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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

MICHAEL FULLER,
a Portland consumer,

Case No. 3:14-cv-252

Plaintiff,

**UNFAIR TRADE PRACTICES
COMPLAINT**

v.

28 USC § 2201(a)
ORS 646.636
ORS 646.638

LA FITNESS aka
Fitness International, LLC, a
Delaware company,

Demand for Jury Trial

Defendant.

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UNFAIR TRADE PRACTICES COMPLAINT - Page 1

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1.

JURISDICTION AND THE PARTIES

This Honorable Court has jurisdiction over this civil action pursuant to 28 USC § 1332 because true diversity of citizenship exists between the Parties and the amount in controversy exceeds \$75,000.

2.

This is an action for actual or statutory damages, punitive damages, declaratory and injunctive relief, attorney fees and costs brought by Michael Fuller (Mr. Fuller) against Fitness International, LLC (LA Fitness).

3.

From October 7, 2013, to the date of this Complaint, Mr. Fuller has lived at his home in Portland and has been a “person” as defined at ORS 646.605(4).

4.

From October 7, 2013, to the date of this Complaint, LA Fitness has been a Delaware company that has operated a gym at 1400 NW Northrup Street in Portland.

5.

From October 7, 2013, to the date of this Complaint, LA Fitness has regularly operated its Portland gym and has been a “person” as defined at ORS 646.605(4).

6.

Venue is proper in this district because Mr. Fuller’s billing information was provided here, Mr. Fuller lives here and LA Fitness operates its gym here.

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7.

LA FITNESS AGREES TO COLLECT ITS DUES AUTOMATICALLY

On or around October 7, 2013, Mr. Fuller gave LA Fitness his billing information and agreed to pay its \$29.99 monthly membership dues.

8.

LA Fitness agreed to automatically collect its monthly dues from Mr. Fuller via electronic funds transfer.

9.

The billing information Mr. Fuller gave LA Fitness in October was completely accurate and current.

10.

Mr. Fuller gave LA Fitness his billing information for an American Express card, with an account number ending in 6289, and with an expiration date of 10/16.

11.

From October 7, 2013, to the date of this Complaint, the American Express card has always been active.

12.

From October 7, 2013, to the date of this Complaint, the American Express card always had available credit to pay LA Fitness's monthly dues.

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13.

MONTH #1

On October 7, 2013, LA Fitness successfully accessed the billing information Mr. Fuller provided it and charged him \$59.98 for its first and last month's dues.

14.

MONTH #2

On November 7, 2013, LA Fitness failed to automatically collect its dues from Mr. Fuller as it had agreed.

15.

Instead, LA Fitness harassed Mr. Fuller repeatedly in the morning on his work phone.

16.

LA Fitness's collectors blitzed Mr. Fuller's work phone, using multiple agents from across the country to call him simultaneously.

17.

When LA Fitness called, Mr. Fuller confirmed his American Express billing information, which matched the information LA Fitness already had on file.

18.

On or around November 8, 2013, LA Fitness successfully accessed the billing information Mr. Fuller had originally provided it and collected its \$29.99 dues.

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19.

MONTH #3

The next month, on December 7, 2013, LA Fitness again failed to automatically collect its dues from Mr. Fuller.

20.

Again, LA Fitness harassed Mr. Fuller repeatedly in the morning on his work phone.

21.

Again, Mr. Fuller confirmed his American Express billing information, which again matched the information LA Fitness already had on file.

22.

On December 10, 2013, LA Fitness successfully accessed the billing information Mr. Fuller originally provided it and collected its \$29.99 dues.

23.

LA Fitness would not give Mr. Fuller the reason why it failed to access his American Express card through electronic funds transfer on December 7.

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24.

MONTH #4

For the third month in a row, in January 2014, LA Fitness harassed Mr. Fuller repeatedly in the morning on his work phone.

25.

Mr. Fuller again confirmed his American Express billing information.

26.

As in November and December 2013, Mr. Fuller's confirmed billing information matched the information LA Fitness already had on file.

27.

Mr. Fuller explained his frustration to LA Fitness and asked it to stop needlessly harassing him each month.

28.

On January 10, 2014, LA Fitness successfully accessed the billing information Mr. Fuller originally provided it and collected its \$29.99 dues, and an additional \$5.00 fee.

29.

Mr. Fuller protested the additional fee and replied to an email LA Fitness sent him, asking it to explain why it was not automatically accessing his American Express billing information as it had previously agreed to.

30.

LA Fitness refused to answer Mr. Fuller's email and refunded the fees it collected.

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31.

MONTH #5

For the fourth month in a row, in February 2014, LA Fitness again harassed Mr. Fuller repeatedly in the morning on his work phone.

32.

As in November, December, and January, Mr. Fuller confirmed his American Express billing information, and it matched the information LA Fitness already had on file.

33.

On February 12, 2014, LA Fitness successfully accessed the billing information Mr. Fuller provided it and collected its \$29.99 dues, plus another \$5.00 fee.

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34.

LA FITNESS CHOSE TO 'PLAY THE ODDS'

The fees charged by LA Fitness were unfair because its failure to timely access Mr. Fuller's billing information via electronic funds transfer was its own choice.

35.

The fees charged by LA Fitness were unfair because the billing information originally provided by Mr. Fuller on or around October 7, 2013, always turned out to be accurate and current.

36.

The fees charged by LA Fitness were unfair because it continued to charge the fees even after it learned the fees were not authorized.

37.

On various occasions from November 2013 to February 2014, Mr. Fuller tried to resolve this matter without the need for a lawsuit.

38.

However, LA Fitness's collectors continue to blitz Mr. Fuller's work phone each month and charge him unfair fees.

39.

Having no other choice, Mr. Fuller must now prosecute LA Fitness to make things right.

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40.

REQUEST FOR COURT ORDER

LA Fitness continues to charge Mr. Fuller unfair fees and will not stop harassing him on his work phone.

41.

Mr. Fuller respectfully requests that this Honorable Court issue an order recognizing that LA Fitness was not authorized to charge Mr. Fuller its fees.

42.

Further, Mr. Fuller respectfully requests that this Honorable Court issue an order prohibiting LA Fitness from harassing him on his work phone in the future.

43.

FAIR COMPENSATION

As a direct result of LA Fitness's unfair trade practices as alleged above, Mr. Fuller has suffered actual damages, including economic loss (periodic loss of use of funds collected to pay unauthorized fees), time distracted while at work, expenses, and severe and ongoing frustration.

44.

LA Fitness's repeated morning calls to Mr. Fuller's work phone are inappropriate and constitute harassment.

45.

Mr. Fuller requests fair and just compensation from LA Fitness.

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46.

PUNITIVE DAMAGES

Mr. Fuller requests LA Fitness pay punitive damages.

47.

LA Fitness chose to ignore its repeated billing failures, hoping to profit on a large scale by playing the odds that no consumer would take the time to file a formal complaint.

48.

LA Fitness's choice to secretly profit on unauthorized fees stood to give it an unfair advantage over other gyms that choose to do business honestly.

49.

Further, LA Fitness's repeated harassment and unauthorized fees constitute a pattern of unfair practices, and violate the standards of business practices deemed acceptable in Mr. Fuller's community.

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50.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

(Unfair Trade Practices)

(ORS 646.638)

Mr. Fuller re-alleges the above paragraphs by reference.

51.

LA Fitness injured Mr. Fuller through its willful and malicious use of unfair trade practices as detailed above, specifically violating 646.608(1)(k) and (u).

52.

As a result of LA Fitness's willful and malicious use of unfair trade practices, Mr. Fuller suffered ascertainable economic loss (periodic loss of use of funds collected to pay unauthorized fees), expenses and emotional harm, and is entitled actual or statutory damages, punitive damages, and reasonable attorney fees and costs pursuant to ORS 646.638.

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53.

SECOND CLAIM FOR RELIEF

(Declaratory Relief)

Mr. Fuller re-alleges the above paragraphs by reference.

54.

Pursuant to ORS 646.636 and 28 USC § 2201(a), Mr. Fuller is entitled to and so requests an order and judgment recognizing that LA Fitness was not authorized to charge Mr. Fuller its fees.

55.

THIRD CLAIM FOR RELIEF

(Injunctive Relief)

Mr. Fuller re-alleges the above paragraphs by reference.

56.

Pursuant to ORS 646.636, Mr. Fuller is entitled to and so requests an order prohibiting LA Fitness from harassing him on his work phone in the future.

57.

DEMAND FOR JURY TRIAL.

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WHEREFORE, Mr. Fuller requests order and judgment against LA Fitness as follows:

- A. For a declaratory order and judgment pursuant to ORS 646.636 and 28 USC § 2201(a) as requested in paragraph 54;
- B. For an order providing injunctive relief pursuant to ORS 646.636 as requested in paragraph 56;
- C. For judgment awarding Mr. Fuller actual or statutory damages;
- D. For judgment awarding Mr. Fuller punitive damages;
- E. For judgment awarding Mr. Fuller attorney fees and costs; and
- F. For such other and further relief as this Honorable Court may deem just and proper.

DATED: February 14, 2014

s/ David Johnson
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