.com/static-files/3218e839-c8aa-4d2a-ad14-907e8f27ffd6> ("We have taken some immediate steps to reduce operating costs and to conserve cash. We informed all non-executive employees working at clubs which have been ordered to close that their employment with us was terminated with immediate effect.").

waiving the advance notice cancellation requirement, and planned to send an email to members informing them of their rights to cancel and freeze. On March 31, 2020, TSI sent an email to members vaguely assuring them that TSI would “issue credits to your accounts and address all membership-related concerns once our gyms are operating,” but nowhere in this email did TSI inform members of the manner in which they could cancel or freeze their memberships.<sup>6</sup>

Moreover, many members received emails from TSI in which TSI made statements inconsistent with the assurances provided to the NYAG. For example, one member sent an email requesting cancellation and received a response from TSI’s CEO informing her that her membership would be frozen, and that TSI would not honor her cancellation request until its clubs reopen. Shockingly, TSI charged this member a \$15 freeze fee on April 1, 2020, despite the fact that she had not requested a freeze and the CEO’s email made no mention of fees.

In the absence of accurate information from TSI, members have inundated our offices with complaints desperately seeking information. Many of these complaints expressed concerns regarding members’ personal economic situation and explained that a gym membership was no longer a luxury they could afford, particularly since they are no longer receiving the service for which they are paying.

While we understand the situation presented by COVID-19 is unprecedented, TSI has a history of violating consumer protection laws,<sup>7</sup> and we believe TSI’s conduct violates multiple State laws.

#### TSI Is Violating the States’ Health Club Laws and UDAAP Laws

First, it is a false and deceptive practice and a violation of our States’ health club laws for TSI to charge dues or assess fees when the services for which members pay such fees are unquestionably no longer being provided through no fault of the members. Members have the absolute right to cancel or freeze their memberships without paying any fees or providing advance notice when TSI has closed its clubs in our States and is therefore failing to provide any health club services, even if the closures were mandated by the government as a result of the national COVID-19 pandemic and state of emergency.<sup>8</sup>

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<sup>6</sup> TSI had also posted a “Member Letter” to its website dated March 25, 2020 that did not address cancellations or freezes. See <https://www.newyorksportsclubs.com/page/member-letter>.

<sup>7</sup> Indeed, the District of Columbia (“District”) sued TSI last year for violating the terms of a settlement agreement and misleading members about a number of membership terms, including cancellation policies. See Press Release, *AG Racine Sues Washington Sports Club for Misleading District Consumers About Membership Cancellation Policies, Billing Practices, and Fees*, Jan. 8, 2019, available at <https://oag.dc.gov/release/ag-racine-sues-washington-sports-club-misleading>. The court in that case recently permitted the District to amend its Complaint to add allegations that TSI has also violated the District’s automatic renewal law. See D.C. Code § 28A-201 *et seq.*

<sup>8</sup> See N.Y. Gen. Bus. Law § 624(3) (providing that members are entitled to cancel their memberships under certain enumerated circumstances, including if “the services are no longer available or substantially available as provided in the contract because of the seller’s permanent discontinuance of operation or substantial change in operation”); 73 Pa. Stat. § 2163(4) (permitting members “to cancel the contract if the health club facility closes for more than 30 days); N.Y. Exec. L. § 63(12); N.Y. Gen. Bus. L. § 349; 73 Pa. Stat. § 201-3; D.C. Code § 28-3904.

Second, it is an unfair and deceptive practice for TSI to mislead or fail to inform members how they can exercise their rights to cancel or freeze their memberships.<sup>9</sup> At a time when millions of Americans have lost their jobs and every penny counts, TSI's refusal to accurately apprise members of their rights, or to mislead them about their rights, is unfair and deceptive. We also note that TSI's conduct to date is inconsistent with a statement in its most recent filing with the Securities and Exchange Commission, where TSI stated that "[m]ost of our members hold month-to-month memberships and accordingly, most members can cancel their club membership at any time without penalty."<sup>10</sup>

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We recognize that COVID-19 has placed extraordinary financial stress on TSI, but that fact does not give TSI the right to violate the law in an apparent attempt to mitigate its financial distress at its members' expense. We demand that TSI immediately implement a membership freeze at no cost to members and honor cancellation requests submitted by mail, telephone, or email without charging any fees or imposing any conditions (such as advance notice requirements). We also demand that TSI post a notice on its website and send an email to members clearly and unambiguously conveying this information, with the text of this communication to be pre-approved by the States. If TSI fails to take these actions, we will take whatever steps are necessary to protect our citizens and enforce our laws.

Please contact New York Assistant Attorney General Chris McCall by telephone (917-747-2635) or email ([christopher.mccall@ag.ny.gov](mailto:christopher.mccall@ag.ny.gov)) as soon as possible to schedule a teleconference with the States to discuss this matter.

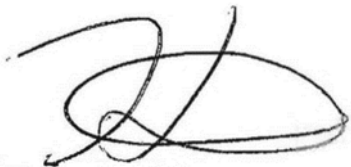
Sincerely,



LETITIA JAMES  
New York Attorney General



JOSH SHAPIRO  
Pennsylvania Attorney General



KARL A. RACINE  
District of Columbia Attorney General

<sup>9</sup> See N.Y. Gen. Bus. Law § 626(8) (providing that , it is “an unfair and deceptive trade practice and unlawful for a [gym] to . . . [m]isrepresent in any manner . . . the [member’s] right to cancel”); 73 Pa. Stat. § 2175(a) (“A violation of this act shall constitute a violation of the . . . the Unfair Trade Practices and Consumer Protection Law, and shall be subject to the enforcement provisions and private rights of action contained in that act.”); D.C. Code § 28-3904.

<sup>10</sup> See TSI, 2019 Annual Report (Form 10-K), Mar. 20, 2020, p. 11, *available at* <http://www.townsportsinternational.com/static-files/3218e839-c8aa-4d2a-ad14-907e8f27ffd6>. According to the same filing, approximately 86% of TSI members have month-to-month memberships. *See id.* at p. 5.

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