

**IN THE UNITED STATES DISTRICT COURT
FOR NORTHERN ILLINOIS
EASTERN DIVISION**

JUAN DORADO,) CASE: 12cv137
MICHAEL MARKZON,)
PLAINTIFFS,) JUDGE
v.) MAG. JUDGE
BALLY TOTAL FITNESS HOLDING CORP.,)
L.A. FITNESS INTERNATIONAL, LLC ("LAF"),)
DEFENDANTS.)

CLASS ACTION COMPLAINT
COMPLAINT FOR MONETARY DAMAGES & EQUITABLE RELIEF

NATURE OF COMPLAINT

This is a 3-count complaint alleging violations of 18 U.S.C. § 1346 ([Federal] Honest Services Act); 815 ILCS 505/ [Illinois] Consumer Fraud and Deceptive Business Practices Act; and Common Law Breach of Contract. Plaintiffs bring this action for themselves as well as by, and on behalf of, similarly situated persons holding Bally Total Fitness Holding Corporation (BALLY) life-time memberships. Bally sold many of its life-time memberships and sold many of its clubs to Defendant LA Fitness. Yet, there are geographic areas in the U.S. that do not have LA Fitness facilities. As of December 1, 2011, Plaintiff Markzon is not able to "work-out" at the Bally facility at which he worked-out on November 30, 2011 or prior, because Bally sold his life-time membership to LA Fitness (LAF), and that LA Fitness will not honor the membership. Bally clubs that are in full operation will no longer honor the membership contract. For other potential plaintiffs throughout the U.S., there are no LA Fitness facilities nearby at which they can work out. For others, Bally did not assign their contracts to LA Fitness, but did sell all of the Ballys in their geographic area to LA Fitness. Plaintiff Dorado who lives in the Chicago area (where all clubs were sold and operate as LA Fitness) was told by Bally that he can work-out but that he must do so in a Saint Louis, Missouri Bally club.

In other cases, there is a LA Fitness facility nearby; but that L.A. fitness will not allow access to LA Fitness by former Bally members unless they buy a new membership (in spite of the assignment of the respective contract).

JURISDICTION & VENUE

Jurisdiction of this court arises under 28 U.S.C. §§1331, 1332, 1337, 1343(a); 18 U.S.C. § 1346. Pendent jurisdiction is had by 28 U.S.C. § 1367.

This Court has personal jurisdiction over both Defendants because both conduct business in this District.

This Court has subject matter jurisdiction over this action and Defendants pursuant to 28 U.S.C. § 1331 because this action arises under federal statutes, namely 18 U.S.C. § 1346; and pursuant to 28 U.S.C. § 1332(d) because the amount in controversy exceeds \$5,000,000.

Venue is proper in this District because all conduct business in this District.

PARTIES

- (1) Plaintiff Juan Dorado is a legal adult and a resident of DuPage County, Illinois. He is the owner of 4 Bally's lifetime memberships Plaintiff was harmed by Defendants in Glendale Heights, Illinois.
- (2) Plaintiff Michael Markzon is a legal adult and a resident of Cook County, Illinois. He is the owner of 1 Bally life-time membership Plaintiff was harmed by Defendants in Cook County, Illinois.
- (3) Defendant BALLY TOTAL FITNESS HOLDING CORPORATION is a national health club operator. Until December 1, 2011 it owned the life-time memberships belonging to the Plaintiffs. Defendant is a citizen of the State of Illinois with its principal place of business at 8700 W Bryn Mawr Ave # 1 Chicago, IL 60631-3507.

(4) Defendant L.A. FITNESS INTERNATIONAL, LLC is a national health club operator. Defendant is a citizen of the State of California with its principal place of business at PO Box 54170, Irvine, CA 92619. Defendant does business in Illinois and has sufficient contacts with Illinois.

FACTS

- (1) Plaintiffs purchased Bally life-time memberships.
- (2) In 2011, Bally sold rights to many of its members and their life-time memberships to Defendant LA Fitness (LAF); as well as sold certain Bally clubs to LAF. Yet, there are geographic areas in the U.S. that do not have LA Fitness facilities.
- (3) As of December 1, 2011, there are no longer Bally-owned clubs in the Chicago area, all having been sold to LAF.
- (4) In the New York City area, Bally sold to LA Fitness, some of its members (along with their lifetime memberships); however, there are no LA Fitness facilities in New York City.
- (5) In Seattle, Bally sold to LA Fitness, some of its members (along with their life-time memberships); however, LA Fitness facilities in Seattle will not honor the membership if it was purchased in Texas.
- (6) For other potential plaintiffs throughout the U.S., there are no LA Fitness facilities nearby at which they can work out. For others, Bally did not assign their contracts to LA Fitness, but did sell all of the Ballys in their geographic area to LA Fitness.

(7) Plaintiff Dorado resides in the Chicago area with his family. He owns four Bally life-time memberships. One for himself and three for family members.

(8) Bally did not sell the four memberships to LA Fitness; although, it did sell all of the Chicago area (including Du Page County) clubs to LA Fitness.

(9) As of December 1, 2011, Bally asserts that Plaintiff Dorado and his family members are still Bally members.

(10) LA Fitness is not honoring any of Dorado life-time memberships; although, it purchased all of the Chicago area Bally clubs. Plaintiff Dorado has been told that he and his family can work-out as long as they do so at a Bally facility in Saint Louis, Missouri. Once again, Mr. Dorado lives in the Chicago area, approximately 5 hours away.

(11) In other cases, there is a LA Fitness facility nearby (a newly acquired Ballys); but that L.A. fitness will not allow access to LA Fitness by former Bally members unless they buy a new membership (in spite of the assignment of the respective contract).

(12) Plaintiff Michael Markzon lives in Chicago and owns a Bally life-time membership. He has worked-out at the same Bally facility in Chicago for the past approximately 11 years. As of December 1, 2011, this facility is now a LA Fitness facility.

(13) Bally states that the membership was transferred to LA Fitness.

(14) Based upon reasonable information and belief, LA Fitness is not honoring the membership because it was purchased in Kansas.

CLASS ACTION ALLEGATIONS

- (1) This is a class action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of a Class of all persons who own or did own a Bally life-time membership.
- (2) Excluded from the Class are the Court and any of the Court's family members, Defendants, and their officers, directors, employees, affiliates, legal representatives, predecessors, successors and assigns, and any entity in which any of them have a controlling interest.
- (3) The members of the Class are so numerous that joinder of all members is impracticable.
- (4) Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. The questions of law and fact common to the Class include whether Defendants violated the same federal laws.
- (5) Plaintiffs' claims are typical of the claims of other Class members, as all members of the Class were similarly affected by Defendants' wrongful conduct in violation of federal law as complained of herein.
- (6) Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel that is competent and experienced in class action litigation.
- (7) Plaintiffs have no interest that is in conflict with, or otherwise antagonistic to the interests of the other Class members.

(8) A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in management of this action as a class

COUNT I: Violations of 18 U.S.C. § 1346
(Federal Honest Services Act)

(1) Plaintiffs repeat, re-allege and incorporates by reference, the allegations in all preceding paragraphs of this Complaint, especially the section entitled "FACTS," with the same force and effect as if herein set forth.

(2) Defendants did use interstate means of communication to effect a "scheme or artifice to defraud ... another of the intangible right of honest services."

(3) LAF as the corporate purchaser of the Bally's contracts, knew that by transferring the location where the service is to be provided far enough away that the person who paid for the service cannot reasonably use the service is the equivalent of a wrongful (civil) transfer of money to the company selling the contract.

(4) Plaintiffs were harmed to include loss of opportunities to exercise; loss of time attempting to resolve matters; and loss of monies.

(5) The conduct of Defendants was the proximate cause and substantial factor in causing Plaintiff's harm.

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Determine that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;
- B. Award compensatory damages, including statutory damages where available, in favor of Plaintiffs and the other members of the Class against Defendants for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- C. Permanently restrain Defendants, and its officers, agents, servants, employees and attorneys, from not honoring Ballys lifetime memberships.
- D. Specific performance (allowing Plaintiffs and class members to exercise at a Bally or LAF facility).
- E. Award Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- F. Grant Plaintiffs such further relief as the Court deems appropriate.

COUNT II: 815 ILCS 505/ [Illinois] Consumer Fraud and Deceptive Business Practices Act

(1) Plaintiffs repeat, re-allege and incorporates by reference, the allegations in all preceding paragraphs of this Complaint, especially the

section entitled "FACTS," with the same force and effect as if herein set forth.

(2) Both of the Defendants engaged in deceptive acts.

(a). Defendant LAF bought memberships and contracts that it knew it would not service or honor. Defendant LAF intended and continues to intend to cause former Bally members to purchase a new life-time membership from LA Fitness.

(b). Defendant Bally knew and intended to breach life-time contracts with members by selling the clubs at which the members "worked-out" or by "locking-out" members via selling their memberships to LA Fitness.

(3) Defendants intended that the Plaintiffs rely on the deception.

(4) The deception occurred in the course of conduct involving trade or commerce.

(5) There are actual damages to the Plaintiffs proximately caused by the deception of both defendants.

(6) Plaintiffs were harmed to include loss of opportunities to exercise; and loss of monies.

(7) The conduct of Defendants was the proximate cause and substantial factor in causing Plaintiff's harm.

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Determine that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;

- B. Award compensatory damages, including statutory damages where available, in favor of Plaintiffs and the other members of the Class against Defendants for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- C. Permanently restrain Defendants, and its officers, agents, servants, employees and attorneys, from not honoring Ballys lifetime memberships.
- D. Specific performance (allowing Plaintiffs and class members to exercise at a Bally or LAF facility).
- E. Award Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- F. Grant Plaintiffs such further relief as the Court deems appropriate.

COUNT III: BREACH OF CONTRACT (Illinois common law)

- (1) Plaintiff repeats, re-alleges and incorporates by reference, the allegations in all preceding paragraphs of this Complaint, especially the section entitled "FACTS," with the same force and effect as if herein set forth.
- (2) There are valid contracts between Plaintiffs and Defendant Bally.
- (3) There are valid contracts between Plaintiffs and Defendant LAF.
- (4) Defendant Bally contractually promised a life-time membership provided Plaintiffs pay their monthly dues.
- (5) Plaintiffs have paid their dues.

- (6) Defendant Bally breached the contract when it locked certain Plaintiffs out of its clubs on December 1, 2011.
- (7) Defendant LA Fitness was assigned contracts by Bally.
- (8) Defendant LA Fitness is breaching its duty by not honoring those contracts.
- (9) Plaintiffs were harmed to include loss of opportunities to exercise; time and hassle to address the debacle; and loss of monies.
- (10) The conduct of Defendants was the proximate cause and substantial factor in causing Plaintiff's harm.

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Determine that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;
- B. Award compensatory damages, including statutory damages where available, in favor of Plaintiffs and the other members of the Class against Defendants for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- C. Permanently restrain Defendants, and its officers, agents, servants, employees and attorneys, from not honoring Bally's lifetime memberships.
- D. Specific performance (allowing Plaintiffs and class members to exercise at a Bally or LAF facility).
- E. Award Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

F. Grant Plaintiffs such further relief as the Court deems appropriate.

*Plaintiffs hereby make a Jury Demand.

Respectfully Submitted, January 8, 2012

s\Christopher Cooper, ESQ., PHD., Counsel for Plaintiffs
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Plaintiff, by his signature below, swears that he has read the foregoing Complaint; has understood it to the best of his ability. He states that he is not a lawyer. He agrees, under penalty of law that based on his understanding of the Complaint, the contents are truthful, accurate and are based on his best knowledge and recollection of the events described.

Plaintiff's Signature: s\Juan Dorado, 01/08/11

Plaintiff's Signature: s\Michael Markzon, 01/08/11