

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

Case No.: 1:20-CV-20836-BLOOM/Louis

AARON FRUITSTONE, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

CLASS ACTION COMPLAINT

SPARTAN RACE, INC.,
a Delaware Corporation,

JURY DEMAND

Defendant.

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiff Aaron Fruitstone (“Plaintiff”) brings this action, on behalf of himself and all others similarly situated in Florida, Massachusetts, and Nationwide, against Defendant Spartan Race, Inc. (“Spartan”).

INTRODUCTION

1. Many millions of consumers nationwide have participated, and continue to participate, in “Spartan Races” during the proposed class period, the largest and most popular obstacle course races. Spartan calls itself “the global leader in obstacle races,” conducting hundreds of different events each year in the United States as well as in 42 different countries. According to Spartan: “It all started in the Green Mountains of Vermont when Spartan founder, Joe De Sena, became increasingly aware that humans are missing a critical component in the modern world. Inspired by the warrior society of ancient Sparta, he set out to create a community of Spartans who push and inspire each other.” Spartan Races has—by any measure—become a great success both financially and in setting itself as the leader in the very popular obstacle race industry. In 2020, Spartan Race purchased its main competitor Tough Mudder. *See In re: Incorporated Tough Mudder*, 1:20-BK-10036, ECF No. 81 (Bankr. D. Del. Feb. 25, 2020) (Order approving the Asset Purchase Agreement by and Among Spartan Race, Inc. and Debtors' Chapter 11 Trustee). By 2015—although both were founded only in 2010—Tough Mudder reported 2 million total participants and Spartan claimed 5 million.

2. Unfortunately, Spartan was not satisfied in simply collecting tens of millions of dollars annually in large registration racer fees (typically over \$100 per race), and sponsorship and corporate fees. Spartan has extracted millions of additional dollars from consumers, through an unfair and deceptive self-enrichment scheme that violates state consumer protection laws in both Spartan’s home state of Massachusetts and Plaintiff’s home state of Florida. Spartan purchased a group insurance policy through CHUBB that covers each racer and costs Spartan Race much less than what they represent (\$14) to all racers. The well-established law in this District when a Defendant chooses terms that are not accurate (like a “port charge”), such will mislead a reasonable consumer under FDUTPA, if the Court finds the “net impression created” was unfair. Unlike all three of their competitors, Spartan instead set up another secret revenue source by representing that each racer must pay a \$14 “Racer Insurance Fee” that in fact costs Spartan, based upon information and belief, less than \$1 dollar per racer per day, the rest is simply an undisclosed profit for Defendant Spartan Race.

3. Rugged Mudder, a competitor of both “Spartan Race” and “Tough Mudder,” created an information chart for the consumers comparing “Rugged Mudder,” “Spartan Sprint” and “Tough Mudder,” and the specific line item “Mandatory Insurance” confirms that both Rugged Mudder and Tough Mudder charge \$0 for Racer Insurance, while Spartan charges all racers \$14:

HERE'S HOW WE STACK UP AGAINST THE OTHER GUYS*

	RUGGED MANIAC	SPARTAN SPRINT	TOUGH MUDDER 5K
DISTANCE	3.1 MILES	3 - 5 MILES	3.1 MILES
# OF OBSTACLES	25	20	10
MAX RUNNERS PER HEAT	250	250	300+
EARLY BIRD PRICE	\$29	\$60 - \$90	\$49
FINAL ON-SITE PRICE	\$100	\$115 - \$180	\$100+
SPECTATOR FEE	\$0	\$20 (advance) \$25 (on-site)	\$20 (advance) \$40 (on-site)
MANDATORY INSURANCE	\$0	\$14	\$0
TICKET PROCESSING FEE	\$6.85-\$8.95	\$8 - \$20	\$6+
PREFERRED START TIME FEE	\$0	\$10	Can't select time
ELITE HEAT FEE	\$0	\$20	No elite heat
PARKING FEE	\$10 - \$15 (per car)	\$3 - \$6 (per person)	\$20 (per car)
TOTAL COST*	\$48 - \$110 (per person)	\$85 - \$206 (per person)	\$85 - \$125+ (per person)

*Data collected from each company's website on 2/18/2019. *Parking fee is included in Total Cost and assumes two people per car.

<https://ruggedmaniac.com>.

4. Each time a consumer registers for a Spartan Race event, Spartan charges a mandatory, non-transferable, and non-refundable “Racer Insurance Fee.” Spartan represents on its website that the “Racer Insurance Fee” is used to purchase “accident medical insurance coverage from a licensed third-party insurance carrier.” Spartan further bills registrants for that insurance through a distinct line-item entry separate from Spartan’s registration fee and separate from other fees and taxes collected by Spartan.

5. Moreover, even if this deceptive practice was permitted, this Racer Insurance that Spartan requires for \$14 is basically worthless, because it is: (1) always secondary to any insurance that most of the racers already have, (2) it is non-refundable if the race is canceled, postponed, or delayed by Spartan or the racer, (3) has a large \$500 deductible, and (4) is required along with a waiver absolving any liability by Spartan for any resulting injury. Further, racers are required to pay the “Racer Insurance Fee” again each time they defer or reschedule their race:

The \$14 Insurance Fee and \$5/\$10 Bag Check/Parking fees are charged per person, per day, per venue and is non-transferable and non-refundable. If you want to defer your entry, you will need to pay the \$14 Insurance Fee again for the new event - NO EXCEPTIONS.

See <https://spartanrace.zendesk.com/hc/en-us/articles/115015992147-2020-Can-I-Transfer-To-Another-Spartan-Race-Another-Person-Or-Both-> (bold and emphasis in original) (last accessed April 13, 2020).

6. Spartan’s representations and marketing materials regarding its “mandatory” “Racer Insurance Fee” create in a reasonable consumer the false impression that the \$14 “Racer Insurance Fee” is used solely to pay for accident insurance for the benefit of the registrant. In truth, Spartan secures that insurance through a group policy, issued by a third-party insurer, that affords racers secondary insurance coverage at a tiny fraction of the cost Spartan charges them. Meanwhile, Spartan itself pockets nearly all of the \$14 Race Insurance Fee as a hidden profit center for the company, undisclosed to consumers.

7. Spartan’s marketing description and charging of the mandatory “Racer Insurance Fee” is objectively likely to deceive any reasonable consumer into believing that the \$14 charge reflects the cost of the insurance coverage being passed through to that consumer. *Bowe v. Public Storage*, 106 F. Supp. 3d 1252, 1258–59, 1270 (S.D. Fla. 2015) (concluding that “a reasonable fact finder could find it was a deceptive practice for Public Storage to represent that the premiums would be ‘passed through’ to the insurance company and then secretly retain a portion of the

insurance premium for itself”). Plaintiff’s claims alleged herein are not based on any alleged insurance regulatory violation.

8. Because the foregoing unfair and deceptive scheme emanated from Spartan’s headquarters in Massachusetts, its actions violate the Massachusetts Consumer Protection Law, Massachusetts General Laws, Chapter 93A, et seq. (“Chapter 93A”). Alternatively, Spartan has been unjustly enriched under Massachusetts law. Plaintiff accordingly asserts these claims on behalf of himself and a nationwide class of all others similarly situated.

9. Florida courts have consistently found this sort of deceptive hidden retention actionable under the Florida Deceptive and Unfair Trade Practices Act, §§ 501.201, et seq., Florida Statutes (“FDUTPA”). *Bowe*, 106 F. Supp. 3d at 1270; *Coleman v. CubeSmart*, 328 F. Supp. 3d 1349, 1362 (S.D. Fla. 2018) (actionable FDUTPA claim alleged where the defendant’s representations could leave a reasonable consumer with the net impression of a pass-through charge); accord, *Latman v. Costa Cruise Lines, N.V.*, 758 So. 2d 699, 702–03 (Fla. 3d DCA 2000) (actionable FDUTPA claim stated against cruise line that secretly retained a portion of funds collected from consumers as port charges). Alternatively, Spartan has been unjustly enriched under Florida law. Plaintiff accordingly also asserts his claim on behalf of himself and a subclass of all other similarly situated Florida residents.

PARTIES

10. Plaintiff is domiciled in Miami-Dade County, Florida, and is thus a citizen of the State of Florida.

11. Defendant Spartan is an entity existing and incorporated pursuant to the laws of Delaware, with its principal place of business in Boston, Massachusetts. Defendant is therefore a citizen of Delaware and Massachusetts. Defendant is amenable to service of process in Florida c/o Corporation Service Company, 1201 Hays Street, Tallahassee, Florida 32301.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A) because this is a class action for a sum exceeding \$5,000,000.00, exclusive of interest and costs, and in which at least one class member is a citizen of a state different than Spartan. Additionally, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) as Plaintiff, a Florida citizen, brings his individual claims against a Delaware

or Massachusetts citizen, and given the nature of the claims and the declaratory and injunctive relief sought, the amount in controversy is greater than \$75,000.00, exclusive of interest and costs.

13. This Court has personal jurisdiction over Spartan because Spartan is authorized to do business and is conducting business throughout the United States, including in Florida. Spartan offers obstacle course races to the general public in the United States, including Florida, and has sufficient minimum contacts with this State and/or sufficiently avails itself of the market in Florida, to render the exercise of jurisdiction by this Court permissible.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to Plaintiff's claims took place in this District.

15. All conditions precedent to the institution and maintenance of this action have been performed, excused, waived, or have otherwise occurred.

FACTUAL ALLEGATIONS

16. Spartan is the "world's leading obstacle race company," offering a series of obstacle races with varying distance and difficulty. Spartan holds more than 120 events in different countries and has "more than one million global participants."¹

17. In addition to the race registration fee that usually ranges around \$100, Spartan charges participants registering for a race other fees, including fees for the operative state "sales tax," "parking services, bag check and merchandise discount" and a mandatory "Racer Insurance Fee."

18. The mandatory "Racer Insurance Fee" must be paid at the time of registration. Spartan even requires racers to pay a new mandatory \$14 "Racer Insurance Fee" again each time a race is rescheduled.

19. On the Spartan website, the mandatory "Racer Insurance Fee" is added to the registrant's checkout cart as a distinct line-item charge, separate from not only Spartan entry fee but also other registration charges, such as "sales tax" and the bundled "parking services, bag check and merchandise discount" fee, and a "service fee;" as illustrated by Spartan for races held before August 7, 2020.²

¹ <https://www.spartan.com/en/race/race-types/race-types-overview?article=33996>.

² <https://spartanrace.zendesk.com/hc/en-us/articles/360009279533-What-are-the-Registration-Fees->

New Entry	\$119.99
Edit	
Morning (Saturday 9:15AM-12:45PM)	\$119.99
<hr/>	
AZ Sales Tax	\$7.56
Racer Insurance Fee	\$14.00
Parking Services, Bag Check, and Merchandise Discount	\$10.00
<hr/>	
Service fee	\$15.91
\$167.46	

For “FULL details on what [the] insurance fees covers,” Spartan then links the consumer to another page on its website,³ where Spartan explains:

[SPARTAN US FAQ](#) > [General Racer](#) > [Registration](#)

What does the racer insurance policy cover?

Spartan Race Inc. purchases accident medical insurance coverage from a licensed third-party insurance carrier, which provides limited coverage to participants for medical bills arising from an injury incurred while participating at an event operated by Spartan Race, Inc. (all US events, the Ultra World Championship event, and the 2019 Vancouver event).

Please note that the accident medical insurance coverage does not include Disability Insurance or Loss of Income coverage. All claimants are required to complete certain forms and provide copies of all medical records to the insurance carrier. This policy is secondary to a claimant's primary medical insurance policy. Please note there is a \$500 deductible under the policy.

NOTWITHSTANDING THE FOREGOING, PARTICIPATION IN THE SPARTAN RACE IS AT THE PARTICIPANT'S SOLE RISK. For more information regarding the specific coverage provided, please contact us at insurance@spartan.com.

For information on how to submit an insurance claim, please see this link: [I need to submit an Insurance Claim](#).

³<https://spartanrace.zendesk.com/hc/en-us/articles/201949907-Why-do-I-have-to-pay-the-14-Racer-Insurance-Fee> (last accessed April 13, 2020).

20. Together, and when objectively construed, Spartan's representations would lead a reasonable consumer to believe that the \$14 "Racer Insurance Fee" is used solely to purchase insurance on behalf of the registrant.

21. In reality and unknown to consumers, the "Racer Insurance Fee" is a hidden profit center for Spartan. Contrary to the representations Spartan makes to participants and consumers, the amount that Spartan pays for the accidental medical insurance coverage for the participant is far, far less than the \$14 it charges to each registrant, who have thus paid an inflated price for the coverage. Spartan's corporate records will demonstrate the precise amount it retains for each insurance fee charged.

PLAINTIFF-SPECIFIC ALLEGATIONS

22. Plaintiff registered for in Spartan's "Sprint" race in Palm Beach on April 28, 2019.

23. Plaintiff completed Spartan's online registration process, in which Spartan required Plaintiff pay the \$14 "Racer Insurance Fee" for the "racer insurance policy" as described above.

24. In reliance on Spartan's foregoing misrepresentations and omissions, Plaintiff paid Spartan the \$14 "Racer Insurance Fee," a significant portion of which was kept by Spartan.

CLASS ACTION ALLEGATIONS

25. As detailed below in the individual counts, Plaintiff brings this lawsuit on behalf of himself and all others similarly situated, pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure.

A. Class Definitions

26. Plaintiff seeks to represent the following Nationwide Class and Florida Class (collectively, "the Classes"):

(1) Nationwide Class: All persons in the United States who, within the applicable limitations period, paid the "Racer Insurance Fee" in connection with any race organized by Spartan.

(2) Florida Subclass: All persons in the state of Florida who, within the applicable limitations period, paid the "Racer Insurance Fee" in connection with any race organized by Spartan.

Excluded from the Classes are Spartan and its officers, directors, affiliates, legal representatives, and employees, any governmental entities, any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff. Plaintiff reserves the right

to modify or amend the definition of the proposed Nationwide Class or Florida Subclass before or after the Court determines whether such certification is appropriate as discovery progresses.

B. Numerosity

27. The Classes are comprised of hundreds, if not thousands, of consumers nationwide and throughout the state of Florida who have paid the “Racer Insurance Fee” in connection with their registration in a Spartan race. Membership in the Classes is so numerous that joinder of all members is impracticable. The precise number of members in the Nationwide Class and the Florida Subclass is currently unknown to Plaintiff, but is easily identifiable through Spartan’s corporate records.

C. Commonality/Predominance

28. This action involves common questions of law and fact, which predominate over any questions affecting individual class members. These common legal and factual questions include, but are not limited to, the following:

- (a) whether Spartan’s description of the “Racer Insurance Fee” is deceptive, unfair, false and misleading;
- (b) whether Spartan retains any portion of the mandatory “Racer Insurance Fee”;
- (c) whether Spartan engaged in unfair and deceptive practices by collecting and retaining any portion of the “Racer Insurance Fee;”
- (d) whether Spartan’s representations are objectively likely to mislead reasonable consumers to believe that the amount of the \$14 “Racer Insurance Fee” is commensurate with the cost to Spartan of providing the accident medical insurance coverage;
- (e) whether Spartan’s practices in charging the “Racer Insurance Fee” violate M.G.L. Chapter 93A;
- (f) whether Spartan’s practices in charging the “Racer Insurance Fee” violates the FDUTPA;
- (g) whether Spartan has been unjustly enriched at the expense of Plaintiff and Class members as a result of Spartan’s practices in collecting and retaining the “Racer Insurance Fee”;
- (h) whether Plaintiff and Class members have sustained monetary loss and the proper measure of that loss;
- (i) whether Plaintiff and Class members are entitled to injunctive relief;
- (j) whether Plaintiff and Class members are entitled to declaratory relief; and

- (k) whether Plaintiff and Class members are entitled to consequential damages, punitive damages, statutory damages, disgorgement, and/or other legal or equitable appropriate remedies as a result of Spartan's conduct.

D. Typicality

29. Plaintiff's claims are typical of the claims of the members of the Classes because, *inter alia*, all members were injured through the uniform misconduct described above, all members have paid the "Racer Insurance Fee" just like Plaintiff, and Plaintiff is advancing the same claims and legal theories on behalf of himself and all such members.

E. Adequacy of Representation

30. Plaintiff will fairly and adequately protect the interests of the members of the Classes. Plaintiff has retained counsel experienced in complex consumer class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests to those of the Classes. Plaintiff anticipates no difficulty in the management of this litigation as a class action. To prosecute this case, Plaintiff has chosen the undersigned law firms, which have the financial and legal resources to meet the substantial costs and legal issues associated with this type of consumer class litigation.

F. Requirements of Fed. R. Civ. P. 23(b)(3)

31. The questions of law or fact common to Plaintiff's and each Classes member's claims predominate over any questions of law or fact affecting only individual members of the Classes. All claims by Plaintiff and the unnamed members of the Classes are based on the common course of conduct by Spartan to charge the "Racer Insurance Fee" to Plaintiff and the unnamed members of the Classes.

32. Common issues predominate when, as here, liability can be determined on a class-wide basis, even when there will be some individualized damages determinations.

33. As a result, when determining whether common questions predominate, courts focus on the liability issue, and if the liability issue is common to the Classes as is in the case at bar, common questions will be held to predominate over individual questions.

G. Superiority

34. A class action is superior to individual actions for both the Nationwide Class and the Florida Subclass, in part because of the non-exhaustive factors listed below:

- (a) Joinder of all Class members would create extreme hardship and inconvenience for the affected customers as they reside nationwide and throughout the state;

- (b) Individual claims by Class members are impractical because the costs to pursue individual claims exceed the value of what any one Class member has at stake. As a result, individual Class members have no interest in prosecuting and controlling separate actions;
- (c) There are no known individual Class members who are interested in individually controlling the prosecution of separate actions;
- (d) The interests of justice will be well served by resolving the common disputes of potential Class members in one forum;
- (e) Individual suits would not be cost effective or economically maintainable as individual actions; and
- (f) The action is manageable as a class action.

H. Requirements of Fed. R. Civ. P. 23(b)(2)

35. Spartan has acted and refused to act on grounds generally applicable to the classes by engaging in a common course of conduct of uniformly charging the “Racer Insurance Fee” to Plaintiff and the unnamed members of the Classes, thereby making appropriate final injunctive relief or declaratory relief with respect to the classes as a whole.

FRAUDULENT CONCEALMENT TOLLING

36. All applicable statutes of limitation have been tolled by Spartan’ knowing and active fraudulent concealment and denial of the facts alleged herein throughout the period relevant to this action. Plaintiff and members of the class did not and could not have known about the facts giving rise to the causes of action at any point during Spartan’s charging of its mandatory “Racer Insurance Fee.” Plaintiff and class members could not have discovered the facts that would disclose Spartan’s fraud despite exercising reasonable care and diligence in seeking to learn them. Indeed, Plaintiff filed this action immediately upon learning that the “Racer Insurance Fee” was merely a conduit for Spartan to conceal a massive profit center. Spartan fraudulently concealed the truth from its customers and, accordingly, the relevant statutes of limitation should be equitably tolled until Plaintiff filed this action at the earliest.

37. Instead of disclosing that Spartan collects a massive profit from charging the “Racer Insurance Fee,” Spartan claims the fee is mandatory, and that it is used to purchase “accident medical insurance coverage from a licensed third-party insurance carrier.” Spartan charges the “Racer Insurance Fee” as a distinct line item when it invoices race participants, creating the impression that the fee is a pass-through to the third-party insurance carrier. Spartan also never reveals that only a small portion of the “Racer Insurance Fee” is used to pay the premium on the

racer insurance, while the vast majority of the “Racer Insurance Fee” is instead retained by Spartan as additional profit. By making many affirmative representations that concealed the “Racer Insurance Fee” was a hidden profit center as described in this complaint, Spartan actively and successfully concealed Plaintiffs’ and class members’ causes of action (which are based on the deceptive and untrue net impression created by the representations made by Spartan Race about the “Racer Insurance Fee”).

38. Furthermore, by making repeated false statements to consumers concerning the “Racer Insurance Fee,” Spartan actively and successfully concealed Plaintiffs’ and class members’ causes of action by fraudulent means.

COUNT I

For Violations of the Massachusetts Consumer Protection Law, Massachusetts General Laws, Chapter 93A (On behalf of Plaintiff and Members of the Nationwide Class)

39. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1–38 as if fully set forth herein.

40. Plaintiff and Class members are persons as defined by section 9(1), M.G.L. c. 93A.

41. Spartan is engaged in trade or commerce within the meaning of the Chapter 93A.

42. M.G.L. c. 93A. section 2(a) declares “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce” unlawful.

43. Spartan has knowingly and willingly committed an unfair or deceptive act or practice that occurred “in the conduct of any trade or commerce,” causing Plaintiff and Class members to suffer an injury.

44. Spartan has knowingly and willingly violated the Chapter 93A section 2 by engaging in the unfair and deceptive practices as described herein, which offend public policies and are immoral, unethical, unscrupulous and injurious to consumers.

45. On February 27, 2020, Plaintiff sent Spartan a demand letter pursuant to M.G.L. c. 94A §9. Spartan did not respond, and the time to do so has expired.

46. Plaintiff and consumers in the Class have been aggrieved by Spartan’s unfair and deceptive practices in that they paid an inflated amount for the mandatory “Racer Insurance Fee” in connection with their participation in a Spartan race.

47. Spartan’s unfair and deceptive practices as described herein are likely to mislead – and have misled – consumers acting reasonably in the circumstances.

48. The harm suffered by Plaintiff and consumers in the Class was directly and proximately caused by Spartan's unfair and deceptive practices of, as more fully described herein.

49. Plaintiff and consumers in the Class accordingly make claims for recoverable damages, multiple damages, attorneys' fees and costs pursuant to M.G.L. c. 94A § 9.

COUNT II

For Violations of the Florida Deceptive and Unfair Trade Practices Act, § 501.201, Florida Statutes, *et seq.*

(On behalf of Plaintiff and Members of the Florida Subclass)

50. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1–38 as if fully set forth herein.

51. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, section 501.201, Fla. Stat., *et seq.* (“FDUTPA”). The stated purpose of the FDUTPA is to “protect the consuming public . . . from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” § 501.202(2), Fla. Stat.

52. Plaintiff and Class members are consumers as defined by section 501.203, Fla. Stat. Spartan is engaged in trade or commerce within the meaning of the FDUTPA.

53. Florida Statute section 501.204(1) declares unlawful “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

54. Spartan's unfair and deceptive practices as described herein are objectively likely to mislead – and have misled – consumers acting reasonably in the circumstances.

55. Spartan has violated the FDUTPA by engaging in the unfair and deceptive practices as described herein, which offend public policies and are immoral, unethical, unscrupulous and injurious to consumers.

56. Plaintiff and consumers in the Class have been aggrieved by Spartan's unfair and deceptive practices and acts of false advertising because by paying the mandatory “Racer Insurance Fee” in connection with their participation in a Spartan race, having parted with money under false pretenses.

57. The harm suffered by Plaintiffs and consumers in the Class was directly and proximately caused by the deceptive and unfair practices of Spartan, as more fully described herein.

58. Pursuant to sections 501.211(2) and 501.2105, Fla. Stat., Plaintiff and consumers in the Class make claims for actual damages, attorneys' fees and costs.

59. Spartan still utilizes many of the deceptive acts and practices described above and is still secretly retaining money from every mandatory "Racer Insurance Fee" it charges. Plaintiff and the other members of the Class have suffered and will continue to suffer irreparable harm if Spartan continues to engage in such deceptive, unfair, and unreasonable practices. Section 501.211(1) entitles Plaintiff and the Class to obtain both declaratory or injunctive relief to put an end to Spartan's unfair and deceptive scheme.

COUNT III

Unjust Enrichment

(Alleged alternatively, on behalf of Plaintiff and Members of the Classes)

60. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1–38 as if fully set forth herein.

61. Spartan charged Plaintiff and Class members the mandatory "Racer Insurance Fee" in connection with their participation in a Spartan race. Spartan secretly retains a significant portion of the mandatory "Racer Insurance Fee," allowing Spartan to enrich itself to the detriment of Plaintiff and Class members.

62. Plaintiff and Class members conferred upon Spartan non-gratuitous payments of the "Racer Insurance Fee." Spartan appreciated, accepted and/or retained, in whole or in part, the non-gratuitous benefits conferred by Plaintiff and Class members.

63. Spartan profited from its unlawful collection and retention of a portion of the "Racer Insurance Fee" it charged at the expense of Plaintiff and Class members, under circumstances in which it would be unjust for Spartan to be permitted to retain the benefit. Under common law principles of unjust enrichment, Spartan should not be permitted to retain the benefits of this unjust enrichment, as they were obtained through deceptive representations and omissions, as more fully described above.

64. Because Spartan's retention of the non-gratuitous benefits conferred by Plaintiff and Class members is unjust and inequitable, Plaintiff and Class members suffered damages as a

result of Spartan's unjust enrichment, and are entitled to, and hereby seek disgorgement and restitution of Spartan's wrongful profits, revenue, and benefits in a manner established by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment on behalf of himself and the Classes:

- a. Certifying the Classes as requested herein;
- b. Awarding actual, direct and compensatory damages;
- c. Awarding restitution and disgorgement of revenues if warranted;
- d. Awarding declaratory relief as permitted by law or equity, including declaring Spartan's practices as set forth herein to be unlawful;
- e. Awarding injunctive relief as permitted by law or equity, including enjoining Spartan from continuing those unlawful practices as set forth herein, and directing Spartan to identify, with Court supervision, victims of its conduct and pay them all money it is required to pay;
- f. Awarding statutory and multiple damages, as appropriate;
- g. Awarding attorneys' fees and costs; and
- h. Providing such further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as to all claims so triable.

Dated: April 13, 2020

Respectfully Submitted,

By: /s/Adam M. Moskowitz

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Counsel for Plaintiff and the Classes

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed on April 13, 2020, with the Court via CM/ECF system, which will send notification of such filing to all attorneys of record.

/s/ Adam M. Moskowitz
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