

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

TOWN SPORTS INTERNATIONAL  
HOLDINGS, INC.,

*Plaintiff,*

-against-

PEOPLE OF THE STATE OF NEW YORK, by  
LETITIA JAMES, Attorney General of the State  
of New York, and TOWN SPORTS  
INTERNATIONAL, LLC,

*Defendants.*

Index No. /2021

Date Filed: 6/10/2021

**SUMMONS**

Plaintiff designates New York County  
as the place of trial pursuant to  
CPLR 503.

**TO THE ABOVE-NAMED DEFENDANTS:**

**YOU ARE HEREBY SUMMONED** to answer the Verified Complaint in this action and to serve a copy of your answer, or if the Verified Complaint is not served with this Summons, to serve a Notice of Appearance on Plaintiff's attorneys within twenty (20) days after service of this Summons, exclusive of the day of service (or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Verified Complaint.

Dated: New York, New York  
June 10, 2021

**AKERMAN LLP**  
*Attorneys for Plaintiff*

By: /s/ Massimo F. D'Angelo  
Massimo F. D'Angelo  
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Summons

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**DEFENDANTS' ADDRESSES:**

PEOPLE OF THE STATE OF NEW YORK  
by LETITIA JAMES, Attorney General of the State of New York  
Managing Attorney's Office  
Office of the Attorney General  
28 Liberty Street, 16<sup>th</sup> Floor  
New York, NY 10005

TOWN SPORTS INTERNATIONAL, LLC  
c/o C T Corporation System  
28 Liberty Street  
New York, NY 10005

Summons

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This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

SUPREME COURT OF THE STATE OF NEW YORK  
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TOWN SPORTS INTERNATIONAL  
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**VERIFIED COMPLAINT**

Plaintiff Town Sports International Holdings, Inc. (“**TSI Holdings**”), by its attorneys, Akerman LLP, for its verified complaint against defendants the People of the State of New York, by Letitia James, Attorney General of the State of New York (the “**NYAG**”), and Town Sports International, LLC (“**TSI LLC**” and, collectively, with the NYAG, “**Defendants**”), alleges as follows:

**NATURE OF THIS ACTION**

1. This is a declaratory judgment action to void a purported settlement agreement. TSI Holdings’ former counsel executed the stipulation purportedly on TSI Holding’s behalf without ever presenting it to TSI Holdings for review or approval and after it had been advised by TSI Holdings that it was being replaced as counsel on the matter. The stipulation and resulting judgment appear to provide for the release TSI Holding’s \$250,000 bond to the NYAG for distribution to members of gyms operated by TSI Holdings and TSI LLC. This would disproportionately benefit TSI LLC and a third party that is acquiring its assets and would severely harm TSI Holdings, which would have never agreed to any settlement with such conditions. Because TSI Holding’s former counsel executed the stipulation without the authority

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to do so, the Court should declare that the stipulation and judgment are void and unenforceable and enjoin defendants from attempting to enforce them.

### **PARTIES**

2. TSI Holdings is a Delaware corporation with an executive office in New York.

3. The NYAG is the People of the State of New York, by Letitia James, Attorney General of the State of New York

4. TSI LLC is a New York limited liability company with its principal place of business in New York.

### **JURISDICTION AND VENUE**

5. Venue in this county is proper pursuant to CPLR 503 because at least one of the parties' principal offices are located in this county and a substantial part of the events giving rise to this action occurred in this county.

### **FACTS**

#### **A. Background**

6. TSI Holdings is in the business of, among other things, providing gym and athletic facilities and memberships.

7. TSI LLC was previously a subsidiary of TSI Holdings and is also in the business of providing gym and athletic facilities and memberships.

8. In 2020, COVID-19 and the resulting governmental lockdowns and limitations on physical occupancy devastated the businesses of many gym operators in New York.

9. Although the spread of COVID-19 appears to be subsiding, gyms are still currently subject to capacity limits and social distancing requirements that present continuing challenges to the New York gym industry.

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10. On September 13, 2020, TSI LLC filed for chapter 11 bankruptcy in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Proceeding**”).

**B. The NYAG’s Prior Proceeding**

11. Approximately two weeks later, on September 30 2020, the NYAG commenced a proceeding against TSI Holdings and TSI LLC in this Court (Index No. 451969/2020; the “**NYAG Proceeding**”).

12. The NYAG alleged in the proceeding that, among other things, TSI Holdings’ and TSI LLC’s gyms were closed during the pandemic and that they allegedly failed to provide timely refunds and cancellations to members.

13. In October 2020, attorneys from Gordon Rees Scully & Manskhai, LLC (“**Gordon Rees**”) filed notices of appearance on behalf of TSI Holdings and TSI LLC in the NYAG Proceeding.

**C. TSI Holdings Retained Akerman LLP and Advised Gordon Rees That It Was Being Substituted Out As Counsel In the NYAG Proceeding**

14. In late February 2021, TSI Holdings decided to retain Akerman LLP (“**Akerman**”) as counsel for all litigation matters including the NYAG Proceeding.

15. At or about that time, TSI Holdings notified Gordon Rees that Akerman would be substituted in as counsel for the company’s litigations including the NYAG Proceeding.

16. Thus, Gordon Rees had notice that it would be representing only TSI LLC (and not TSI Holdings) in the NYAG Proceeding going forward.

17. Gordon Rees was required, however, to keep TSI Holdings apprised of all significant developments in the NYAG Proceeding until Akerman was formally substituted in as new counsel.

**D. Gordon Rees Executed a Purported Settlement Agreement Without TSI Holdings' Knowledge and Consent**

18. On or about February 26, 2021, Gordon Rees executed a "Consent and Stipulation" (the "**Stipulation**") purportedly on behalf of both TSI Holdings and TSI LLC that allegedly settled the NYAG Proceeding.

19. Gordon Rees was required to present the Stipulation and the terms of any final settlement of the NYAG Proceeding to TSI Holdings for review and approval before execution.

20. Gordon Rees, however, never presented the Stipulation and the terms of any final settlement of the NYAG Proceeding to TSI Holdings for review or approval.

21. Gordon Rees executed the Stipulation without obtaining TSI Holdings' consent to do so.

22. TSI Holdings never authorized anyone to execute the Stipulation on its behalf.

23. Gordon Rees lacked the authority to execute the Stipulation on TSI Holdings' behalf.

24. A week later, on March 3, 2021, the NYAG filed the Stipulation with the Court with a request to have it so ordered.

25. That same day, the NYAG filed a proposed "Final Consent Order and Judgment" (the "**Proposed Judgment**") based upon the Stipulation.

26. The Proposed Judgment referred to TSI Holdings and TSI LLC collectively as "TSI" and did not differentiate between the two entities with respect to their purported obligations under the Proposed Judgment.

27. The Proposed Judgment inaccurately stated that TSI Holdings "consent[ed] to the entry of this Consent Order and Judgment" which, among other things, imposed monetary liability upon TSI Holdings and TSI LLC.

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28. In 2015, TSI Holdings had posted a statutory bond (number 76106469) in the amount of \$250,000 with the Guarantee Company of North America USA (“**Guarantee Company**”) as surety (the “**Bond**”) pursuant to General Business Law § 622-a.

29. The Proposed Judgment purportedly required TSI Holdings to forfeit all rights to the Bond, stating: “In consideration of the making and execution of the Judgment, TSI shall name [NYAG] as an obligee to the Bond, and TSI shall forfeit any and all rights to, and interests in the . . . Bond.”

30. The Proposed Judgment stated that the proceeds of the Bond would be “distributed to TSI [*i.e.*, TSI Holdings and TSI LLC] members whose contracts expired prior to TSI going out of business and TSI members who were unlawfully denied refunds . . .”

31. TSI Holdings currently still operates five gyms in New York.

32. TSI LLC, on the other hand, previously operated approximately 175 gyms in New York.

33. Upon information and belief, a third party has acquired TSI LLC’s assets.

34. Based upon the Proposed Judgment, however, the Bond (which was posted by TSI Holdings) would be used to distributed to TSI LLC’s members.

35. This would primarily benefit TSI LLC and the third-party buyer at TSI Holdings’ expense.

36. TSI Holdings would have never agreed to these terms if they had been presented for review and approval.

37. Gordon Rees, however, never presented the terms of the Stipulation or the Proposed Judgment to TSI Holdings for review or approval and thus TSI Holdings was not aware of the terms of the purported settlement.

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38. On March 3, 2021, the same day the NYAG filed the Proposed Judgment, TSI Holdings learned for the first time by way of a press release claiming that it was a party to a settlement agreement with the NYAG.

39. The NYAG's press release stated that it had resolved its lawsuit against TSI Holdings "for unlawfully charging monthly dues to members and for partaking in a variety of illegal and fraudulent practices" during the COVID-19 pandemic.

40. The press release also includes the following quote from the NYAG:

"From the beginning of my office's investigation, I have made clear to New York Sports Clubs and Lucille Roberts that the COVID-19 pandemic would not give them a free pass to violate the law and take advantage of members . . . A public health crisis did not give these gyms license to lift up their finances through unlawful charges. Today's agreement holds the former parent company for these gyms accountable and brings us one step closer to recovering a \$250,000 bond posted by the parent company for potential distribution to members harmed by their unlawful practices."

41. The foregoing is just a sample of the characterizations made by the NYAG in its press release.

42. The NYAG's characterizations of TSI Holdings' conduct with respect to the purported "settlement" severely harms TSI Holdings' reputation and ability to continue operating gyms in New York.

43. On March 4, 2021, immediately after discovering that Gordon Rees had improperly executed the Stipulation, TSI Holdings' new counsel submitted a letter to the Court in the NYAG Proceeding requesting a status conference to address these developments.

44. TSI Holdings also requested in the letter that the Court stay entry of any judgment until the propriety of the Stipulation and Proposed Judgment could be determined.

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45. NYAG and Gordon Rees were copied on TSI Holdings' March 4, 2021 letter.

46. At or about the same time TSI Holdings filed the letter, it also filed a stipulation substituting Gordon Rees out of the NYAG Proceeding.

47. After TSI Holdings filed the letter and substitution of counsel, the Court in the NYAG Proceeding entered the "Final Consent Order and Judgment" (the "**Judgment**") adopting the terms of the Stipulation and Proposed Judgment.

**E. TSI Holdings Filed a Motion In the Bankruptcy Proceeding Seeking a Declaration That the Stipulation Is Void**

48. On March 10, 2021, TSI Holdings filed a motion in the Bankruptcy Proceeding seeking, among other things, to void the purported settlement agreement.

49. The bankruptcy court held a hearing on TSI Holdings' motion on April 20, 2021.

50. At that time, the bankruptcy court denied TSI Holdings' motion and directed it to first seek vacatur of the purported settlement agreement in this Court.

**F. The NYAG Is Demanding Release of the Bond Based Upon the Stipulation and Judgment**

51. By letter dated May 25, 2021, the NYAG demanded that Guarantee Company immediately release the Bond based upon the Judgment.

52. In the letter, the NYAG has threatened to commence an action against Guarantee Company to force the release of the Bond.

53. The NYAG, however, is not entitled to the Bond because the Stipulation is *void ab initio*.

**FIRST CAUSE OF ACTION**  
**(Declaratory Judgment)**

54. TSI Holdings repeats the allegations contained in paragraphs 1 through 53 above as if set forth here.

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55. Upon information and belief, Defendants dispute that the Stipulation and Judgment are void and unenforceable as against TSI Holdings because Gordon Rees executed the Stipulation without the authority to do so.

56. A ripe and justiciable controversy exists between TSI Holdings and Defendants with respect to whether the Stipulation and Judgment are void and unenforceable.

57. TSI Holdings has no adequate remedy at law.

58. Based on the foregoing, TSI Holdings is entitled to a declaration that: (a) the Stipulation is *void ab initio*; and (b) the Stipulation and Judgment are unenforceable as against TSI Holdings.

**SECOND CAUSE OF ACTION**  
**(Permanent Injunction)**

59. TSI Holdings repeats the allegations contained in paragraphs 1 through 58 above as if set forth here.

60. The equities favor TSI Holdings because it should not be bound to the Stipulation by Gordon Rees' improper conduct.

61. TSI Holdings has no adequate remedy at law.

62. TSI Holdings will suffer serious and irreparable harm if the Stipulation and Judgment are enforced against it.

63. TSI Holdings' reputation and business will be severely damaged if the Stipulation and Judgment are enforced against it.

64. Based on the foregoing, TSI Holdings is entitled to a permanent injunction enjoining and restraining Defendants and their agents and representatives from: (a) enforcing or attempting to enforce the Stipulation or the Judgment as against TSI Holdings; (b) attempting to obtain any release of the Bond based upon the terms and conditions of the Stipulation and the

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Judgment; and (c) publicizing any purported settlement agreement between TSI Holdings and Defendants.

**WHEREFORE**, TSI Holdings demands judgment as follows:

- (i) On the first cause of action, granting TSI Holdings a declaration that the Stipulation and Judgment are *void ab initio* and are unenforceable as against TSI Holdings;
- (ii) On the second cause of action, granting TSI Holdings a permanent injunction enjoining and restraining Defendants and their agents and representatives from (a) enforcing or attempting to enforce the Stipulation or the Judgment as against TSI Holdings; (b) attempting to obtain any release of the Bond based upon the terms and conditions of the Stipulation and the Judgment; and (c) publicizing any purported settlement agreement between TSI Holdings and Defendants; and
- (iii) Together with such other and further relief as to the Court seems just and proper.

Dated: New York, New York  
June 10, 2021

**AKERMAN LLP**  
*Attorneys for Plaintiff*

By: /s/ Massimo F. D'Angelo  
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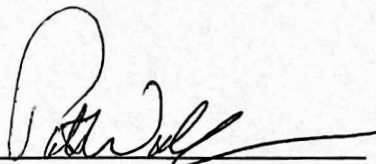
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**VERIFICATION**

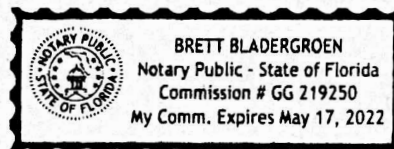
STATE OF ~~NEW YORK~~ *Florida*  
COUNTY OF ~~NEW YORK~~ *Palm Beach*

PATRICK WALSH, being duly sworn, deposes and says: that he is the chief executive officer of plaintiff Town Sports International Holdings, Inc.; that he has read the foregoing Verified Complaint; that he knows the contents thereof; and that, to his knowledge, the Verified Complaint is true, except as to matters stated therein to be alleged upon information and belief, and, as to those matters, he believes them to be true.

  
PATRICK WALSH

Sworn to before me this  
10 day of June, 2021

  
NOTARY PUBLIC



Verification

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