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8
9 **UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 JASON ROTHMAN, Individually and on
Behalf of All Others Similarly Situated,

12 Plaintiff,

13 v.

14 EQUINOX HOLDINGS, INC. and DOES
1 through 100, inclusive,

15 Defendants.
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Case No.: 2:20-cv-09760-CAS-MRW

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) Violation of the Consumer Legal Remedies Act, Cal. Civ. Code §§1750. *et seq.*
- (2) False Advertising (Cal. Bus. & Prof. Code §§17500, *et seq.*)
- (3) Fraudulent Business Practices (Cal. Bus. & Prof. Code §§17200, *et seq.*)
- (4) Unfair Advertising (Cal. Bus. & Prof. Code §§17200, *et seq.*)
- (5) Unlawful Business Practices (Cal. Bus. & Prof. Code §§17200, *et seq.*)

DEMAND FOR JURY TRIAL

1 Plaintiff Jason Rothman, on behalf of himself and all others similarly situated,
2 asserts this class action against defendants Equinox Holdings, Inc. (referred to herein
3 as “Defendant” or “Equinox”) and Does 1-100 (collectively referred to herein as
4 “Defendants”), and alleges as follows:

5 **I. INTRODUCTION**

6 1. Defendant Equinox Holdings, Inc., through its subsidiaries, (the
7 “Subsidiary Clubs”) provides fitness services such as yoga classes, studio cycling,
8 cardio exercises, martial arts, spa, and personal training at their Equinox-branded
9 Fitness Clubs and hotels throughout the United States. Defendant Equinox Holdings,
10 Inc. oversees the operations of Equinox-branded Fitness Clubs throughout the State of
11 California.

12 2. To access an Equinox-branded Fitness Clubs in California, consumers
13 must sign a standard and uniform Equinox Membership Agreement at one of the
14 Subsidiary Clubs. An Equinox Membership allows members access to the Equinox-
15 branded Fitness Clubs and use of the services offered therein.

16 3. Equinox Memberships are advertised as limited and, therefore, extremely
17 exclusive. Consequently, the monthly membership dues at an Equinox-Fitness Club
18 can vary by location and with the number of clubs that a member has access to, but it
19 will often exceed one hundred and fifty dollars per month. For example, the
20 membership dues for access to a single Equinox-branded Fitness Club may be in excess
21 of one hundred and seventy dollars per month; access to all clubs within a geographic
22 region may exceed three hundred dollars per month. All membership dues are
23 automatically paid by the Equinox Members, *via* a periodic credit card charge or
24 electronic funds transfer from a bank account. Such dues are charged on a fixed date,
25 the 23rd of each month in Plaintiffs’ case, identified in the Equinox Membership
26 Agreement and are charged in one-month increments.

27 4. Like all fitness clubs, the primary benefit of an Equinox Membership is
28 access to Equinox’s gym facilities, as well as the fitness classes and other services

1 offered therein. Each Equinox Member prepays for their next month's access to the
2 Equinox-branded Fitness Clubs, by either paying for the next month's membership dues
3 or prepaying for several months at one time. If an Equinox Member falls behind on
4 their membership dues, the member will not be permitted to use any fitness clubs or
5 attend any fitness classes until all fees are made current.

6 5. In March 2020, the COVID-19 pandemic spread quickly across California
7 and the State responded by issuing its first "stay-at-home" order. Accordingly, on
8 March 16, 2020, Defendants announced that they were closing all of their California
9 gyms indefinitely, effective on March 17, 2020. Recognizing that they would be unable
10 to charge monthly membership dues without providing the services promised,
11 Defendants announced that all Equinox Memberships would be "frozen" as of March
12 17, 2020. This "freeze" meant that no additional payments would be required until the
13 Equinox-branded Fitness Clubs were able to reopen. All of Defendants' members,
14 however, had already prepaid for the entire month of March by the time that the gym
15 closure was announced and became effective. Defendants had no plans to provide
16 refunds for the prepaid March membership dues for the periods during which their
17 Equinox-branded Fitness Clubs were closed and refused requests by members,
18 including Plaintiff, to refund the membership dues for unused time.

19 6. Instead of refunding each of their Members the pro-rated amount of their
20 unusable March membership, Defendants provided its Members a credit in the form of
21 a digital Equinox "Gift Card" in an amount equal to their prepaid but unused
22 membership dues. (i.e., Equinox labeled and described the credits as a "Gift Cards").
23 Each member who received this gift card from Defendant had their mobile applications
24 updated to reflect the same. This gift card was issued in June 2020 and expired in
25 November 2020.

26 7. The Equinox Gift Cards issued to members as a result of their unusable
27 March Membership could not be used to pay future membership dues and instead were
28 restricted to items and services that could be purchased directly from Equinox. This

1 limitation violated the provisions of the membership agreement as Defendants are
 2 required to provide a monetary refund for any periods during which their clubs are
 3 closed.

4 8. Additionally, Defendants cannot provide the refund through an illegal gift
 5 card that is unlikely to be used by Equinox Members due to its extremely short
 6 expiration date, its restrictions on use, and the ongoing COVID-19 crisis. Indeed,
 7 Equinox announced another round of closure in early July after collecting six weeks of
 8 membership dues from members on June 25, 2020, rather than the agreed upon one
 9 month of prepaid dues per the membership agreement. Weeks later, Equinox closed its
 10 doors yet again and retained members' prepaid dues without reimbursing members for
 11 the unused portion of their membership dues.

12 9. As a result of Defendant's aforementioned conduct, Plaintiff Jason
 13 Rothman, individually and on behalf of all others similarly situated, seeks to recover
 14 damages and restitution for Defendant's unlawful and deceptive labeling under: (1) the
 15 California Consumer Remedies Act, Cal. Civ. Code § 1750, *et seq.*; (2) California
 16 Business and Professions Code, Unfair or Unlawful Business Practices, Cal. Bus. &
 17 Prof. Code, § 17200, *et seq.*; and (3) California's False Advertising Law, Cal. Bus. &
 18 Prof. Code §§ 17500, *et seq.* Plaintiff also seeks public injunctive relief to ensure that
 19 Defendants stop this illegal business practice.

20 **II. JURISDICTION**

21 10. Jurisdiction is proper pursuant to Class Action Fairness Act of 2005
 22 ("CAFA"). 28 U.S.C. § 1332(d)(2). Under CAFA, district courts have original federal
 23 jurisdiction over class actions involving (1) an aggregate amount in controversy of at
 24 least \$5,000,000; and (2) minimal diversity.

25 11. Minimal diversity" exists because Plaintiff and Equinox Holdings, Inc. are
 26 citizens of different states.

27 12. Upon information and belief, improperly retained membership dues of
 28 resident Californians \$5 million, exclusive of interest and costs.

1 13. This Court has jurisdiction over Defendants because they are registered to
2 conduct, and do conduct, substantial business within California.

3 14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) because a
4 substantial part of the events or omissions giving rise to these claims occurred in this
5 district. Also, venue is proper in this district pursuant to 18 U.S.C. § 1965.

6 **III. PARTIES**

7 15. Plaintiff Jason Rothman (“Plaintiff” or “Plaintiff Rothman”) is a resident
8 of Los Angeles County, California, and a citizen of California and purchased his
9 Equinox membership in Los Angeles County. Plaintiff’s CLRA Venue Declaration is
10 attached hereto as Exhibit A as though fully incorporated herein. Plaintiff Rothman
11 entered into an Equinox Membership Agreement with Defendants on November 8, 2017
12 for access to the Equinox-branded Fitness Club. Prior to signing the Membership
13 Agreement, Plaintiff carefully reviewed its terms, including the refund guarantee, and
14 in reliance on the language that “the Club will remain legally liable to Buyer for a
15 refund” in the event Equinox is unable to provide members access to its facilities,
16 Plaintiff agreed to be bound by the terms of the Membership Agreement. Defendants
17 agreed to provide Plaintiff Rothman access to their Pasadena Equinox-branded Fitness
18 Club in exchange for a monthly membership due of \$169.00, charged to Plaintiff
19 Rothman’s credit card on 23rd day of each month. On or around March of 2018 Plaintiff
20 Rothman changed his membership to the Glendale, California, Equinox branded Fitness
21 Club, under the terms of the Pasadena Equinox branded Fitness Club.

22 16. Plaintiff Rothman remains an Equinox Member. On March 16, 2020,
23 Plaintiff Rothman was notified that he would be unable to use Defendants’ gym
24 facilities or use their fitness classes due to the ongoing COVID-19 crisis. Plaintiff
25 Rothman had already paid the March monthly membership dues at the time of the
26 closure. Defendants did not refund the portion of Plaintiff’s March monthly
27 membership dues.

28 17. Instead, on June 16, 2020, Defendants provided Plaintiff Rothman with a

1 gift card for the amount of \$84.19 that could be used at Defendants' businesses but may
 2 not be used for future membership dues. This gift card expires on November 19, 2020.
 3 On June 25, 2020, Plaintiff Rothman wrote to his Equinox Club and asked that his Gift
 4 Card of 84.19 be applied to the six weeks of Membership Dues that Defendant charged
 5 him on June 25 because he understood, based on the Membership Agreement, that the
 6 unused portion of his membership dues should be refunded to him and not unilaterally
 7 converted to a restricted gift card by Defendants.

8 18. Defendant Equinox Holdings, Inc. is a Delaware Corporation, with its
 9 headquarters at 31 Hudson Yards, New York, New York. The Company, through its
 10 subsidiaries, provides fitness services such as classes in yoga, studio cycling, cardio,
 11 martial arts, and also provides spa, and personal training services. Equinox Holdings,
 12 Inc. creates, controls, and dictates the Equinox Membership offerings of its Equinox-
 13 branded Fitness Clubs to ensure that each of its clubs offers similar membership terms,
 14 pricing, and experiences.

15 19. Plaintiff does not know the true names of defendants DOES 1 through 100
 16 inclusive, and therefore sues them by those fictitious names. Plaintiff is informed and
 17 believes, and on the basis of that information and belief, alleges, that each of the doe
 18 defendants are in some manner proximately responsible for the events and happenings
 19 alleged in this complaint and for Plaintiff's injuries, damages, restitution and equitable
 20 remedies prayed for herein.

21 **IV. SUBSTANTIVE ALLEGATIONS**

22 20. Founded in 1991, Equinox advertises itself as a high-end gym that offers
 23 personalized member experiences, including personal training sessions, curated
 24 nutrition and regeneration programs, private Pilates sessions, and signature group
 25 fitness classes. Equinox currently operates one hundred Equinox-branded Fitness
 26 Clubs, a hotel and spa, juice bars, and offers other wellness related services across the
 27 United States. Defendants distinguish themselves by offering through their Equinox
 28 Memberships premium products, services, and facilities, for which they charge a

1 correspondingly premium rate.

2 21. Based on information and belief, Defendant Equinox Holdings, Inc.
3 monitors, regulates, controls, and directs all of the Subsidiary Clubs' operations,
4 including membership offerings, monthly membership dues, refund policies, and gift
5 card offerings. Defendant Equinox Holdings, Inc. requires that its Subsidiary Clubs use
6 the same membership agreements and abide by the rules and regulations it periodically
7 establishes. This allows Defendants to offer memberships that allow individuals to
8 access to several Equinox-branded Fitness Clubs under a single membership agreement,
9 while receiving an identical experience at each of their clubs.

10 22. Access to Defendants' Equinox-branded Fitness Clubs are limited to
11 Equinox Members. An Equinox Membership entitles the member to Equinox-branded
12 Fitness Clubs, spa services, fitness classes, personal training, and other complimentary
13 benefits. Base memberships that only grant a consumer access to one club can cost up
14 to \$2,200 a year, plus a \$500 initiation fee. If a consumer wants to go to multiple
15 Equinox-branded fitness locations, an "all access" membership runs up to \$3,120 a year.
16 The Equinox Memberships are with the individual Subsidiary Clubs; based on
17 information and belief, Defendant Equinox Holdings, Inc. owns Plaintiff's and the
18 putative class's Equinox Membership accounts and corresponding personal
19 information.

20 23. To sign up for an Equinox Membership each putative class member must
21 agree to and sign an Equinox Membership Agreement. This Equinox Membership
22 Agreement generally requires a consumer to commit to a twelve-month membership
23 term, after which the Membership will continue month-to-month until it is terminated.
24 An Equinox Membership can only be canceled by a member with thirty days prior
25 written notice by either certified or registered mail or an in-person visit to the club at
26 which the member signed their membership agreement. "Such notice shall be
27 accompanied by the contract forms, membership cards and any other documents
28 evidencing membership previously delivered to the [putative class member]." These

1 onerous cancellation terms are intended to make it difficult for members to terminate
2 their Equinox Membership.

3 24. Under the terms of the Equinox Membership Agreement, members must
4 prepay their monthly membership dues, in order to use Defendants' Equinox-branded
5 Fitness Clubs. The Membership Agreement specifically states that "Members will not
6 be permitted to use any Club until all fees are current." Accordingly, the Equinox
7 Membership Agreement is primarily a contract for access to Defendants' fitness clubs,
8 and the fitness related services and facilities offered therein. Other benefits of the
9 Equinox Membership Agreement, "including, but not limited to spa sessions, personal
10 training sessions, Pilates sessions, complimentary gift cards or other promotional items"
11 are either "complimentary" or offered for an additional fee and have no monetary value
12 under the Membership Agreement.

13 25. Defendants recognize that their members are entitled to a refund of
14 membership dues if the Equinox-branded Fitness Clubs were to physically close. The
15 Equinox Membership Agreement notes this eventuality and specifically states:

16 In deciding whether to make payments on an installment basis, Buyer
17 should be aware that if the Club closes, although the Club will remain
18 legally liable to Buyer for a refund, Buyer may risk losing his or her money
if the Club is unable to meet its financial obligations to Members.

19 26. Plaintiff Rothman read and relied on the above representation prior to
20 agreeing to be bound by the Membership Agreement; likewise, Plaintiff Rothman relied
21 on the refund guarantee when making his decision to do business with Equinox.
22 Accordingly, through their Membership Agreements, Defendants warranted and
23 advertised that members would receive refunds if their Equinox-branded Fitness Clubs
24 closed.

25 27. At the beginning of this year, both the state and federal government
26 became concerned over the rapidly increasing number of COVID-19 cases. On March
27 4, 2020, California entered a state of emergency regarding the threat of COVID-19, and
28 the virus continued to spread throughout the State. This unprecedented pandemic

1 required the California to take quick action to preserve the public health and safety of
2 all residents, as well as to protect the healthcare delivery system.

3 28. On March 19, 2020, the Governor of the State of California, Gavin
4 Newsom, issued Executive Order N-33-20, pursuant to Government Code sections
5 8567, 8627, and 8665. This March 19, Order became to be known “Safer at Home, Stay
6 at Home” Order and required that “all individuals living in the State of California to
7 stay home or at their place of residence” except for critical infrastructure sectors. This
8 Safer at Home, Stay at Home Order required that all gyms and fitness facilities to close
9 until further notice. This Order remained in place until June of 2020.

10 29. Defendants closed their Equinox-branded Fitness Clubs on March 17,
11 2020, having provided its members less than twenty hours’ notice of the closure.
12 Unfortunately for Plaintiff and other putative Class members, they had already prepaid
13 their March membership dues. Accordingly, Plaintiff and thousands of the putative
14 Class members had prepaid Defendants for services that they would never be provided
15 and expected, based on the language in the Membership Agreement, that they would be
16 refunded the unused portion of their membership dues. Under the Equinox Membership
17 Agreement, Plaintiffs could not cancel their Membership to avoid paying for March
18 membership dues because the dues had to be prepaid and any cancelation required thirty
19 days’ notice.

20 30. Under the Equinox Membership Agreement, Plaintiff and the putative
21 Class members were entitled to a refund for any portion of their membership dues
22 during which the Equinox-branded Fitness Clubs were closed. Defendants did not
23 provide any monetary refund as they were required, and as was previously represented,
24 under the Equinox Membership Agreement.

25 31. Instead, Defendants waited until June 16, 2020 to issue any compensation
26 for the closure of their fitness clubs. Defendants, however, would only issue a gift card
27 for future goods and services instead of the promised refund. Worse yet, the gift cards
28 had a short expiration date, November 19, 2020. Given the continuing COVID-19

1 crisis, many consumers would be and on information and belief were unable, or
 2 unwilling, to use Defendants' goods or services within this expiration date.

3 32. A gift card, provided for consideration, and which has an expiration date,
 4 is a *per se* statutory violation of California Civil Code, section 1749.5.

5 33. This is not the only time that Defendants refused to provide a monetary
 6 refund for periods during which their Equinox-branded Fitness Clubs were closed due
 7 to COVID-19. Defendants were forced to close several of their California based
 8 Equinox-branded Fitness Clubs in July 2020. When these clubs closed, Defendants still
 9 did not provide any monetary refunds for their members' monthly membership dues.

10 34. Given Defendants' refusal to issue refunds, the continuing COVID-19
 11 pandemic, and that state and local governments continue to close gyms throughout the
 12 state, it is likely that injury to the class will repeat. Accordingly, both monetary reliefs
 13 to address past injury and injunctive relief and punitive damages to prevent future injury
 14 are sought by Plaintiff on behalf of the class.

15 **V. CLASS ACTION ALLEGATIONS**

16 35. Plaintiff brings this action as a class action pursuant to California Civil
 17 Procedure Code, section 382, and California Civil Code, section 1781, for the following
 18 Class of persons:

19 All members of Equinox-branded Fitness Clubs, located in California,
 20 who did not receive a refund of unused membership dues for any period
 21 during which Defendants' Equinox-branded Fitness Clubs were closed,
 22 from March 2020 to present.

23 Excluded from the Class are all legal entities, Defendants herein and any person, firm,
 24 trust, corporation, or other entity related to or affiliated with Defendants, as well as any
 25 judge, justice or judicial officer presiding over this matter and members of their
 26 immediate families and judicial staff.

27 36. Plaintiff reserves the right to amend the Class definition if further
 28 investigation and discovery indicates that the Class definition should be narrowed,
 expanded, or otherwise modified.

1 37. While the exact number of Class members is unknown to Plaintiff at this
2 time, and will be ascertained through appropriate discovery, Plaintiff is informed and
3 believes that there are tens of thousands of members in the proposed Class. The number
4 of individuals who comprise the Class is so numerous that joinder of all such persons is
5 impracticable and the disposition of their claims in a class action, rather than in
6 individual actions, will benefit both the parties and the courts.

7 38. Plaintiff's claims are typical of the claims of the other members of the
8 Class. All members of the Class have been and/or continue to be similarly affected by
9 Defendants' wrongful conduct as complained of herein, in violation of federal and state
10 law. Plaintiff is unaware of any interests that conflict with or are antagonistic to the
11 interests of the Class.

12 39. Plaintiff will fairly and adequately protect the Class members' interests
13 and have retained counsel competent and experienced in consumer class action lawsuits
14 and complex litigation. Plaintiff and their counsel have the necessary financial resources
15 to adequately and vigorously litigate this class action, and Plaintiff is aware of their
16 duties and responsibilities to the Class.

17 40. Defendants have acted with respect to the Class in a manner generally
18 applicable to each Class member. Common questions of law and fact exist as to all
19 Class members and predominate over any questions wholly affecting individual Class
20 members. There is a well-defined community of interest in the questions of law and
21 fact involved in the action, which affect all Class members. Among the questions of
22 law and fact common to the Class are, inter alia:

- 23 (a) Whether Defendants are required to provide a monetary refund for
24 any period during which Defendants' Equinox-branded Fitness
25 Clubs were closed due to COVID-19;
- 26 (b) Whether Defendants represented that they would provide monetary
27 refund for any period during which their Equinox-branded Fitness
28 Clubs were closed;

1 (c) Whether Defendant's failure to provide refunds constitutes unfair
2 method of competition and deceptive practice in violation of, *inter*
3 *alia*, California Civil Code §§ 1750 *et seq.*; including:

4 (i) Whether Defendants misrepresent that their Equinox
5 Membership has benefits which they do not have;

6 (ii) Whether Defendant represents that their Equinox
7 Memberships have certain characteristics or benefits
8 when they do not;

9 (iii) Whether Defendants advertises their Equinox
10 Membership with intent not to sell them as advertised;
11 and

12 (iv) Whether Defendant represents that their Equinox
13 Membership Agreement confers rights, remedies, or
14 obligations which it does not.

15 (e) Whether Defendants' business practices, alleged herein, constitutes
16 misleading and deceptive advertising under, *inter alia*, CAL. BUS. &
17 PROF. CODE § 17500.

18 (f) Whether Defendant's business practices, alleged herein, constitutes
19 "unlawful," "unfair," or "fraudulent" business acts or practices
20 under, *inter alia*, CAL. BUS. & PROF. CODE §§ 17200, including:

21 (i) Whether Defendants' failure to provide refunds under their
22 Equinox Membership Agreements constitutes "unlawful" or
23 "unfair" business practices by violating the public policies
24 set out in CAL. CIV. CODE §§ 1770 *et seq.*; CAL. BUS. & PROF.
25 CODE § 17500, and other California and federal statutes and
26 regulations;

27 (ii) Whether Defendants' provision of gift cards with expiration
28 dates violating the public policies set out in CAL. CIV. CODE

1 §§ 1749.5 *et seq.*;

2 (iii) Whether Defendants' failure to provide refunds under their
3 Equinox Membership Agreements is immoral, unethical,
4 oppressive, unscrupulous or substantially injurious to
5 consumers;

6 (iv) Whether Defendants' failure to provide refunds under their
7 Equinox Membership Agreements constitutes an "unfair"
8 business practice because the consumer injury outweighs any
9 countervailing benefits to consumers or competition, and
10 because such injury could not be reasonably avoided by
11 consumers; and

12 (v) Whether Defendants' failure to provide refunds under their
13 Equinox Membership Agreements constitutes a "fraudulent"
14 business practice because members of the public are likely to
15 be deceived;

16 (g) The nature and extent of remedies, including restitution, damages,
17 and injunctive relief to which Plaintiff and the Class are entitled; and

18 (h) Whether Plaintiff and the Class should be awarded attorneys' fees
19 and the costs of suit for Defendants' violations of the UCL, FAL,
20 and CLRA.

21 41. A class action is superior to all other available methods for the fair and
22 efficient adjudication of this controversy since joinder of all members is impracticable.
23 Furthermore, as the damages suffered by individual Class members may be relatively
24 small, the expense and burden of individual litigation make it virtually impossible for
25 Class members to individually redress the wrongs done to them. There will be no
26 difficulty in managing this action as a class action.

27 42. Defendants have acted on grounds generally applicable to the entire Class
28 with respect to the matters complained of herein, thereby making appropriate the relief

sought herein with respect to the Class as a whole.

FIRST COUNT

Violation of Cal. Bus. & Prof. Code § 17500 - Untrue, Misleading and Deceptive Advertising (Individually and on Behalf of the Class)

43. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

44. At all material times, Defendants engaged in a scheme of offering their Equinox Membership for sale to Plaintiff, and other members of the Class by way of, *inter alia*, the Equinox Membership Agreement, commercial marketing, and advertising, internet content, and other promotional materials.

45. These materials, advertisements, and other inducements misrepresented and/or omitted the true benefits of Defendants' Equinox Membership as alleged herein. Said materials, advertisements, and other inducements were controlled by and emanated from Defendant's Equinox-branded Fitness Clubs, located the State of California.

46. Defendants' advertisements and other inducements come within the definition of advertising as contained in Cal. Bus. Prof. Code § 17500, in that such promotional materials were intended as inducements to purchase Defendants' Equinox Membership and are statements disseminated by Defendants, who are located in California, to Plaintiff and other members of the Class.

47. A reasonable consumer would be misled by Defendants' Equinox Membership Agreement. Defendants state in the Membership Agreement "that if the Club closes... the Club will remain legally liable to Buyer for a refund," when Defendants do not provide such refunds.

48. Plaintiff, a reasonable consumer, read and understood the language of the Membership Agreement to mean that he would be refunded his membership dues if Defendants could not provide access to the clubs, and in reliance thereon, agreed to pay for a membership to Equinox.

49. Defendants knew, or in the exercise of reasonable care should have known,

1 that the statements regarding their Membership Agreement's refund policy were false,
2 misleading and/or deceptive.

3 50. Consumers, including Plaintiff and members of the Class, necessarily and
4 reasonably relied on Defendants' statements regarding the Membership Agreement's
5 refund policy. Consumers, including Plaintiff and members of the Class, were among
6 the intended targets of such representations.

7 51. The above acts of Defendants, in disseminating said misleading and
8 deceptive statements throughout the State of California, including Plaintiff and
9 members of the Class, were and are likely to deceive reasonable consumers by
10 obfuscating the true nature of their Membership Agreement's refund policy, and thus
11 were violations of Cal. Bus. Prof. Code § 17500.

12 52. Plaintiff and Class members were harmed and suffered injury as a result of
13 Defendants' violations of the Cal. Bus. Prof. Code § 17500. Defendants have been
14 unjustly enriched at the expense of Plaintiff and the members of the Class.

15 53. Accordingly, Plaintiff and members of the Class seek injunctive relief
16 prohibiting Defendants from continuing these wrongful practices, and such other
17 equitable relief, including full restitution of all improper revenues derived from
18 Defendants' wrongful conduct to the fullest extent permitted by law.

19 **SECOND COUNT**

20 **Violation of Cal. Civ. Code §§ 1750, *et seq.*-** 21 **Misrepresentation of a Product's standard, quality,** 22 **sponsorship, approval, and/or certification** **(Individually and on Behalf of the Class)**

23 54. Plaintiff hereby incorporates by reference the allegations contained in the
24 preceding paragraphs of this Complaint.

25 55. Defendants' Equinox Membership Agreements are a "service" as defined
26 by California Civil Code §1761(a).

27 56. Defendants are a "person" as defined by California Civil Code §1761(c).

28 57. Plaintiff and Class members are "consumers" within the meaning of

1 California Civil Code §1761(d) because they purchased their Equinox Membership for
2 personal, family or household use.

3 58. The sale of Defendants' Equinox Membership to Plaintiff and Class
4 members is a "transaction" as defined by California Civil Code §1761(e).

5 59. By stating in their Membership Agreement "that if the Club closes... the
6 Club will remain legally liable to Buyer for a refund," when Defendants do not provide
7 such refunds, Defendants violated California Civil Code §§ 1770(a)(4), (5), (9) and
8 (14), as they misrepresented the characteristics, benefits, rights, obligations, and
9 remedies conferred by Defendants' Equinox Membership Agreement. Prior to entering
10 into an agreement to pay Defendants for an Equinox membership, Plaintiff Rothman
11 read and relied on the language in the Membership Agreement, including the language
12 indicating that the club would remain liable to refund him his unused membership dues
13 in the event the club closed, and agreed to be bound by the Membership Agreement.

14 60. As a result of Defendants' conduct, Plaintiff and Class members were
15 harmed and suffered actual damages as a result of Defendant's unfair competition and
16 deceptive acts and practices. Had Defendants disclosed the true nature and/or not falsely
17 represented its Equinox Membership Agreement's refund policy, Plaintiff and the Class
18 would not have been misled into purchasing Defendants' Equinox Membership, or,
19 alternatively, would have paid significantly less for them.

20 61. Plaintiff, on behalf of himself and all other similarly situated California
21 consumers, and as appropriate, on behalf of the general public of the state of California,
22 seeks injunctive relief prohibiting Defendants continuing these unlawful practices
23 pursuant to California Civil Code § 1782(a)(2).

24 62. Plaintiff provided Defendants with notice of its alleged violations of the
25 CLRA pursuant to California Civil Code § 1782(a) *via* certified mail, demanding that
26 Defendants correct such violations.

27 63. Because Plaintiff sent to Defendant a CLRA letter detailing the claims
28 alleged above, Defendants were noticed of their violations of law and their deceptive,

1 knowing, and willful injurious conduct with respect to unlawfully retaining membership
 2 dues that it had no legal entitlement. Defendant's failure to respond to Plaintiff's CLRA
 3 letter within 30 days, and their failure to remedy the issues identified, indicates
 4 Defendant's disregard of Plaintiff's claim that advertising of the Equinox Membership
 5 was fraudulent, unlawful, or misleading, and that the Membership was sold with full
 6 knowledge or reckless disregard that the challenged claims were fraudulent, unlawful,
 7 and misleading. Further still the action of taking and retaining members due rather than
 8 issuing a monetary refund demonstrates that Defendants acts, and omissions were
 9 fraudulent, unlawful, misleading and unconscionable. Accordingly, Defendant's failure
 10 to respond demonstrates their willful Plaintiff now seeks all available damages under
 11 the CLRA for all violations complained of herein, including, but not limited to, statutory
 12 damages, punitive damages, attorney's fees and cost and any other relief that the Court
 13 deems proper.

14 **THIRD COUNT**

15 **Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.* -** 16 **Unlawful Business Acts and Practices** 17 **(Individually and on Behalf of the Class)**

18 64. Plaintiff hereby incorporates by reference the allegations contained in the
 19 preceding paragraphs of this Complaint.

20 65. The California Civil Code, section 1770(a)(4), (5), (9) and (14), prohibits
 21 misrepresentation of the characteristics, benefits, rights, obligations, and remedies
 22 conferred by Defendants' Equinox Membership Agreement, as noted in above.

23 66. Similarly, California Business & Professions Code, section 17500,
 24 prohibits any false or misleading advertisement that would deceive a reasonable
 25 consumer.

26 67. By stating in their Equinox Membership Agreement "that if the Club
 27 closes... the Club will remain legally liable to Buyer for a refund," when Defendants
 28 do not provide such refunds, Defendants violated California Civil Code §§ 1770(a)(4),
 (5), (9) and (14) and California Business & Professions Code, section 17500, as it

1 misrepresented the characteristics, benefits, rights, obligations, and remedies conferred
 2 by Defendants' Equinox Membership Agreement. Plaintiff read and relied on the terms
 3 of the Membership Agreement before he agreed to pay for an Equinox Membership
 4 according to the terms in the Membership Agreement.

5 68. Civil Code, section 1749.5, prohibits the inclusion of expiration dates on
 6 gift cards provided in California.

7 69. Defendants issued a gift card for future goods and services instead of a
 8 monetary refund. Accordingly, this gift card was provided for consideration. These
 9 gift cards had a short expiration date, November 19, 2020. Given the continuing
 10 COVID-19 crisis, many consumers would be unable, or unwilling, to use Defendants
 11 goods or services within this expiration period. Accordingly, the gift card provided no
 12 real relief and is a violation of section 1749.5.

13 70. The business practices alleged above are unlawful under Business and
 14 Professions Code §§ 17500, *et seq.*; California Civil Code §§ 1749.5 and 1770(a)(4),
 15 (5), (9) and (14), each of which forbids the untrue, fraudulent, deceptive, and/or
 16 misleading marketing, and advertisement of consumer services and the expiration of
 17 gift cards purchased for consideration.

18 71. As a result of Defendants' above unlawful, unfair and fraudulent acts and
 19 practices, Plaintiff, on behalf of himself and all others similarly situated, and as
 20 appropriate, on behalf of the general public, seeks injunctive relief prohibiting
 21 Defendant from continuing these wrongful practices, and such other equitable relief,
 22 including full restitution of all improper revenues and ill-gotten profits derived from
 23 Defendant's wrongful conduct to the fullest extent permitted by law.

24 **FOURTH COUNT**

25 **Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.* -** 26 **Unfair Business Acts and Practices** 27 **(Individually and on Behalf of the Class)**

28 72. Plaintiff hereby incorporates by reference the allegations contained in the
 preceding paragraphs of this Complaint.

1 73. Plaintiff and other members of the Class who did not receive a refund of
2 membership dues when their respective Equinox-branded Fitness Clubs were closed
3 due to COVID-19 were injured by virtue of Defendants failure to honor their Equinox
4 Membership Agreement, which required such refunds. Plaintiff read and relied on the
5 terms of the Membership Agreement before he agreed to pay for an Equinox
6 Membership according to the terms in the Membership Agreement. Had Plaintiff and
7 members of the Class known that Defendants would failure to honor their contract and
8 misrepresented the benefits, rights, and obligations of the Equinox Membership
9 Agreement, they would not have purchased said membership or would have paid less.

10 74. Similarly, the gift cards provide have an expiration date, which may such
11 gift cards unlikely to be used and provide Class members any meaningful compensation
12 for the harm visited upon them.

13 75. Defendants' actions alleged herein violate the laws and public policies of
14 California and the federal government, as set out in preceding paragraphs of this
15 Complaint.

16 76. There is no benefit to consumers or competition by allowing Defendants
17 to deceptively market and advertise the Equinox Membership in violation of the law or
18 allowing Defendants failure to honor is contractual agreements.

19 77. The gravity of the harm suffered by Plaintiff and Class members, who paid
20 for services they did not receive, outweighs any legitimate justification, motive or
21 reason for marketing, advertising, and performing the Equinox Membership in a
22 deceptive and misleading manner. Accordingly, Defendants' actions are immoral,
23 unethical, unscrupulous and offend the established public policies as set out in state and
24 federal law and is substantially injurious to Plaintiff and members of the Class.

25 78. The above acts of Defendants, in disseminating said misleading and
26 deceptive statements, and failing to honor their Equinox Membership Agreements,
27 throughout the State of California were and are likely to deceive reasonable consumers.

28 79. Plaintiff and members of the Class were unlikely to discover Defendant's

1 misrepresentations, as Plaintiff and members of the Class were not aware of that
 2 Defendants would not honor their Equinox Membership Agreements and could not
 3 avoid their injury as Plaintiff and members of the Class could not cancel their
 4 membership before suffering an injury.

5 80. As a result of Defendants' above unlawful, unfair and fraudulent acts and
 6 practices, Plaintiff, on behalf of himself and all others similarly situated, and as
 7 appropriate, on behalf of the general public, seek injunctive relief prohibiting
 8 Defendants from continuing these wrongful practices, and such other equitable relief,
 9 including full restitution of all improper revenues and ill-gotten profits derived from
 10 Defendants' wrongful conduct to the fullest extent permitted by law.

11 **FIFTH COUNT**

12 **Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.* -** 13 **Fraudulent Business Acts and Practices** 14 **(Individually and on Behalf of the Class)**

15 81. Plaintiff hereby incorporates by reference the allegations contained in the
 16 preceding paragraphs of this Complaint.

17 82. Such acts of Defendant as described above constitute a fraudulent business
 18 practice under Cal. Bus. & Prof. Code §§ 17200, *et seq.*

19 83. A reasonable consumer would be misled by Defendants' Equinox
 20 Membership Agreement. Defendants state in its Membership Agreement "that if the
 21 Club closes... the Club will remain legally liable to Buyer for a refund," when
 22 Defendants do not provide such refunds.

23 84. Defendants knew, or in the exercise of reasonable care should have known,
 24 that the statements regarding their Membership Agreement's refund policy were false,
 25 misleading and/or deceptive.

26 85. Plaintiff read and relied on the terms of the Membership Agreement before
 27 he agreed to pay for an Equinox Membership according to the terms, including the
 28 refund guarantee, in the Membership Agreement. Consumers, including Plaintiff and
 members of the Class, necessarily and reasonably relied on Defendants' statements

1 regarding the Membership Agreement's refund policy. Consumers, including Plaintiff
2 and members of the Class, were among the intended targets of such representations.

3 86. As a result of Defendants' above unlawful, unfair, and fraudulent acts and
4 practices, Plaintiff, on behalf of himself and all others similarly situated, and as
5 appropriate, on behalf of the general public, seeks injunctive relief prohibiting
6 Defendants from continuing these wrongful practices, and such other equitable relief,
7 including full restitution of all improper revenues and ill-gotten profits derived from
8 Defendant's wrongful conduct to the fullest extent permitted by law.

9 **VI. PRAY FOR RELIEF**

10 WHEREFORE, Plaintiff and the Class pray for relief and judgment as follows:

11 A. For an order declaring that this action is properly maintained as a class
12 action and appointing Plaintiff as representative for the Class, and appointing Plaintiff's
13 counsel as Class counsel;

14 B. For an order enjoining Defendant from continuing to engage in the
15 unlawful and unfair business acts and practices as alleged herein;

16 C. For an award of restitution and damages, including punitive damages,
17 resulting from Defendant's unlawful advertising;

18 D. For an order awarding attorneys' fees and costs of suit, including expert
19 witness fees, as permitted by law; and

20 E. Such other and further relief as this Court may deem just and proper.
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JURY TRIAL

Plaintiff demands a trial by jury for all of the claims asserted in this Complaint so triable.

DATED: January 22, 2021

Respectfully submitted,

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