

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

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

Plaintiff,

vs.

FAMILY FITNESS 40890 INC; *et al*,

Defendants.

---

Case No. 17-08739-CBB

HON. CHRISTOPHER P. YATES

Darrin F. Fowler (P53464)  
Aaron W. Levin (P81310)  
Attorneys for Plaintiff  
Assistant Attorneys General  
Michigan Dep't of Attorney General  
Corporate Oversight Division  
P.O. Box 30736  
(517) 335-7632  
FowlerD1@michigan.gov  
LevinA@michigan.gov

Nicholas V. Dondzila (P73937)  
Dondzila Law  
Attorney for Family Fitness  
180 Monroe Ave., Ste. 400  
Grand Rapids, MI 49503  
(616) 454-3700  
dondzila@k2legal.com

---

CONSENT JUDGMENT

The Attorney General of the State of Michigan (Attorney General) commenced this lawsuit on September 25, 2017. In a four-count complaint, the Attorney General alleged that the above-captioned Defendants, collectively referred to throughout this litigation as Family Fitness, violated MCL 445.931 and various provisions of the Michigan Consumer Protection Act, MCL 445.901 et seq. The Attorney General's First Amended Complaint was filed on or about October 10, 2017.

Family Fitness filed an Answer to the Attorney General's First Amended Complaint on or about October 31, 2017. The Attorney General filed a Second Amended Complaint on or about March 18, 2018. No Answer to the Attorney General's Second Amended Complaint has been filed.

During the course of this litigation, this Court has entered various orders, both substantive and procedural. Among the substantive orders are the following:

- A preliminary injunction was granted on December 7, 2017;
- A stipulated order to assist consumers in removing Family Fitness debts reported to credit reporting agencies by Swift Funds Financial Services, LLC was entered on April 3, 2018;
- A permanent injunction was entered on behalf of Megan Cortez, Mandy Menefee, Andrew Shaw, Kathy Shaw, and Suegay Munguia on August 22, 2018.
- Summary disposition was granted in the Attorney General's favor on a determination of liability under Counts I and II of the Second Amended Complaint on December 11, 2018; and
- A permanent injunction was entered on behalf of consumer Martha Herman on February 25, 2019.

For the purposes of this Consent Judgment, the above listed orders shall be referred to as the Interim Substantive Orders.

Family Fitness now wishes to resolve the pending matter rather than pursue continued litigation. Without admitting any wrongdoing, Family Fitness further asserts it has taken steps to improve its business operations since the commencement of this lawsuit, and that it will continue to do so in the future. Family Fitness has also expressed a willingness to release consumers from outstanding debts that accrued prior to the issuance of this Court's preliminary injunction affecting its business practices; Family Fitness asserts these debts are valued at approximately \$8 million.

Meanwhile, the Attorney General has stated throughout this litigation the dual goals of allowing Family Fitness to continue operating so long as it can do so in a lawful manner and securing compensation for consumers harmed by Family Fitness past misconduct.

Following discussions between the Attorney General's Office and Family Fitness' ownership team this Consent Judgment is being presented because it is deemed by both sides to be the best mechanism for accomplishing these goals.

Family Fitness acknowledges it has had the opportunity to review this document and receive appropriate legal consultation prior to its entry.

Therefore, upon the consent of the Parties as reflected through the below signatures, IT IS ORDERED AS FOLLOWS:

1. Family Fitness will pay to the Attorney General's Office the total sum of \$220,000.00. This shall be accomplished through thirty-six (36) equal payments made on a monthly basis for thirty-six months in the amounts of \$6,111.11 each. These payments shall be due on the eighteenth (18th) day of each month, with the first payment being due on May 18, 2019, and

payments due in each consecutive month after that, such that the final payment will be made on or before April 18, 2022.

2. At its election, Family Fitness may reduce its overall liability under this Consent Judgment to \$214,801.32 by making an additional payment of \$12,000.00 to the Attorney General on or before April 30, 2020. Should Family Fitness make such an additional payment, its monthly payment amount for the remaining twenty-four monthly payments from May 18, 2020 through April 18, 2022 shall be reduced to \$5,400.00 per month.
3. All payments made under this Consent Judgment shall be accomplished through checks made payable to the State of Michigan delivered or mailed to the attention of Darrin F. Fowler, Assistant Attorney General, 525 W. Ottawa St., P.O. Box 30736, Lansing, MI 48909. Should all payments required under this Consent Judgment be received by the Attorney General's Office on or before the monthly due dates, then Family Fitness shall be entitled to subtract \$4,801.32 from its final monthly payment; together with the option in paragraph 2, this presents Family Fitness the opportunity to bring the total payments due under this Consent Judgment to \$210,000.00.
4. The Attorney General's Corporate Oversight Division, or any successor Division, shall make the first \$190,000.00 received from Family Fitness under this Consent Judgment available as compensation to consumers through a claims process implemented through the exercise of that Office's discretion. In so doing, the Attorney General shall provide a fixed reimbursement to each consumer who supplies documentation that he or she had a Family Fitness debt placed upon a report from a credit reporting agency by Swift Funds Financial Services, Inc in 2017. The Attorney General may also use these funds to provide compensation for documented expenses for membership fees, personal training costs, cancellation fees, late charges, and other costs arising before the date of this Consent Judgment that the Attorney General believes may have been improperly applied by Family Fitness. Those individuals identified as Typical Consumers in the Attorney General's Motion for Class Certification shall be given the first priority in the disbursement process, and each of those Typical Consumers shall be given an additional \$125 beyond the amount they might otherwise be entitled to under the claims process. This Consent Judgment does not create enforceable third-party rights to any payments or other benefits contemplated by the terms of this Judgment.
5. All funds paid by Family Fitness to the Attorney General after the first \$190,000.00 shall be deemed as attorney fees. Similarly, if there are funds remaining from the initial \$190,000.00 in payments after the Attorney General has completed the claims and disbursement process, these funds


shall be retained by the Attorney General as additional attorney fees and to defray the costs associated with the claims and disbursement process.

6. Within twenty-one (21) days of the entry of this Consent Judgment, Family Fitness shall provide the Attorney General with the physical addresses, email addresses, and telephone numbers of the consumers whose names are listed in the document included as Attachment B to the Attorney General's Motion to Compel that was filed with this Court on December 4, 2018.
7. Consistent with the preliminary injunction previously entered by this Court, Family Fitness is permanently enjoined from:
  - disallowing, preventing or ignoring any written cancellation made by a consumer seeking to terminate any membership or personal training agreement, regardless of when that agreement was entered into;
  - applying the electronic signature of any Michigan consumer to any agreement without his or her express knowledge and consent;
  - stating, or suggesting, that signing a new membership or personal training agreement is a prerequisite to removing any past debts from collection;
  - maintaining or enforcing any membership agreement entered into by a consumer who entered into the agreement following a statement by Family Fitness that doing so would cause a prior debt claimed by Family Fitness to be removed from collections or otherwise resolved;
  - telling any consumer that a membership, personal training session, or other benefit or prize is "free" or will be provided without charge if any costs or charges will be applied; and
  - using the promise of prizes to generate business, except to the extent Family Fitness fully complies with the requirements of MCL 450.903.
8. The Interim Substantive Orders are hereby incorporated into this Consent Judgment, and Family Fitness shall adhere to the requirements and injunctions stated in those orders.
9. Any and all consumer debt obligations to Family Fitness arising on or before December 7, 2017, to the extent Family Fitness regards any debts as still owing as of the date of this Consent Judgment, are declared void. This ruling applies to all consumer obligations arising from any membership or personal training agreement.

10. Family Fitness shall not charge any cancellation fee on any membership or personal training agreement resulting from a drawing or event prize. Until all payments are made as required under this Consent Judgment, Family Fitness shall not charge a cancellation fee of more than \$75 on any other membership or personal training agreement, regardless of the date upon which such agreement was entered into. This \$75 limitation applies regardless of the number of consumers to which the agreement relates. In other words, if a gym membership agreement relates to a family of four persons, the total cancellation fee on that agreement for the four individuals cannot exceed \$75.

This is a final order resolving the last pending claim in this lawsuit and closing this case.

Dated: April 17, 2019

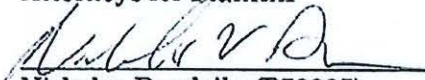
  
\_\_\_\_\_  
HON. CHRISTOPHER P. YATES (P41017)  
Kent County Circuit Court Judge

WE CONSENT TO ENTRY OF THE ABOVE ORDER:

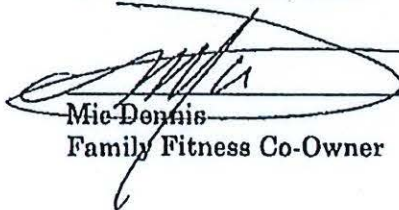
Dated: April 15, 2019

  
\_\_\_\_\_  
Darrin F. Fowler (P53464)  
Aaron W. Levin (P81310)  
Attorneys for Plaintiff

Dated: April 15, 2019

  
\_\_\_\_\_  
Nicholas Dondzila (P73937)  
Attorney for Defendants

Dated: April 15<sup>72</sup>, 2019

  
\_\_\_\_\_  
Mic Dennis  
Family Fitness Co-Owner

10