

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 17TH JUDICIAL CIRCUIT
KENT COUNTY

BILL SCHUETTE, ATTORNEY GENERAL
OF THE STATE OF MICHIGAN, *ex rel*
The People of the State of Michigan,

Plaintiff,

v

Family Fitness 40890 Inc.; Family Fitness
49345 Inc.; Family Fitness 49424, Inc.; Family
Fitness 49445 Inc.; Family Fitness 49509
Corp.; Family Fitness 49534 Inc.; Family
Fitness at the Rec Inc.; Family Fitness Byron
Center Inc.; Family Fitness Gull Road Inc.;
Family Fitness of Norton Shores Inc.; Apex
Management SGR, LLC; AND ANY
UNKNOWN CORPORATIONS OR OTHER
LEGAL ENTITIES WITH OWNERSHIP OR
MANAGEMENT RESPONSIBILITY OVER
THE NAMED DEFENDANTS, INCLUDING
THE ENTITY SERVING AS THE
"CORPORATE OFFICE" FOR THEM,

Defendants.

No. 17-

-CP

HON.

**CLASS ACTION COMPLAINT FOR MONEY DAMAGES, DECLARATORY
JUDGMENT, AND INJUNCTIVE RELIEF**

PARTIES, JURISDICTION, AND VENUE

1. Attorney General Bill Schuette brings this civil action on behalf of the People of the State of Michigan and on behalf of classes of Michigan consumers as described below. The Michigan Attorney General is authorized to bring this action under MCL § 445.905 and MCL § 445.910. The Attorney General may obtain

injunctive relief, actual damages, and other appropriate relief under the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq.*

2. There are fourteen fitness clubs in Michigan operating under the “Family Fitness” name. These fitness clubs are as follows: Family Fitness Center and Fitzone for Women of Wyoming, 1228 28th Street, SW, Wyoming, MI 49509; Family Fitness Center and Fitzone for Women of Grand Rapids 3325 Plainfield Avenue, Grand Rapids, MI 49525; Family Fitness Center and Fitzone for Women of Sparta, 258 S. State Street, Sparta, MI 49345; Family Fitness Center and Fitzone for Women of North Muskegon, 1222 Holton Road, North Muskegon, MI 49445; Family Fitness Center and Fitzone for Women of Norton Shores, 1052 E. Sternberg Road, Norton Shores, MI 49444; Family Fitness Center and Fitzone for Women of Plainwell, 399 Oaks Crossing, Plainwell, MI 49080; Family Fitness Center and Fitzone for Women of Portage, 6051 Constitution Blvd., Portage, MI 49024; Family Fitness Center and Fitzone for Women of Muskegon, 3480 Apple Avenue, Muskegon, MI 49442; Family Fitness Center and Fitzone for Women of Holland, 91 Douglas Avenue, #140, Holland, MI 49424; Family Fitness Center and Fitzone for Women of Standale, 4290 Lake Michigan Drive, NW, Standale, MI 49534; Family Fitness Center and Fitzone for Women of Alpine, 1040 Four Mile Road NW, Grand Rapids, MI 49544; Family Fitness at The Rec, 201 E. Maple Street, Fremont, MI 49412; Family Fitness Byron Center, 2149 84th Street SW, Suite 101, Byron Center, MI 49315, and Family Fitness Allendale, 6161 Lake Michigan Drive, Allendale, MI 49401.

3. The Defendants in this lawsuit are the corporations and other business entities that own and operate the fitness clubs identified in the preceding paragraph. This includes the following Michigan corporations: Family Fitness 40890 Inc.; Family Fitness 49345 Inc.; Family Fitness 49424, Inc.; Family Fitness 49445 Inc.; Family Fitness 49509 Corp.; Family Fitness 49534 Inc.; Family Fitness at the Rec Inc.; Family Fitness Byron Center Inc.; Family Fitness Gull Road Inc.; and Family Fitness of Norton Shores Inc. Upon information and belief, these companies, and potentially other unknown current and former Family Fitness entities, conduct business through a centrally-coordinated management entity called Apex Management SGR, LLC (Apex Management), which is also a Michigan limited liability company. Thus, the Attorney General also joins as Defendants in this lawsuit Apex Management and any and all unknown corporations and other business entities having any ownership interest in, or operational responsibility for, the fitness clubs referenced in the preceding paragraph, including the entity that does business under the alias "Corporate Office" in reference to the named Defendants. The Defendants to this litigation shall be referred to in this Complaint, both individually and collectively, as "Family Fitness."

4. Family Fitness claimed to have over 50,000 members among its fourteen gyms in an email to consumer Joe L. of Grand Rapids dated July 26, 2017. In a prior email to this same consumer, Family Fitness asserted that it had over 100,000 members. (Joe L. email chain, Exhibit A).

5. This Court has subject-matter jurisdiction over this matter, and is the appropriate venue, pursuant to MCL 445.905(1) and MCL 600.1621.

FACTUAL ALLEGATIONS

Background

6. The Attorney General has received 286 consumer complaints against Family Fitness in 2017, and a total of 341 since 2011. Several common, troubling themes are evident among these complaints. Multiple complaints raise one or more of the following concerns:

- Consumers have entered drawings and are told by telephone they have won free memberships, but—when they show up to collect their prizes—they learn there are actually monthly costs;
- Consumers who have won drawing prizes are not given any written description of the prize, notice that they will be subjected to a sales presentation when they come to collect it, nor any descriptions and costs of the services Family Fitness intends to solicit them about when they do come;
- Misrepresentations are made to consumers at the time of signing up with Family Fitness. Such representations relate to topics including the involved costs, the duration of contracts, and the consumers' right to cancel contracts. Such misrepresentations range from false or misleading statements that the membership or personal training arrangements can be cancelled at any time, to failures to disclose important information—such as Family Fitness' expectation that a consumer doing a free trial must use the

facilities a specified number of times in order to be able to cancel the free trial;

- Numerous consumers even appear to have been misled about the existence of contracts, with their electronic signatures being applied to contracts they did not have an opportunity to review, or even knew existed. Family Fitness has compounded this issue by making confusing or misleading statements to such consumers that they are legally obligated by the terms of these contracts;
- In some situations where contracts have been legitimately entered into, Family Fitness has failed to deliver on promised benefits, such as making tanning or personal training services available to the consumers;
- Family Fitness has put up substantial barriers to cancellation, including asserting to consumers that they may not cancel contracts, charging punitive cancellation fees, and by making misrepresentations regarding the consumers' legal rights;
- For consumers who have had memberships with other gyms that have closed, Family Fitness has made confusing and misleading representations regarding their legal obligations to Family Fitness;
- In recent situations, Family Fitness appears to be putting consumers under duress to enter into new membership agreements by telling them that is the only way they can remove prior alleged debts for which the consumers have been put into a collections process.

7. As elaborated upon in this Complaint, Family Fitness has engaged in the following unfair, unconscionable and deceptive trade practices that are made unlawful under the Michigan Consumer Protection Act (MCPA):

(m) Causing a probability of confusion or of misunderstanding with respect to the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.

(r) Representing that a consumer will receive goods or services "free" or "without charge", or using words of similar import in the representation, without clearly and conspicuously disclosing with equal prominence in immediate conjunction with the use of those words the conditions, terms, or prerequisites to the use or retention of the goods or services advertised.

(aa) Causing coercion and duress as the result of the time and nature of a sales presentation.

(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is.

(cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

(ff) Offering a consumer a prize if in order to claim the prize the consumer is required to submit to a sales presentation, unless a written disclosure is given to the consumer at the time the consumer is notified of the prize and the written disclosure meets all of the following requirements:

(i) Is written or printed in a bold type that is not smaller than 10-point.

(ii) Fully describes the prize, including its cash value, won by the consumer.

(iii) Contains all the terms and conditions for claiming the prize, including a statement that the consumer is required to submit to a sales presentation.

(iv) Fully describes the product, real estate, investment, service, membership, or other item that is or will be offered for sale, including the price of the least expensive item and the most expensive item.

8. The Attorney General issued a Notice of Intended Action (NIA) to Family Fitness on July 14, 2017. Through this NIA, the Attorney General advised Family Fitness that its practice of telling consumers they are responsible for the entire dollar value of membership and personal training contracts that the consumers were either cancelling, or trying to cancel, constitutes an unlawful penalty under contract law.

9. After issuing the July 14th NIA, the Attorney General's Corporate Oversight Division began gathering additional information by interviewing consumers and receiving documents from them. Affidavits were secured from several consumers. Some of these affidavits are summarized in the below allegations so that Family Fitness understands the nature of the MCPA violations being alleged in this Complaint. Although only first names are being used in this Complaint, and redacted exhibits are being publicly filed with it, Family Fitness has been served with an unredacted copy of the exhibits so that it can identify the affected consumers used as illustrations in this Complaint, and so that it can provide meaningful answers to the allegations it contains.

10. The additional information the Attorney General gathered through the informal inquiry led to the discovery of the additional, unlawful misconduct alleged in this Complaint. These supplemental concerns were brought to Family Fitness' attention through a second NIA issued on September 11, 2017.

11. Through this Complaint, the Attorney General seeks preliminary and permanent injunctive relief remedying and prohibiting the unlawful conduct it describes. See MCL 445.905 and MCR 3.310. Further, the Attorney General seeks monetary and other appropriate relief on behalf of all consumers identified in this Complaint, as well as all similarly-situated Michigan consumers. To the extent possible, the Attorney General will seek certification of classes consistent with the criteria set forth in MCR 3.501. Where the criteria for class certification cannot be established, the Attorney General will pursue the requested relief on behalf of enumerated consumers identified through complaints to the Attorney General's Office or through discovery from Family Fitness during the litigation of this matter. See MCL 445.910. As a result of Family Fitness' misconduct, numerous Michigan consumers are making payments on contracts that Family Fitness is improperly disallowing them from cancelling, or on which Family Fitness has imposed unlawful barriers to cancellation. In many instances, consumers have made payments to Family Fitness based on unlawful contracts, despite misconduct by Family Fitness such as its own failure to provide the promised benefits. Many consumers have experienced, and some still are experiencing, the reporting of unlawful debts to credit reporting agencies by a collection agency acting on Family Fitness' behalf. The claims in this Complaint are being made on behalf of all affected consumers who have either entered into formal or informal membership and/or personal training agreements with Family Fitness since September 26, 2011; and on behalf of any persons who had earlier dealings with Family Fitness upon which Family

Fitness has made collection efforts within the limitations period established under the MCPA.

Illustrative Consumer Experiences

Emma H. of Grand Rapids

12. In March of this year, Emma and her boyfriend, Chad, entered a drawing at a Grand Rapids restaurant to win some type of free travel or hotel voucher. A week later, Chad received a voicemail message from Nicki at Family Fitness asking him to call back because he had won a prize. Emma returned the call, and Nicki told her she and Chad had won a free hotel stay and a free gym membership. Emma set up an appointment for her and Chad to meet Nicki and claim their prizes. Prior to going to Family Fitness, Emma and Chad did not receive anything in writing telling them what they had won. (Emma H. Affidavit, Exhibit B, ¶¶3-4).

13. When Emma and Chad met with Nicki at the gym, Nicki explained to them that the membership they had won was actually not free, but rather discounted. They were told they would be charged \$10.50 each per month to cover costs such as sales tax and a towel fee. Chad and Emma agreed to sign up for a one-year membership at that price. At that point, Nicki began scrolling through the membership contract. As she skimmed through it, Nicki told Emma and Chad they did not need to read the contract. She told them the contract was month-to-month, but Emma and Chad did not ask about cancellation fees at the time. Emma and Chad were asked to pay a \$75 sign-up fee, and Chad provided his credit

card. Emma and Chad then provided their signatures on an iPad. (Exhibit B, ¶¶5-6).

14. At the meeting with Nicki, Chad and Emma also received a folder with information about how they could claim what turned out to be a \$50 voucher for a hotel stay. Since the information in the folder said this was only available to people who signed up for a premium membership, which Chad and Emma had not done, they never looked into actually using the voucher. (Exhibit B, ¶7).

15. After leaving Family Fitness, a friend warned Emma about potential problems with that company. So, Emma called Nicki and asked about cancellation terms. Nicki told Emma there was a \$75 cancellation fee, and that was it. (Exhibit B, ¶9).

16. Although Emma and Chad agreed to a one-year contract, and Nicki told them their contract would be for one year at the time they signed up, a week later the contract was emailed to them and it stated a term of twenty-four months. (Exhibit B, ¶¶10, 16, and Attachment 1).

17. Ultimately, Emma and Chad only used the gym one time—approximately a week after the day on which they signed up. After paying for the membership for a couple months, but not really using it, Emma called to cancel the membership. The worker gave her an email address for the corporate office. Emma emailed the corporate office on June 1st to cancel the membership. (Exhibit B, ¶13 and Attachment 2).

18. On June 7th, Brooke from Family Fitness sent Emma an email response stating that \$508 remains owing on the membership agreement, but that she could offer a one-time buy-out for \$250 if Emma and Chad accepted it by July 7th. (Exhibit B, Attachment 2).

19. In email exchanges that followed, Emma refused to accept the \$250 offer because she and Chad had won a free membership, and had not been told about such high cancellation fees. Brooke responded by stating, "I regret to inform you that we are unable to cancel this membership without a fee, as you will be breaking a legally binding agreement." (Exhibit B, Attachment 2).

20. In June, Chad cancelled his credit card so that Family Fitness could no longer charge it, and Emma and Chad have refused to pay anything more to Family Fitness. (Exhibit B, ¶16 and Attachment 2).

Hannah G. of Hudsonville

21. In January 2017, Hannah G. of Hudsonville (Hannah) attended a bridal show as she prepared for her May wedding. While at the show, she entered a Family Fitness drawing to win a Keurig. (Hannah G. affidavit, Exhibit C, ¶1).

22. A week later, Hannah received a telephone call from a woman identifying herself as a Family Fitness employee saying that Hannah had won a Keurig. The employee also offered Hannah gym membership coupons during the phone conversation. Hannah scheduled an appointment to claim her prize.

23. Hannah then met with Kaitlin at Family Fitness' Byron Center location on January 26, 2017. After obtaining her Keurig, Hannah talked with

Kaitlin about a membership package that would include unlimited tanning, which she was interested in because of her upcoming wedding. Kaitlin offered Hannah a package for \$20 per month that included unlimited tanning, no cancellation fees, and which Hannah could cancel at any time. Hannah told Kaitlin she planned to cancel the membership after her May wedding, and confirmed the details of the offer many times before signing a contract because of these plans. (Exhibit C, ¶¶6-7).

24. Hannah went to Family Fitness a total of four or five times, all in March and April 2017. But, she was never able to tan there because the equipment was not functioning. A manager, James, repeatedly told her there were electrical problems with the tanning equipment. Nevertheless, Family Fitness billed Hannah \$20 per month for March and April. Meanwhile, Hannah purchased multiple two-week tanning packages from another business so she could prepare for her wedding. Finally, Hannah told Family Fitness she was cancelling her membership. (Exhibit C, ¶¶9-15).

25. When Hannah tried to cancel, she was told she had a three-year contract and would have to pay \$792 in order to cancel. In an April 26th email, Lola from Family Fitness wrote:

I have taken a look at your account right now and you have 33 monthly payments left at \$20 each and a 3 club enhancement fees of \$44.00 each. This would leave you with a total remaining balance of \$792.00.

By signing your agreement you are agreeing to complete the full terms of the agreement. When breaking an agreement early we typically require members to pay the full remaining balance in order to cancel a membership.

However, for you I am able to offer a \$250 buy-out fee, a total savings of \$542. This is an offer that would need to be taken advantage of within 30 days in order for it to remain valid.

Until we have come to an agreement with this lowered off, your monthly deductions will still occur. This is not something I can stop until we have a payment or payment plan set.

26. After receiving this email, Hannah again talked with Kaitlin, at which time Kaitlin denied telling Hannah that there were no cancellation fees or that she could cancel at any time. (Exhibit C, ¶20). Hannah paid the \$250 so she could resolve the situation before her wedding. (Exhibit C, ¶19).

Marjorie B. of Portage

27. In March 2017, after entering a drawing at a women's expo, Marjorie received a telephone call from someone she does not believe was a Family Fitness employee stating she had won a free, two-year membership from Family Fitness for two people. Marjorie was not told that when she went to Family Fitness to claim her prize that she would be subjected to a sales presentation, nor did she receive any written information from Family Fitness telling her about her prize, or their memberships and costs. (Exhibit D, ¶¶2-3).

28. A couple days later, Marjorie met with Andrew, the manager of the Family Fitness in Portage. According to Marjorie, "Andrew told me the that the membership I won was not 100% free, and that I would have to pay \$24 per month for incidental fees, such as paying for paper towels, supplies, and the cleaning crew." Andrew also told Marjorie her free membership included free personal training sessions. Although Andrew tried to sell a personal training arrangement to

Marjorie for \$30 per week, she agreed only to trying a few sessions being offered through the prize she had won. (Exhibit D, ¶¶4-5). Marjorie then explains she provided her debit card, but did not discuss or sign any contracts:

I gave Andrew my debit card with the understanding that the \$24/month would be withdrawn from this account. I signed an electronic signature pad, which I thought was giving Family Fitness permission to withdraw \$24 from my account each month for the regular gym membership. Andrew and I did not discuss any contracts, a cancellation policy, or the terms of the gym membership at all. I left Family Fitness that day with the understanding that I would be paying \$24/month for the incidental fees of the regular gym membership and did not think I was involved in any contracts for any services. (Exhibit D, ¶5).

But contracts were later emailed to Marjorie that she never signed:

I received 2 emailed contracts to me on 2 different dates from Family Fitness. The first was a 2-year gym membership contract and was sent to me on March 21st, 2017 (Attachment 1). The second was a 2-year personal training membership and was sent to me on March 31st (Attachment 2). I did not knowingly sign any contract for Family Fitness services. I do not remember when I first saw the contracts they emailed to me or when I opened them, but know I was never shown a contract and I never signed any document, electronic or hard copy. (Exhibit D, ¶8).

29. Marjorie then completed a personal training session with Andrew, and scheduled two more with someone named Ryan. Ryan failed to show up for the next two sessions. When Marjorie finally did have a personal training session with Ryan, he told her he had slept through his alarm during the prior two appointments, and apologized to her. (Exhibit D, ¶6).

30. Marjorie then realized Family Fitness was charging her debit card \$80 per month. So, she sent multiple emails to Family Fitness in June and July in an effort to cancel the contracts she had not signed. Although she did not get a written

response, she got a call from Brooke saying Marjorie would have to pay \$800 to get out of the contracts, but that she could offer a deal at \$250. Although Brooke told Marjorie she would stop collecting payments for July, Marjorie then was charged \$44 which Brooke later told her was for the club enhancement fee. Brooke told Marjorie she was mistaken in believing this fee would not be charged under the arrangement she had previously proposed. (Exhibit D, ¶¶10-13).

31. Then, in late July, Marjorie saw media stories about the problems other Family Fitness customers were having and cancelled her debit card. Marjorie also sent another email, and a hard copy letter, again telling Family Fitness she was cancelling the contracts she never signed. This prompted more correspondence with Family Fitness, concluding with an email from Brooke on August 7th telling Marjorie her personal training contract could be cancelled at a cost of \$129, and her membership agreement could be cancelled for \$102. Brooke added, “if we do not receive your cancellation acceptance and payment, we will assume that you wish to keep your memberships open.” (Exhibit D, ¶¶14-17 and Attachments 6-8).

Melissa N. of Kalamazoo

32. In January 2014, Melissa N. of Kalamazoo received a telephone call advising she had won a free, 30-day membership to Family Fitness. Melissa was told to go to the nearest Family Fitness location to her home, which is in Portage. During this conversation, Melissa was not told that Family Fitness would try to sell her memberships at the free trial consultation, nor was Melissa ever

provided any written information about the free trial that she had won. (Exhibit E, ¶¶2-3).

33. In meeting with a Family Fitness employee at the Portage gym, an effort was made to get Melissa to sign up for a membership for the period after the 30-day trial expired, but Melissa declined. The employee then talked Melissa into a consultation with a personal trainer. (Exhibit E, ¶3).

34. At the consultation with the personal trainer, Melissa signed a contract for personal training. Melissa does not have a copy of this personal training agreement and does not recall whether she was given a copy at the time. (Exhibit E, ¶¶3-4).

35. Melissa completed five or six sessions with the personal trainer. Then, during the session on March 11, 2014, she suffered a knee injury that required her to go to the emergency room the next day. She informed her personal trainer of this situation, and that surgery was needed. Melissa also called Family Fitness to cancel the contract in light of the knee injury. She was told the contract could not be canceled and that all that could be done was to put the account on a thirty-day freeze. Because of this response, and because she did not want to continue paying for a personal trainer she was not using, Melissa worked with her bank to change her debit card number so that Family Fitness could not take further payments. (Exhibit E, ¶¶6-7).

36. Over the next three years, Melissa had no contact with Family Fitness. She did not receive any calls, emails letters, or invoices. Melissa never returned to the gym after her injury on March 11, 2014. (Exhibit E, ¶8).

37. Then, in 2017, while attempting to purchase a car, Melissa learned from her credit report that charges were allegedly owed to Family Fitness. Two debts to Family Fitness were listed on Melissa's credit report: one for \$3,704, and another for \$1,491. This prompted Melissa to send complaints to a local television station and to the Attorney General. (Exhibit E, ¶¶9-10).

Ron M. of Plainwell

38. Ron M. of Plainwell is a retired police officer. In September 2016, Ron and his partner went to Family Fitness of Plainwell and met with the manager, Lee. Lee signed Ron up for both membership and personal training agreements. During the sign-up process, Lee repeatedly said that the contracts could be cancelled at any time. Ron signed for the membership agreement on an electronic pad, and signed a paper copy of a personal training agreement that Lee had filled out with a pen. (Exhibit F, ¶¶1-2).

39. Ron did five or six workouts, first with Lee and then with a female personal trainer. Ron decided to terminate the personal training contract because the workouts were not well-designed for his fitness level. The workouts were not vigorous, and seemed to be crafted for someone with a much lower fitness level. His last personal training session was sometime in the middle-to-late October. By this time, Ron had only used the gym approximately ten times. (Exhibit F, ¶¶4-6).

40. Ron then took several steps in an effort to cancel his contract. At Lee's direction, this included sending an email to Family Fitness' corporate office. In a phone call on October 25th, April from Family Fitness' corporate office told Ron that the company does not cancel contracts. (Exhibit F, ¶¶7-10).

41. Next, Ron went back to the Plainwell location to meet again with Lee, who then claimed he never told Ron and his partner they could cancel at any time:

Frustrated and still on the hook for both contracts, I went back to Lee to figure out what was going on. I asked for his help to cancel. Lee then claimed that he cannot cancel the contracts and that he never told my partner and me that we could cancel at any time. My partner and I were shocked to sit there and listen to him lie to us. (Exhibit F, ¶11).

42. On November 8th, April emailed Ron telling him Family Fitness would cancel his personal training contract for free, but as part of that agreement it would not be able to cancel his membership agreement. (Exhibit F, ¶12 and Attachment 1).

43. In subsequent email correspondence, April continued refusing to cancel the membership agreement. So, in late January 2017, Ron decided to cancel his debit card so that Family Fitness could no longer collecting monthly payments for a membership he was not using. (Exhibit F, ¶¶12-14 and Attachment 1).

44. Then, Ron received an email from Jodi at Family Fitness due to its inability to collect payment. Family Fitness continued regarding Ron's monthly membership dues as unpaid debts. After the Attorney General issued the NIA, Ron raised it with Jodi. He then received a response from someone at Family Fitness identifying herself as Jen stating, "the cease and desist unfortunately doesn't pertain to this case as you were already given a free cancellation of your personal

training membership.” No explanation was given for why this would be true, nor is a coherent reason apparent.

45. As communications between Ron and Family Fitness continued after he supplied the Attorney General with an affidavit, Family Fitness tried to convince Ron to pay a termination fee of \$250 to end his membership agreement. In so doing, April from Family Fitness falsely told Ron that the Attorney General had approved this termination fee:

“I have been given approval to cancel your membership with the standard early termination fee of \$250.00. We have been working closely with the attorney general’s office and the \$250.00 early termination for cancelling memberships before their agreed upon expiration date has been approved by them.”

46. Ron forwarded this message to the undersigned counsel, who forwarded it to Family Fitness’ counsel with a demand that Family Fitness stop making such representations, and that it identify all persons who had received similar statements. Family Fitness’ attorney responded that four consumers had received similar statements.

COUNT I - Violations of MCPA Sections 3(1)(r) and (ff)

47. The Attorney General incorporates paragraphs 1 through 46 as though fully set forth here.

48. Through drawings at multiple events and/or locations, Family Fitness has obtained the names and contact information for Michigan consumers. Whether directly or through agents or contractors, Family Fitness has told some consumers by telephone that they have won free memberships.

49. In advising drawing winners that they have won free memberships, Family Fitness generally does not tell them that they will be subjected to a sales presentation when they come to collect their prizes. Family Fitness also generally does not provide the consumer with any written notification describing the prizes the consumers have won, that there will be a sales presentation at the time the prizes are claimed, or the prices of the membership and personal training agreements Family Fitness will present at the time the prizes are claimed.

50. Family Fitness has told some Michigan consumers that they have won free memberships in telephone calls. But when some of these consumers have come to Family Fitness to collect the membership that had been referred to as free in the telephone call, Family Fitness—acting through its employees, agents or subcontractors—has told some such consumers that they must pay monthly fees in connection with the memberships they initially claim are free.

51. For example, a representative of Family Fitness told Emma that she and Chad had won a free membership as an inducement to get them to come to Family Fitness. Family Fitness did not send Emma or Chad any written documentation about the prize they had won, or the costs of membership and personal training services in advance of their coming to pick up the prize. The membership Emma and Chad won was not actually free.

52. Upon information and belief, someone acting on Family Fitness' behalf notified Marjorie that she had won a free two-year membership. Family Fitness did not provide Marjorie any written documentation in advance of her coming to claim

her prize describing the prize she had won or the costs of membership and personal training services. Upon information and belief, Family Fitness had the ability to, but did not, ensure that the person or entity that called Marjorie made appropriate disclosures. The membership that Marjorie won was not actually free.

53. A representative of Family Fitness called Melissa and told her she had won a free membership. Family Fitness did not provide Melissa any written disclosures describing the prize she had won or the costs of membership and personal training services prior to the time when Melissa went to Family Fitness to claim her prize. The membership Melissa won was not actually free.

54. Both Emma and Hannah came to Family Fitness to claim prizes without first being told they would be subjected to a sales presentation, and neither received any written description of the prizes they had won or the membership costs before coming to Family Fitness to claim their prizes. The free membership that Emma and her boyfriend won was not actually free.

55. Family Fitness' conduct as described in this Count violates MCL 445.903(1)(r) and (ff).

56. Upon information and belief, many other Michigan consumers have had similar experiences to those described above. Upon further information and belief, Family Fitness is continuing to engage in contest prize activities like those experienced by Emma, Hannah, Marjorie and Melissa. Thus, the Attorney General is advancing these claims on behalf of these, and all similarly situated, consumers.

COUNT II - Violation of MCL 445.931

57. The Attorney General incorporates the allegations from paragraphs 1 through 56 above.

58. The MCPA is not the only source of law applying to Family Fitness' prize drawings. Specifically, MCL 445.931 requires entities offering an inducement valued at \$25 or more to entice consumers to attend a sales presentation where the offered services are valued at greater than \$500 to include a clear disclosure on the contract explaining that it can be cancelled by the consumer within three days of its signing.

59. At times, Family Fitness offers inducements valued at more than \$25 in order to induce consumers into attending in-person sales presentations at its fitness clubs. Further, Family Fitness has used such inducements to sell membership or personal training service contracts valued at more than \$500. Family Fitness has done this on contracts that do not contain text stating that the contract may be cancelled within three days of execution.

COUNT III - Violations of MCPA sections 3(1)(m), (y), (bb) and (cc)

60. The Attorney General incorporates the allegations from paragraphs 1 through 59 above.

61. Upon information and belief, Family Fitness authorizes employees, representatives and agents at each of its fitness club locations to present information to consumers about memberships and personal training. These employees, representatives, or agents answer consumer questions, and are

empowered to enter into contracts with consumers regarding memberships and personal training on Family Fitness' behalf.

62. Family Fitness sells its gym memberships and personal training agreements to consumers through employees, representatives or agents whom the consumers reasonably believe are providing them complete, honest, and accurate information. But, some consumers are receiving information that is incomplete, untruthful, or inaccurate.

63. Some consumers, like Hannah and Ron were told by the representative signing them up that they can cancel the membership at any time. Such consumers were either affirmatively told there is no cancellation fee, or the employee, representative, or agent with whom the consumer was dealing told the consumer he or she may cancel any time without disclosing that Family Fitness would attempt to hold them financially responsible for the full amount of the contract.

64. According to its primary Michigan website as it existed prior to receiving the first NIA from the Attorney General, Family Fitness offered a 30-day free trial, but a consumer was required to use the gym facilities a minimum of 12 times in order to cancel a free, trial membership. This minimum usage requirement does not, and did not, appear in Family Fitness' standard membership agreements. Family Fitness' employees, representatives, and agents did not always disclose this minimum usage requirement to consumers at the time of signing them up for membership agreements. Nevertheless, Family Fitness has refused to allow such consumers who have not used the facilities for that minimum number of times to

cancel free memberships without paying a termination fee. Zach S., a former Grand Valley State University student, was not told he needed to use the gym a minimum number of times in order to cancel his free trial until he actually tried to cancel. (See Zach S. affidavit, Exhibit G, ¶11).

65. On some occasions, Family Fitness' employees, representatives or agents have applied the electronic signature of a consumer to membership or personal training agreements without the knowledge or consent of the consumer. This has left affected consumers uninformed about, and later surprised by, various contract terms that Family Fitness has applied against them, including—but not limited to—monthly payments, a \$44 club enhancement fee, automatic membership renewal, cancellation fees (including a \$75 fee charged to consumers who move to an area more than 35 miles from a Family Fitness gym), and the duration of the purported membership.

66. The electronic signatures of Marjorie and Zach were applied to membership and personal training contracts without their knowledge or consent by one or more Family Fitness employees, representatives or agents. Although Melissa signed a personal training contract, her electronic signature was applied to a membership agreement without her consent. (Exhibits D, G, and E). The Attorney General has received numerous complaints containing similar allegations. (See, e.g. consumer complaints from Annie M. of Portage, Olivia F. of Muskegon, Christina B. of Allegan, and Christopher D. of Grandville; Exhibit H).

67. With respect to some consumers, Family Fitness has not delivered upon the promised benefits. Although Family Fitness' employee, representative or agent knew Hannah was signing up specifically because of her desire to use the tanning beds to get ready for her wedding, the tanning equipment at the Byron Center location was not functioning for an extended period in March and April 2017. Furthermore, Marjorie's personal trainer failed to appear at two of the four appointments she scheduled; but Family Fitness billed her for those appointments anyway. Furthermore, Jesika G. of Grand Rapids had personal trainers repeatedly cancel, arrive late, or leave early from her scheduled sessions, citing multiple different reasons each time. (Jessica G. affidavit, Exhibit I). Jesika also reported that during many of her thirty minute training sessions, her trainer would leave for a "restroom break" and return ten to fifteen minutes later, and Family Fitness still billed Jesika for the full thirty minute sessions. Other consumers have experienced similar problems with their personal trainers. See, e.g., the consumer complaints of Jana J. of Grand Rapids and Lisa B. of Sparta. (See Exhibit J).

68. Family Fitness' conduct as described in this Count violates MCL 445.903(1)(m), (y), (bb), and (cc).

69. The Attorney General is advancing the allegations in this Count on behalf of each consumer identified in paragraphs 1 through 46 and 60 through 68 above, as well as on behalf of all similarly situated consumers who will be identified during the course of this litigation. These consumers have experienced damages including (but not limited to) the payment of unwarranted monthly membership

and personal training costs, annual club enhancement fees, and contract termination costs. Upon information and belief, some of the business practices giving rise to the violations that have already occurred are still ongoing.

COUNT IV - Violations of MCPA Sections 3(1)(n) and (aa)

70. The Attorney General incorporates paragraphs 1 through 69 as though fully set forth here.

71. Family Fitness has engaged in a variety of communications and conduct that have the probability of confusing or misleading consumers about their legal rights in regard to gym memberships and personal training arrangements. This has occurred both with regard to consumers who came to Family Fitness to establish a membership, and with respect to consumers who were members at other gyms that closed and then were told they were now members of Family Fitness.

A. Issues relating to gym memberships originating with other entities

72. There have been numerous occasions where Family Fitness purchased or acquired another gym when it went out of business, and automatically signed up the other gym's customers for Family Fitness memberships. Consumers report that when the previous gym they had memberships at closed, their memberships were transferred or sold to Family Fitness without their knowledge. Then, when they were not paying for the Family Fitness memberships they never agreed to, Family Fitness insisted the consumers pay high late fees or sent their accounts to

collections. Consumers have stated that this occurred when other gyms in West Michigan such as Back to Fitness, Endurance Fitness, and Forever Fit, closed.

a. For example, Miguel R. of Holland belonged to a gym called Back to Fitness. When the gym went out of business, Back to Fitness encouraged Miguel to join Family Fitness. When he went into Family Fitness to inquire, Family Fitness encouraged Miguel to sign a new contract with them. Miguel told Family Fitness he did not wish to be a member of the gym and decided not to sign a contract. Miguel is now in collections because of Family Fitness, and says “Now I am being billed by Family Fitness when I was never a member of their gym.” (Exhibit K, pp 1-2).

b. Michael T. of Grandville belonged to Forever Fit. Family Fitness bought Forever Fit, which Michael never knew occurred, and he states, “I was never made aware of this buyout or anything to do with my membership contract.” He suddenly had a membership with Family Fitness that he never signed up for or agreed to. The alleged “debt” has been reported to a collections agency. (Exhibit K, pp 3-4). Similarly, Ronald L. of Caledonia belonged to Endurance Fitness in Kentwood, Michigan. Family Fitness then acquired Endurance Fitness and it became the Alpine Family Fitness location. Ronald began attending Family Fitness after the acquisition, but decided he wanted to cancel when his original Endurance membership was up. Family Fitness did not allow him to, and he says, “they tried to say since they bought out Endurance that I must now comply with their contract, even though I signed nothing.” (Exhibit K, pp 5-6).

c. Jason H. of Ada also belonged to Endurance Fitness when it was sold to Family Fitness. His membership was then transferred to the Plainfield Family Fitness location and when he became upset about the services at the gym, he tried to cancel. He was told that he could not cancel without paying high fees, so Jason waited for his original Endurance membership to run out. Six months after the Endurance membership ended, he was contacted by Family Fitness and told that he owed for the past six months of membership, even though he knew it ended. Family Fitness informed Jason that his contract “was signed up for another 3 years” without his knowledge. Jason was also in collections. (Exhibit K, pp 7-8).

d. Similar complaints have been filed by other Michigan residents, including Christine H. of Commerce Township, Carrie F. of Muskegon, and William T. of Wyoming, among others. (Exhibit K, pp 9-14).

B. Issues arising with consumers who came to Family Fitness

73. As demonstrated through the affidavits of Marjorie and Zach (Exhibits D and G), Family Fitness has insisted that consumers who had their electronic signatures applied to membership and personal training contracts without their consent are nonetheless bound by the terms of those contracts. In electronic mail and telephonic correspondence with such consumers, Family Fitness' Corporate Office representatives have described these contracts as creating a legal obligation upon the consumer.

74. It is a well-established principle of contract law that terms that impose penalties, rather than compensating a party for its reasonable damages cause by a breach, are void.

75. Prior to the Attorney General's issuance of the first NIA on July 14, 2017, Family Fitness had been operating under the premise that consumers either cannot cancel membership and personal training contracts, or that those wishing to cancel are still obligated to pay all monthly fees that would be due were such contracts completed to the end of the term. Through communication of this policy to individual consumers, Family Fitness achieved collection of monthly fees and annual club enhancement fees from consumers who were unable or unwilling to pay the large contract termination fee. In some instances, as with Hannah, Family Fitness used its policy to obtain contract termination fees of \$250 or more. In many other instances, Family Fitness used its policy to assert debts of hundreds or even thousands of dollars against consumers that were transferred to a collection agency for recovery.

76. Upon information and belief, Family Fitness' policy as described in the preceding paragraph was motivated by interests other than to compensate Defendants for the reasonable costs and expenses they were incurring as a result of consumers choosing to discontinue membership and personal training relationships with Family Fitness. Upon further information and belief, contract termination fees of \$250 or more are punitive and unlawful. Contract termination fees in amounts below \$250 are also likely punitive.

77. Following issuance of the first NIA, Family Fitness communicated to some consumers that the Attorney General had approved a contract termination fee of \$250. The Attorney General had not given any such approval. But Family Fitness' communication created a probability that the consumers receiving it would be confused by their legal rights or obligations through mention of AG approval.

78. Family Fitness has used template membership and personal training contracts for several years. These templates contain a cancellation provision that is unclear and creates a probability that consumers will be confused or misled about their cancellation rights. This provision states:

Cancellation Policy: To request cancellation please send a written notice to the corporate email address request@familyfitnessmichigan.com. Gym and/or its assigns or billing agents will address each agreement on a individual basis. Should the Gym not be able to provide a location within a 35 mile radius from the member(s) new address, payment on this agreement will be suspended upon payment of an appropriate cancellation fee of \$75.00 and legitimate verification of the move with 30-days notice. However, if the membership has been Paid in Full, the member will not be refunded for any unused portion of the membership. Send cancellation request to request@familyfitnessmichigan.com.

Member agrees to follow club rules as promulgated from time to time. Violation of these rules may be the cause for suspension or cancellation of membership with no refund and the entire remaining balance shall be deemed due and payable upon demand, and you agree to pay allowable interest, and all cost of collection, including, but not limited to, collection agency fees, court costs and attorneys fees.

79. Further, there is a probability consumers may be confused or misled by this provision when confronted with it during an in-person sales presentation. As alleged above, such presentations sometimes include statements from Family Fitness employees, representatives or agents that the consumer may cancel at any

time and without costs, or that the consumer need not read the contract being presented.

80. To the extent anything in the cancellation provision is clear, it is that a consumer may be charged a \$75 cancellation fee if he or she moves to a location where there is not a Family Fitness location within thirty-five miles. But Family Fitness has communicated with multiple consumers who have moved more than thirty-five miles from a Family Fitness location in a way that is likely to cause a probability of confusion as to their legal rights under this text.

81. The Attorney General has received approximately ten complaints from Family Fitness customers who had a membership and then moved out of the area, and Family Fitness has still not allowed them to cancel the membership. Some of these consumers indicate that when they signed up for the membership, they were told that if they moved more than 35 miles away from a Family Fitness location, they could cancel with a \$75 fee, or even no fee at all. Furthermore, consumers report that Family Fitness requests proof of moving in the form of a utility bill, driver's license from the new state, or a lease. In some instances when the consumers provide proof of their new residence, Family Fitness unreasonably rejects the proof.

a. For example, Tyler S. signed a contract with the Muskegon Family Fitness in October 2015. When he moved to Colorado in April 2016, Family Fitness told him to send proof of new residence. Tyler sent a copy of his paystub from a Colorado employer because he did not have the proof they required at that time.

Family Fitness rejected this proof as insufficient and told him to pay \$200 to cancel the membership. When he complained to Family Fitness, he reports they told him “they could do whatever they wanted and charge me whatever they wanted even though I hadn’t been there in over a year.” Family Fitness then sent Tyler to collections even though he was living in Colorado. (Exhibit L, pp 1-2).

b. Michael M. belonged to the Muskegon location and was moving away, so he wanted to cancel. Family Fitness told him to provide the necessary documentation. When he went to provide the documentation, they asked him to pay a higher amount. He says, “I called corporate and they tried to tell me I have to pay \$250 plus [a] cancellation fee.” (Exhibit L, pp 3-4). Furthermore, Kelli S. of California belonged to the Plainfield location after winning a free membership. Kelli was told when signing up that if she moved further than 35 miles from Family Fitness she would not need to pay a cancellation fee. Kelli says when she moved to California and wanted to cancel accordingly, they told her to cancel she had to pay the full sum of the contract. Kelli says, “They also stated that I would have to pay \$75 for each contract and one-month sum of each contract” when she told Family Fitness she moved. (Exhibit L, pp 5-6).

c. Reece D. belonged to the Holland location and moved to Colorado. When she explained this to Family Fitness to try and cancel, Family Fitness told her she could not cancel because “it was not a permanent move”. Because her stay in Colorado was for three months before moving permanently to another western

state, Family Fitness did not accept her documentation of proof of address. (Exhibit L, pp 7-8).

d. Other similar complaints have been filed by previous Michigan residents, including Candace S., Vicky P., Sarah K., and Lauren B. (See Exhibit L, pp 9-16). Family Fitness' conduct with respect to these and similarly situated consumers has led to confusion regarding their legal rights and has led to unconscionable results.

82. Family Fitness has used its assertion of large sums of money due under past contracts to compel some consumers into entering into new membership contracts. For example, Gage S. of Saranac was told the only way to resolve a collections debt of more than \$10,000 that was interfering with his mortgage process was to enter into a new, two-year membership contract. (Gage S. documents, Exhibit M). And, Kylee A. of Greenville pre-paid \$217 on a new, one-year contract in order to get a collections debt on a prior agreement removed. (Kylee A. affidavit, Exhibit N). Thus, after confusing these and other similarly situated consumers about their legal rights, Family Fitness is using duress associated with the debts it has put into a collections process as a means of compelling consumers into unwanted contractual relationships.

CONCLUSION AND RELIEF SOUGHT

Based upon the above allegations, the Attorney General will seek certification for appropriate classes of affected Michigan consumers. Where the criteria for class certification cannot be met for one or more claims, the Attorney

General will seek relief on behalf of all consumers identified in this complaint, as well as enumerated consumers to be identified through complaints to the Attorney General's Office or through discovery. Further, the Attorney General respectfully requests that this Honorable Court grant the following relief:

A. Issue preliminary and permanent injunctive relief prohibiting Family Fitness from engaging in the unlawful conduct described in this Complaint, and affirmatively requiring Family Fitness to restore the affected consumers to their status quo conditions by returning all payments that were improperly charged, voiding all contracts that were unlawfully created, and repairing the condition of credit scores damaged through the reporting of unlawful debts.

B. All consumers negatively affected by Family Fitness' misconduct should be awarded the greater of \$250 or their actual damages in accordance with MCL 445.910.

C. The Attorney General should be awarded costs and attorney fees expended in the course of this litigation.

D. All other relief this Court deems just and proper.

Respectfully submitted,

Bill Schuette
Attorney General


Darrin F. Fowler (P53464)
Assistant Attorneys General
Corporate Oversight Division
P.O. Box 30755
Lansing, MI 48909
(517) 373-1160

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