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NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 2084-CV-02713 BLS1

2/1/22 After hearing, ALLOWED as edited. See Final Judgment by Consent of same date.

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

TOWN SPORTS INTERNATIONAL, LLC, f/k/a BOSTON SPORTS CLUB; TOWN SPORTS INTERNATIONAL HOLDINGS, INC.; NEWTSI HOLDINGS, INC., d/b/a BOSTON SPORTS CLUB; V FITNESS GROUP LLC, ONE FITNESS GROUP, LLC d/b/a WORK OUT WORLD; PATRICK WALSH; and MICHAEL POIRIER;

Defendants.

E-FILED 1/25/2022 (LAW)

THE COMMONWEALTH AND THE WOW DEFENDANTS' JOINT MOTION FOR ENTRY OF FINAL JUDGMENT BY CONSENT

Plaintiff, the Commonwealth of Massachusetts, and Defendants, V Fitness Group, LLC and One Fitness Group, LLC both doing business as Work Out World (collectively, "WOW Defendants"), hereby jointly move this Court for entry of the proposed Final Judgment by Consent ("Final Judgment"). The parties have reached an agreement to resolve the instant litigation. The proposed Final Judgment (attached as Exhibit A) and the Stipulation and Consent of the WOW Defendants (attached as Exhibit B) are filed herewith.

NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
Civil No. 20-2713-BLS1

COMMONWEALTH OF MASSACHUSETTS
Plaintiff

vs.

TOWN SPORTS INTERNATIONAL, LLC,[1] & others[2]
Defendants

FINAL JUDGMENT BY CONSENT

On November 24, 2020, Plaintiff, the Commonwealth of Massachusetts, by and through its Attorney General, Maura Healey, commenced this consumer protection action against Town Sports International, LLC. The Commonwealth subsequently amended its complaint, as of right, to add Defendant Patrick Walsh. On June 24, 2021, the Commonwealth obtained leave to amend its complaint to join additional Defendants, including V Fitness Group, LLC ("V Fitness") and One Fitness Group, LLC ("One Fitness") both doing business as Work Out World (collectively, the "WOW Defendants"). The Commonwealth's Second Amended Complaint ("SAC") alleges that the Defendants violated the Massachusetts Health Club Act, G. L. c. 93, §§ 78-89, and the Consumer Protection Act, G. L. c. 93A, and seeks injunctive relief, restitution, civil penalties, and reasonable fees and costs, including attorneys' fees.

The Commonwealth and the WOW Defendants consent to the entry of this Final Judgment by Consent ("Final Judgment") in order to resolve the amount of restitution, civil penalties, and fees and costs to be paid by the WOW Defendants as well as the terms of

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[1] Formerly known as Boston Sports Club.

[2] Town Sports International Holdings, Inc., NewTSI Holdings, Inc. d/b/a Boston Sports Club, V Fitness Group LLC, One Fitness Group, LLC d/b/a Work Out World, Patrick Walsh, and Michael Poirier.

penalties, and fees and costs to be paid by the WOW Defendants as well as the terms of injunctive relief, without further trial or adjudication. The WOW Defendants acknowledge that this Court has subject matter jurisdiction over this action and personal jurisdiction over the WOW Defendants. The WOW Defendants waive all rights of appeal and also waive the requirements of Rule 52 of the Massachusetts Rules of Civil Procedure.

THE COMMONEALTH AND THE WOW DEFENDANTS JOINTLY HAVE AGREED AND REPRESENT AS FOLLOWS:

I. DEFENDANTS SUBJECT TO FINAL JUDGMENT

1. This Final Judgment shall extend to V Fitness Group, LLC and One Fitness Group, LLC both doing business as Work Out World as well as to those persons set forth in Mass. R. Civ. P. 65(d) and it shall constitute a continuing obligation.

2. Defendant V Fitness Group, LLC doing business as Work Out World is a Massachusetts limited liability company headquartered at 51 Diauto Drive, Randolph, MA 02368 with its principal place of business at 41 Seyon Street, Waltham, MA 02453.

3. Defendant One Fitness Group, LLC doing business as Work Out World is a Massachusetts limited liability company headquartered at 51 Diauto Drive, Randolph, MA 02368 with its principal place of business at 95 Washington Street, Canton, MA 02021.

II. JURISDICTION

4. This Court has jurisdiction over the subject matter of this action pursuant to G. L. c. 93A, § 4, and G. L. c. 214, § 1.

5. This Court has personal jurisdiction over Defendants in this action pursuant to G. L. c. 223A, § 3.

6. Venue is proper in Suffolk County pursuant to G. L. c. 93A, § 4.

III. DEFINITIONS

7. "Contract for health club services" is defined as "a contract which has the primary purpose of providing a person with the right to use the facilities of a health club or with instruction, training, or assistance by a health club in the preservation, maintenance, encouragement or development of physical fitness, conditioning or well-being…" pursuant to G. L. c. 93, § 78.

8. "Seller" is defined as "any person, firm, corporation, partnership, unincorporated association, franchise, franchisor, or other business enterprise which operates a health club or which offers or enters into contracts for health club services." Id.

9. "Buyer" is defined as "any person who enters into a contract for health club services with a health club." Id. Hereinafter, the term consumer shall be synonymous with the term buyer as defined by the Health Club Act.

10. "Consumer who had their contracts transferred" refers to any consumer whose contract is voided under Paragraph 26 of this Final Judgment.

IV. BACKGROUND

11. Pursuant to G. L. c. 93A, § 4, on November 24, 2020, the Commonwealth commenced this consumer protection action against Town Sports International, LLC.

12. The Commonwealth later amended its Complaint as of right to add Defendant Patrick Walsh.

13. The Commonwealth then obtained leave to amend its Complaint to join the WOW Defendants as well as Town Sports International Holdings, Inc., NewTSI Holdings, Inc. ("NewTSI"), and Michael Poirier.

14. The Commonwealth's SAC alleges that each of the WOW Defendants violated the Health Club Act, specifically G. L. c. 93, § 80, and engaged in unfair or deceptive acts or practices in violation of G. L. c. 93A, § 2, by: (1) accepting transfers of contracts for health club services from NewTSI where the consumers had not provided their written consent, (2) billing consumers despite the fact that they never agreed to have their contracts for health club services assigned to the WOW Defendants or to buy services from the WOW Defendants, and (3) making false or deceptive statements to consumers regarding the legality and impact of the assignment of their contracts for health club services to the WOW Defendants.

15. General Laws c. 93, § 80, states that "[n]o contract [for health club services] may be assigned by one health club to another health club without written consent of the buyer."

16. On or around November 30, 2020, the WOW Defendants entered into a contract with NewTSI in which NewTSI agreed to assign contracts for health club services to the WOW Defendants for a fee.

17. In total, NewTSI and One Fitness Group, LLC contracted to transfer 903 contracts for health club services, and NewTSI and V Fitness Group, LLC contracted to transfer 2,241 contracts for health club services.

18. At no time did NewTSI obtain the consumers' written consent to transfer their contracts for health club services to different health clubs, which consent is required by G. L. c. 93, § 80. The WOW Defendants assert that NewTSI represented to it that all memberships were transferable without further consent and that any violation of the Health Club Act by it was inadvertent. The WOW Defendants did not confirm whether such consent had in fact been obtained either before or after the transfer.

19. After the transfer, the WOW Defendants sent consumers an email stating that their contracts for health club services had been assigned and that they could "opt-out" if they did not wish to have their bank accounts or credit cards autodrafted by the WOW Defendants. The WOW Defendant's email was misleading because health clubs are required to obtain consumers' prior written consent to transfer a contract for health club services.

20. Beginning in January 2021, the WOW Defendants started charging consumers who had their contracts for health club services transferred and who had not opted-out by autodrafting their bank accounts or credit cards.

21. Between January and April 2021, the WOW Defendants charged 1,314 consumers who had their contracts for health club services transferred without their consent. When consumers contacted WOW to complain, WOW cancelled memberships and provided refunds.

22. On May 1, 2021, the WOW Defendants ceased charging consumers who had their contracts transferred and, as of that date, had issued refunds totaling $39,193.82 to consumers who had contacted the WOW Defendants to cancel their memberships, request a refund, and/or dispute the charges. Since that date, WOW Defendants have continued to issue refunds to any consumer whom they had charged who sought to cancel his or her membership, request a refund, and/or dispute the charges

23. The Commonwealth and the WOW Defendants have filed a Joint Motion for Entry of Final Judgment by Consent, incorporating by reference the terms of this Final Judgment.

ACCORDINGLY, THE FOLLOWING IS HEREBY ORDERED AND ADJUDGED:

IV. INJUNCTIVE RELIEF

24. Defendants V Fitness Group, LLC and One Fitness Group, LLC both doing business as Work Out World as well as those persons set forth in Mass. R. Civ. P. 65(d) are hereby enjoined from taking any action in violation of the Health Club Act, G. L. c. 93, §§ 78-89, including, but not limited to, engaging in the following activities or conduct in the Commonwealth of Massachusetts:

A. Assigning a contract for health club services to another health club without the written consent of the consumer; and

B. Charging a consumer or their estate anything other than the contract price for the amount of time that the services or facilities were used by the consumer prior to cancellation when a consumer cancels a contract for health club services due to any of the following: (i) a doctor's order that the consumer cannot physically or medically receive the services because of significant physical or medical disability for a period in excess of three months; (ii) the consumer's death; (iii) the unavailability of the health club services to be provided under the contract because the seller fails to open a planned health club or location, permanently discontinues operation of a health club or location, or substantially changes the operation of a health club or location; (iv) the consumer moving either their residence or place of employment more than twenty-five miles from any health club operated by the seller or a substantially similar health club which will accept the seller's obligation under the contract.

25. Defendants V Fitness Group, LLC and One Fitness Group, LLC both doing business as Work Out World as well as those persons set forth in Mass. R. Civ. P. 65(d) are hereby enjoined from taking any action in violation of the Consumer Protection Act, G. L. c. 93A, including, but not limited to, engaging in the following activities or conduct in the Commonwealth of Massachusetts:

A. Making false or deceptive statements to consumers about the legality or enforceability of their contracts for health club services;

B. Taking ownership of, or attempting or purporting to take ownership of, health club memberships that the consumer had cancelled or attempted to cancel;[3]

C. Billing or charging consumers for membership fees, cancellation fees, or any other costs for consumers who had cancelled their contracts for health club services with a health club prior to assignment; and

D. Billing or charging a consumer for membership fees, cancellation fees, or any other costs after a consumer's contract was assigned or purportedly assigned without the voluntary and written consent of the consumer that,

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[3] Except that it shall not be a material violation of this provision of the Final Judgment if the WOW Defendant obtaining membership contracts has not billed or charged the consumer who cancelled or attempted to cancel their membership contract and the WOW Defendant has taken the following actions:

a. asked the health club transferring the contracts to the WOW Defendant whether it has the written consent of each of the consumers involved to do so;
b. received written confirmation from the health club transferring the contracts to the WOW Defendant that it has the written consent of each of the consumers involved to do so;
c. reviewed all records related to any contract transferred to a WOW Defendant within one (1) week of the transfer;
d. confirmed, via the record review set forth in (c) above, that the health club that transferred the contracts had the written consent of each consumer transferred before contacting, billing, and/or charging any consumer transferred; and
e. cancelled any membership transferred within 72 hours of determining that the consumer either had not given their written consent to the transfer or had cancelled or attempted to cancel their membership contract prior to the transfer.

inter alia, explicitly identified the name and location of the club to which the consumer is being assigned.

26. Each of the 3,144 contracts for health club services that NewTSI assigned to the WOW Defendants shall be deemed void and unenforceable as of November 30, 2020.

27. Within 60 days of the entry of this Final Judgment, the WOW Defendants shall refund all outstanding amounts, which they have not already refunded, that they received from any consumer whose contract is voided under Paragraph 26, except for funds received from any consumer whose contract is voided under Paragraph 26 who: (1) used one of the WOW Defendants' facilities or services at least nine times between November 30, 2020, and August 30, 2021, and (2) elects to enter into a new membership agreement with one of the WOW Defendants within 60 days of the entry of this Final Judgment.

28. The WOW Defendants represent as follows: Prior to the filing of the Joint Motion for Entry of this Final Judgment, the WOW Defendants cancelled any allegedly past due amounts related to any consumer whose contract is voided under Paragraph 26. The WOW Defendants represent that neither they nor any person or entity acting on their behalf have ever referred any of these consumers to collections for allegedly past due amounts or reported any of these consumers' allegedly past due amounts to a credit reporting agency.

29. Within 15 days of the entry of this Final Judgment, the WOW Defendants shall email a notice, in the form and substance attached as Exhibit 1 to this Final Judgment, to every consumer whose contract is voided under Paragraph 26, using the email addresses it currently has in its business records for each consumer.

30. Within 90 days of the entry of this Final Judgment, the WOW Defendants will certify to the Attorney General's Office in writing that they have complied with Paragraphs 27 and 29 of the Final Judgment.

31. The WOW Defendants may solicit and/or offer any consumer whose contract is voided under Paragraph 26 a new membership contract, provided that the contract complies with this Final Judgment, the Health Club Act, and G. L. c. 93A and includes terms and conditions that are no less beneficial than those offered to other consumers at their respective facilities with respect to membership dues, fees and costs, club access, the facilities and services available, cancellation policies and procedures, and any other material terms and conditions.

32. As of the date of the entry of this Final Judgment, the WOW Defendants shall not obtain consumers' generic consent to assignment in a contract for health club services. From and after the date of the entry of this Final Judgment, prior to assigning a contract for health club services, the WOW Defendants shall, within the thirty (30) day time period immediately preceding the proposed assignment: (i) inform each impacted consumer of the anticipated assignment and include information regarding the proposed assignee of the contract, including the assignee's name, location, and services offered and (2) obtain the written consent of each impacted consumer, which can be done by email or other electronic means. Commencing no later than forty-five (45) days after the entry of this Final Judgment, the WOW Defendants' contracts for health club services shall include language that the contract may not be assigned without the written consent of the consumer. Additionally, from and after the date of the entry of this Final Judgment, prior to accepting assignment of a contract for health club services, the WOW Defendants shall obtain assurances from the assigning health club that it followed

procedures substantially equivalent to those outlined in the second sentence of this paragraph and obtained the written consent to the transfer of each impacted consumer.

33. Nothing herein shall relieve Defendants of their obligations to comply with all federal and state laws and regulations.

VI. MONETARY RELIEF

34. Pursuant to G. L. c. 93A, § 4, a judgment for civil penalties is hereby entered against One Fitness for $43,750 and against V Fitness for $81,250 (the "Judgment Amounts"), subject to the provisions set forth below.

35. Each of One Fitness and V Fitness severally shall pay half of its respective Judgment Amount to the Commonwealth in three installments as follows:

a. Within 10 days of the entry of this Final Judgment, One Fitness shall pay $5,000 and V Fitness shall pay $10,000.

b. Within 60 days of the entry of this Final Judgment, One Fitness shall pay $5,000 and V Fitness shall pay $10,000

c. On or before May 31, 2022, One Fitness shall pay $11,875 and V Fitness shall pay $20,625.

These funds shall be allocated to the Commonwealth's local consumer aid fund established by G. L. c. 12, § 11G, and/or to the General Fund of the Commonwealth of Massachusetts.

36. The remaining halves of the Judgment Amounts, $21,875 against One Fitness and $40,625 against V Fitness (the "Suspended Amount") shall be suspended for a period of ten (10) years from the entry of this Final Judgment, provided that the WOW Defendants comply with the provisions of this Final Judgment. If a Court of competent jurisdiction determines that either or both of the WOW Defendants have failed to comply with any provision in this Final Judgment,

then each of One Fitness and V Fitness (and not just the non-compliant party), severally, shall pay its respective Suspended Amount, together with any additional penalties or restitution assessed by a Court, and shall also pay, jointly and severally, the Commonwealth's reasonable attorneys' fees and costs incurred for the enforcement of this Final Judgment. At of the end of such ten-year period, so long as the Commonwealth has not brought an action alleging that either or both WOW Defendants have failed to comply with any provision in this Final Judgment, the Suspended Amounts shall be forever waived.

37. The Judgment Amounts are assessed and suspended based on the WOW Defendants' financial condition as represented to the Commonwealth by each of them in July 2021 and affirmed by the WOW Defendants' execution of the attached Stipulation and Consent. If either of the WOW Defendants have failed to accurately disclose its assets and liabilities, said failure shall constitute a default under this Final Judgment and all sums due under this Final Judgment which have not been paid, including the Suspended Amounts, shall be immediately due and payable after notice by the Commonwealth.

38. If either One Fitness or V Fitness commences any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking an order for relief of either One Fitness's or V Fitness's debts, or seeking to adjudicate either One Fitness or V Fitness as bankrupt or insolvent, or seeking appointment of a receiver, trustee, custodian, or other similar official for either One Fitness or V Fitness or for all or any substantial part of either One Fitness's or V Fitness's assets, neither One Fitness nor V Fitness shall argue or otherwise take the position, directly or indirectly, that: (a) its obligations under this Judgment may be avoided under 11 U.S.C. § 547; (b) it was insolvent at the time this Judgment was entered into, or became insolvent as a result of a payment made pursuant to the Judgment; or

(c) the mutual promises, covenants, and obligations set forth in this Judgment do not constitute a contemporaneous exchange for new value given to either One Fitness or V Fitness.

39. If either One Fitness's or V Fitness's obligations under this Judgment are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the Commonwealth, at its option, may rescind the releases in this Judgment and bring any claim, action, or proceeding against either One Fitness or V Fitness for the claims that would otherwise be covered by the release provided herein. Neither One Fitness nor V Fitness shall argue or otherwise take the position that the Commonwealth's claims are subject to stay, including pursuant to 11 U.S.C. §§ 105 or 362(a), or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, except to the extent such defenses were available on the date this Judgment entered.

40. Any and all payments required pursuant to this Final Judgment shall be made by certified or cashier's check payable to the Commonwealth of Massachusetts and delivered to Ann E. Lynch, Assistant Attorney General, Office of the Attorney General, 1441 Main Street, 12th Floor, Springfield, MA 01103.

VII. OTHER PROVISIONS

41. Compliance. Within sixty (60) days of entry of this Final Judgment, the WOW Defendants shall provide the Attorney General's Office with confirmatory discovery that includes identifying all consumers whose contracts for health club services the WOW Defendants voided under this Final Judgment and the amount of refunds provided to consumers. The WOW Defendants shall also provide exemplars of its membership contract(s) currently in use for new members in Massachusetts. Further, upon the request of the Attorney General, or

her representatives, the WOW Defendants shall produce all documents or provide all information relating to compliance and/or efforts to comply with the provisions of this Final Judgment.

42. Continuing Jurisdiction. The parties to this Final Judgment admit to the continuing jurisdiction of the Suffolk Superior Court for the purpose of enforcing or modifying the terms of this Final Judgment or for granting such further relief as the Court deems just and proper. The injunctive relief provisions of this Final Judgment place the WOW Defendants under the restraint of a direct order of the Court. Any violation of the injunctive terms of this Final Judgment may result in the WOW Defendants being adjudged in criminal or civil contempt of court and, pursuant to G. L. c. 93A, § 4, subject to a civil penalty of not more than ten thousand dollars ($10,000) for each violation, as well as other penalties permitted by law.

43. Governing Law. The provisions of this Final Judgment shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

44. Severability. The provisions of this Final Judgment shall be severable and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the other provisions of this Final Judgment shall remain in full force and effect.

45. Conduct Not Condoned. Consent to this Final Judgment does not constitute an approval by the Commonwealth of any of the WOW Defendants' acts or practices, and the WOW Defendants shall make no representations to the contrary.

46. Entire Agreement. This Final Judgment contains the complete agreement between the Commonwealth and the WOW Defendants regarding the amount of restitution, civil penalties, and fees and costs to be paid by the WOW Defendants as well as the terms of the injunctive relief. No promises, representations, or warranties other than those set forth in this Final Judgment have been made between the Commonwealth and the WOW Defendants. This

Final Judgment supersedes all prior communications, discussions, or understandings, if any, between the Commonwealth and the WOW Defendants, whether oral or in writing.

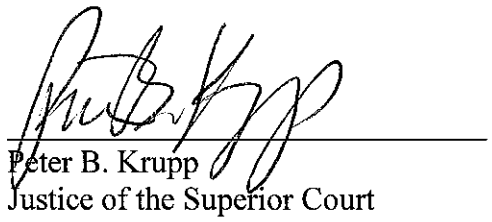
47. Modification. This Final Judgment may not be changed, altered, or modified, except by further order of the Court.

48. Effective Date. This Final Judgment becomes effective upon entry by the Court.

49. Requirements Maintained. It is the intention of the parties that the provisions of this Final Judgment do not contravene the WOW Defendants' obligation to comply with all applicable state and federal laws and regulations.

50. Release. Entry of this Final Judgment by the Court resolves all of the Commonwealth's consumer protection claims pursuant to G. L. c. 93A, §2, against the WOW Defendants arising out of the conduct described in the Commonwealth's Second Amended Complaint. This Final Judgment does not affect the Commonwealth's actions against other defendants in this action, nor the WOW Defendant's rights against such persons.

SO ORDERED:



Dated: February 11, 2022

Peter B. Krupp
Justice of the Superior Court

Exhibit 1

Greetings [consumer name]

We hope that you have enjoyed your experience with Work Out World ("WOW") either in club or via our streaming service! In light of the requirements of the Massachusetts Health Club Act, WOW will be voiding all contracts that it obtained from Boston Sports Clubs, including yours. However, you are welcome to continue as a WOW member by joining one of our clubs in person or via our website.

Additionally, unless you choose to become a member and have been regularly using our services since November 2020, any and all funds collected by WOW in association with your account have been refunded or will be refunded by [date 60 days from date of entry of Final Judgment]. If you have any questions about this, please reach out to WOW's Member Services Department at 781-785-0168. You may also contact the Massachusetts Attorney General's Office at 617-727-8400, if you have questions or concerns.

We greatly appreciate the opportunity to serve you and hope you will remain or consider us as your health club provider in the near future.

Healthy regards,

Exhibit B

STIPULATION AND CONSENT OF V FITNESS GROUP, LLC AND ONE FITNESS GROUP, LLC TO ENTRY OF FINAL JUDGMENT

Defendants V Fitness Group, LLC and One Fitness Group, LLC both doing business as Work Out World (collectively, "WOW Defendants") admit to the continuing jurisdiction of the Suffolk Superior Court as to the personal and subject matter jurisdiction of this action and consent to the entry of the Final Judgment by Consent. In so consenting, the WOW Defendants state that they are represented by Attorneys Charles Ognibene and Gregory Bombard, that they have consulted with their attorneys, and that they have personally read and understand each numbered paragraph in the Final Judgment by Consent.

The WOW Defendants waive the entry of findings of facts and conclusions of law pursuant to Rule 52 of the Massachusetts Rules of Civil Procedure. The WOW Defendants understand that the Final Judgment by Consent is entered pursuant to G. L. c. 93A, § 4, and that any false representation of a material fact in this Final Judgment by Consent may result in them being adjudged in contempt of court.

The WOW Defendants confirm that, to the best of their knowledge, their financial disclosures to the Commonwealth remain accurate as to their assets as of the time of execution of this Stipulation and Consent.

CONSENTED, WAIVING ALL RIGHTS OF APPEAL:

V Fitness Group, LLC

Dated:
By: Elizabeth Beninati, Manager
51 Diauto Drive
Randolph, MA 02368

One Fitness Group, LLC

Dated:
By: Elizabeth Beninati, Manager

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