

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Anytime Fitness, Inc., a
Minnesota corporation,

File No.

Plaintiff,

VERIFIED COMPLAINT

v.

Rainbow Fitness, LLC, a
Nevada limited liability
company, Fort Apache Fitness,
LLC, a Nevada limited liability
company, Blue Diamond
Fitness, LLC, a Nevada limited
liability company, Lawrence
Fagan, an individual, and Linda
Fagan, an individual,

Defendants.

Plaintiff Anytime Fitness, Inc. (“AFI”) for its complaint against Defendants
Rainbow Fitness, LLC, Fort Apache Fitness, LLC, Blue Diamond Fitness, LLC, Lawrence
Fagan, and Linda Fagan states and alleges as follows:

INTRODUCTION

For the past 16 months, Defendants have been taught by AFI how to develop and
successfully operate a limited service 24-hour co-ed fitness center business. They reaped
the substantial benefits conferred upon them by AFI under five-year franchise agreements,
which have permitted Defendants to quickly build a successful business in a field in which
they had no prior experience. AFI provided Defendants with the information and “know
how” to get their business up and running, and then to successfully operate their fitness

locations, including proper club layout, services offered and the pricing of those services, implementation of security systems and related technology developed by AFI and an affiliate of AFI, AFI's membership agreement forms which were prepared and distributed by AFI exclusively to its franchisees, access to AFI's suppliers, training in the methods of operating a largely unstaffed 24 hour co-ed fitness business, promotion and sales of fitness club memberships, processing of membership and membership fees, and numerous other trade practices of AFI and the Anytime Fitness franchise system. In exchange for AFI putting Defendants in business, Defendants agreed to operate their Anytime Fitness centers for the entire five year term of their Franchise Agreements and that during the term of their Franchise Agreements they would not compete with AFI, or assist anyone in competing with AFI, in connection with any other fitness center.

Defendants have blatantly and brazenly breached their non-compete and appear to be planning to breach their five year commitment to AFI. They have recently opened and begun operating a business known as "Lifestyle Fitness 24/7" in the same Las Vegas market as their Anytime Fitness centers, and are currently constructing a second "LifeStyle Fitness 24/7" location, which they intend to open within three weeks. They have indicated that they then intend to convert their three Anytime Fitness franchised locations in Las Vegas to "LifeStyle Fitness 24/7" locations to compete directly with Anytime Fitness and its existing and future franchise locations or close their Anytime Fitness locations and transfer the members to the "coming soon" location. These new businesses rely on all of the above-listed "know how," right down to the keyless entry fobs that Defendants stealthily purchased in late July from an affiliate of AFI. Equally disturbing, Defendants

have used AFI's registered trademarks and confidential information in the promotion and operation of their new business, including an advertising brochure that uses the Anytime Fitness name and logo in marketing Defendants' "coming soon" location.

These outrageous acts by Defendants require the issuance of immediate injunctive relief by this Court to avoid further injury to a significant Minnesota company.

PARTIES

1. Plaintiff AFI is a corporation existing under the laws of Minnesota, with its principal place of business located at 12181 Margo Avenue South, Hastings, Minnesota.

2. Defendant Rainbow Fitness, LLC is, on information and belief, a limited liability company existing under the laws of Nevada, with its principal place of business located at 7537 S. Rainbow Boulevard. #109, Las Vegas, Nevada, 83139.

3. Defendant Fort Apache Fitness, LLC is, on information and belief, a limited liability company existing under the laws of Nevada, with its principal place of business located at 6125 S. Ft. Apache Rd., Suite 212, Las Vegas, Nevada 89148.

4. Defendant Blue Diamond Fitness, LLC, is, on information and belief, a limited liability company existing under the laws of Nevada, with its principal place of business located at 8180 Blue Diamond Blvd. #150, Las Vegas, Nevada 89113.

5. Defendant Lawrence Fagan is, on information and belief, a resident of the State of Nevada, residing at 7196 Laramie Avenue, Las Vegas, Nevada 89113, and doing business in Nevada.

6. Defendant Linda Fagan is, on information and belief, a resident of the State of Nevada, residing at 7196 Laramie Avenue, Las Vegas, Nevada 89113, and doing business in Nevada.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 1338, as this action arises in part under the Lanham Act, 15 U.S.C. § 1051, et seq. This Court also has supplemental jurisdiction over this action pursuant to 28 U.S.C. § 1367.

8. This Court also has jurisdiction over these claims pursuant to 28 U.S.C. § 1332(a)(1) because the plaintiff and the defendants are citizens of different states and the amount in controversy exceeds \$75,000.00, excluding interest and costs.

9. This Court may properly exercise personal jurisdiction over Defendants pursuant to Section 18.E. of the Franchise Agreements entered into between the parties. Section 18.E. of the Franchise Agreements provides in part that “the sole forum for litigation arising under this Agreement . . . will be the state or federal courts of Minnesota.” This Court also has personal jurisdiction over Defendants because they entered into contracts with a Minnesota-based corporation regarding the very subject of this action, and their actions have given rise to injuries in the State of Minnesota.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), in that a substantial part of the events giving rise to the claims presented in this action occurred in this judicial district.

FACTS

11. On or about April 7, 2008, AFI entered into a Franchise Agreement with Rainbow Fitness, LLC, which granted Rainbow Fitness, LLC, the right to operate one Anytime Fitness center at 7537 S. Rainbow Boulevard. #109, Las Vegas, Nevada, 83139 (“Rainbow Franchise Agreement”). A true and correct copy of the Rainbow Franchise Agreement is attached as Exhibit A.

12. On or about April 8, 2008, AFI entered into a Franchise Agreement with Fort Apache Fitness, LLC, which granted Fort Apache Fitness, LLC, the right to operate one Anytime Fitness Center at 6125 S. Ft. Apache Rd., Suite 212, Las Vegas, Nevada 89148 (“Fort Apache Franchise Agreement”). A true and correct copy of the Fort Apache Franchise Agreement is attached as Exhibit B.

13. On or about April 21, 2008, AFI entered into a Franchise Agreement with Desert Fitness Holdings, LLC, which granted Desert Fitness Holdings, LLC, the right to operate one Anytime Fitness Center at 8180 Blue Diamond Blvd. #150, Las Vegas, Nevada 89113 (“Blue Diamond Franchise Agreement”). A true and correct copy of the Blue Diamond Franchise Agreement is attached as Exhibit C. (The Rainbow Franchise Agreement, Fort Apache Franchise Agreement, and Blue Diamond Franchise Agreement are collectively referred to as the “Franchise Agreements.”)

14. In or around April 2008, Desert Fitness Holdings, LLC transferred the Blue Diamond Fitness Franchise Agreement to Blue Diamond Fitness, LLC. A true and correct copy of the transfer agreement is attached as Exhibit D.

15. Lawrence Fagan and Linda Fagan (the “Fagans”) are the owners and managers of Defendants Rainbow Fitness, LLC, Fort Apache Fitness, LLC, and Blue Diamond Fitness, LLC.

16. Lawrence Fagan is the unconditional guarantor “for the payment of all amounts and the performance of the covenants, terms and conditions in the [Franchise Agreements], to be paid, kept and performed by the Franchisee” for the Franchise Agreements. *See* Personal Guaranty attached to each Franchise Agreement and the Transfer Agreement.

17. Linda Fagan is the unconditional guarantor “for the payment of all amounts and the performance of the covenants, terms and conditions in the [Franchise Agreements], to be paid, kept and performed by the Franchisee” for the Rainbow and Fort Apache Franchise Agreements. *See* Personal Guaranty attached to the Rainbow and Fort Apache Franchise Agreements.

18. The Fagans also agreed to be “personally bound by each and every condition and term contained in the [Franchise] Agreements and agree[d] that this Personal Guaranty will be construed as though the undersigned . . . executed Franchise Agreement[s] containing the identical terms and conditions of the [Franchise] Agreement[s].” *See* Personal Guaranty attached to each Agreement.

19. The Franchise Agreements were for an initial term of five years, with an option given to the Defendants to re-franchise the businesses for additional five-year terms.

20. AFI is the owner of Registered Trademark No. 2,814,114 for the “ANYTIME FITNESS” mark.

21. As Anytime Fitness franchisees under the Franchise Agreements, Defendants obtained, among other things, use of the ANYTME FITNESS mark and the other names and trademarks licensed by AFI to its franchisees (collectively the “Names” and “Marks”), marketing and advertising services, training programs, and highly confidential proprietary manuals and other materials, including computer software, to be used in connection with the operation of fitness centers.

22. Defendants were new to the fitness business and also received, as AFI franchisees, the information and know how to get their businesses up and running and then to successfully operate them, including,

- Proper club layout;
- The “menu” of services offered and the pricing of those services;
- Access to AFI’s suppliers;
- Training in the methods of operating a largely unstaffed 24-hour co-ed fitness business;
- AFI’s membership agreement, which has been prepared and distributed by AFI exclusively to its franchisees;
- Promotion and sales of fitness club memberships;
- Processing of membership and membership fees;

- Access to a comprehensive security system and related technology that allows for proper security for a largely unstaffed 24-hour co-ed fitness business; and
- Numerous other trade practices of AFI and the Anytime Fitness franchise system.

23. Defendants essentially had the benefit of learning and using this entire “System” of methods, procedures, standards, specifications, and the Marks within the model that AFI created, whereby the “menu” of services is limited in order to succeed in this type of business.

24. Others who have tried to adopt AFI’s business model have added services or space that add expense and destroy this model, including such things as group shower rooms, saunas, hydro massage beds and daycare centers. Most franchisees who have added such services and the necessary space have regretted doing so and have returned to the basic business model or “System.” AFI teaches its franchisees, and taught Defendants, how to operate the business successfully.

25. In exchange for the valuable services and other consideration provided by AFI, Defendants agreed, in Section 17.A. of the Franchise Agreements, that they would not:

directly or indirectly, during the term of this Agreement, on your own account or as an employee, consultant, partner, officer, director, shareholder or member of any other person, firm, entity, partnership, corporation or company, own, operate, lease, franchise, engage in, be connected with, have any interest in, or assist any person or entity engaged in any

other fitness center, wherever located, whether within the Protected Territory or elsewhere.

26. In Section 17.E. of the Franchise Agreements, Defendants agreed that AFI would have the right to petition this Court for injunctive relief to enforce the provisions of the Franchise Agreements relating to any covenants not to compete.

27. Under Section 3.C. of the Franchise Agreements, Defendants' right to use the Marks "applies only to the Franchised Location, and exists concurrently with the term of this Agreement and only so long as you are in complete compliance with our quality standards. You will have the right to use the Marks and system only in the manner prescribed, directed and approved by us in writing."

28. In April 2009, AFI showed defendant Lawrence Fagan a closed Anytime Fitness center, located at 6300 West Charleston Boulevard in Las Vegas, Nevada (the "West Charleston Location"), to see if he was interested in acquiring another Anytime Fitness franchised location. The landlord had purchased the equipment from the former franchisee and had been speaking with Mr. Fagan about reopening the leased premises as an Anytime Fitness location. AFI ultimately offered Mr. Fagan the opportunity to open an Anytime Fitness location at the West Charleston Location, but Mr. Fagan declined, claiming the economics did not work.

29. The Fagans have now opened and are operating a Lifestyle Fitness 24/7 at the West Charleston Location.

30. Lifestyle Fitness 24/7 operates as a 24-hour fitness center, similar to and competitive with AFI and its franchisees. It uses the same membership agreement, the same keyless entry system, the same equipment layout, offers the same limited "menu" of

services and the pricing of those services, has been constructed using materials and equipment obtained from AFI's suppliers, is being operated as a largely unstaffed 24-hour co-ed fitness business, and will use numerous other trade practices of AFI and the System in its operation.

31. On information and belief, the Fagans intend to open another fitness location under the Lifestyle Fitness 24/7 name at the intersection of West Warm Springs Road and South Durango Drive in Las Vegas, Nevada (the "Durango Drive Location"), in the next three to four weeks. The Durango Drive Location is now under construction.

32. On information and belief, Defendants are using many aspects of the System in their competing Lifestyle Fitness 24/7 businesses, including:

- Proper club layout;
- The "menu" of services offered and the pricing of those services;
- Access to AFI's suppliers;
- Training in the methods of operating a largely unstaffed 24-hour co-ed fitness business;
- AFI's membership agreement, which has been prepared and distributed by AFI exclusively to its franchisees;
- Promotion and sales of fitness club memberships;
- Processing of membership and membership fees;
- Access to a comprehensive security system and related technology that allows for proper security for a largely unstaffed 24-hour co-ed fitness business; and

- Numerous other trade practices of AFI and the Anytime Fitness franchise system.

33. On information and belief, Defendants have advertised and promoted the new Lifestyle Fitness 24/7 locations using the AFI Names and Marks. Attached as Exhibit E is a true and correct copy of one such advertising brochure. This brochure was not reviewed or approved by AFI.

34. On information and belief, Defendants intend to use key fobs purchased through an affiliate of AFI and AFI's proprietary software which allows members to use the key fob at the front door of the fitness center.

35. On information and belief, Defendants intend to provide membership reciprocity at all five fitness centers, including the three existing Franchised Locations and the two Lifestyle Fitness 24/7 centers. Defendants are also representing to the public that their Anytime Fitness franchised locations will either be converted to Lifestyle Fitness 24/7 centers or will be closed and the members will be transferred to the Durango Drive Location. If they do so, Defendants will be in breach of Section 17.B. of the Franchise Agreements, which prohibits them from owning, operating or assisting in the operation of any fitness center within the "Protected Territory" or within five miles of any Anytime Fitness location.

36. On information and belief, Defendants are soliciting the same employees and members from their AFI franchised businesses to their new Lifestyle Fitness 24/7 businesses.

37. On or about August 7, 2009, AFI sent a letter to the Fagans informing them of their non-compete obligations under the Franchise Agreements, demanding that they cease any competition, and requesting a response from them within three days. A true and correct copy of this letter and the receipt of service by the Fagans is attached as Exhibit F.

38. On August 17, 2009, the Fagans responded to this letter, but did not address or answer the questions posed to them concerning whether or not they were competing or intending to compete with AFI. A true and correct copy of the Fagans' email response is attached as Exhibit G.

39. AFI then responded to the Fagans' email and requested an answer to the following questions:

- (a) Are either of you involved, or have either of you in the last two months been involved, in any way, whether it be ownership, consulting, operation, ordering items for, or advertising, a fitness center at the West Charleston Location?
- (b) Are either of you involved, or have either of you in the last two months been involved, in any way, whether it be ownership, consulting, operation, ordering items for, or advertising any fitness center in Nevada that has operated or advertised its services to the public under the name Lifestyle Fitness or under any other name other than the 3 Anytime Fitness locations in which you are involved?

A true and correct copy of AFI's email response to the Fagans is attached as Exhibit H.

40. On August 19, 2009, the Fagans sent a responsive email to AFI, stating that the answers to both questions were "No." A true and correct copy of the Fagans' email response to AFI is attached as Exhibit I.

COUNT I
BREACH OF FRANCHISE AGREEMENT
(Violation of Covenant Not to Compete)

41. AFI restates and realleges each and every allegation contained in the paragraphs above.

42. AFI and Defendants made and entered into three binding and enforceable Franchise Agreements under which Defendants agreed that they would not own, operate, or be involved in any other fitness center during the term of the Franchise Agreements. The Franchise Agreements will not expire until April 2013 and have not been terminated.

43. Defendants further agreed that for a period of two years after expiration or termination of the Agreements, they will not own, operate, lease, franchise, conduct, engage in, be connected with, have any interest in or assist any person or entity engaged in any fitness center, which is located in the Protected Territory or within five miles of any Anytime Fitness center.

44. Defendants have breached Section 17.A. of the Franchise Agreements by owning, operating, or being involved in one or more fitness centers while they are still AFI franchisees.

45. As a direct and proximate result of Defendants' breaches of the Franchise Agreements, AFI has suffered loss and damage the precise amount to be determined at trial.

46. AFI is also entitled to preliminary and permanent injunctive relief prohibiting any and all conduct by Defendants in violation of the non-competition covenants contained in the Franchise Agreements.

COUNT II
TRADEMARK INFRINGEMENT
(Lanham Act)

47. AFI restates and realleges each and every allegation contained in the paragraphs above.

48. Defendants have advertised and are continuing to advertise and operate their competing fitness business by using the AFI Marks.

49. The wrongful use of the AFI Marks without authorization or consent from AFI is a violation of the Lanham Act, 15 U.S.C. §§ 1114 and 1125.

50. Defendants' use of the Marks in connection with a competing fitness business has caused, will cause, and is likely to cause confusion and mistake among both prospective and actual customers of AFI and its authorized franchisees in violation of Section 32 of the Lanham Act, 15 U.S.C. §§ 1114 and 1125.

51. Upon information and belief, Defendants' violations of the Lanham Act are willful and intentional and in conscious disregard of the rights of AFI.

52. As a direct and proximate result of Defendants' unlawful conduct, AFI has been, and will continue to be, irreparably and substantially harmed and injured in its business. If Defendants' infringement is allowed to continue, AFI will sustain further loss, damage, and irreparable injury.

53. As a result of Defendants' infringement of the Names and Marks, AFI is entitled to recover damages, the precise amount to be determined at trial, including costs and treble damages. AFI is also entitled to recover its attorneys fees, as provided for in exceptional cases under 15 U.S.C. § 1117(a).

54. AFI is also entitled to preliminary and permanent injunctive relief enjoining Defendants from further and continuing infringement of the Marks.

**COUNT III
FEDERAL UNFAIR COMPETITION**

55. AFI restates and realleges each and every allegation contained in the paragraphs above.

56. Defendants' use of the Marks in connection with their competing fitness businesses has caused and is likely to continue to cause confusion and mistake, and to deceive customers and potential customers as to the source, origin, sponsorship or approval of the services and products provided by AFI, and constitutes unfair competition and false advertising pursuant to 15 U.S.C. § 1125(a).

57. As a direct result of Defendants' unlawful conduct, AFI has been and will continue to be irreparably and substantially harmed and injured in its business. If Defendants' actions are allowed to continue, AFI will sustain further loss, damage and irreparable injury.

58. As a result of Defendants' unlawful use of the AFI Marks, AFI is entitled to recover damages, including treble damages, and its costs, the precise amounts to be determined at trial. AFI also is entitled to recover its attorneys fees, as provided for in exceptional cases under 15 U.S.C. § 1117(a).

59. AFI is also entitled to preliminary and permanent injunctive relief, enjoining Defendants from further and continuing infringement of the AFI Marks.

COUNT IV
TRADEMARK INFRINGEMENT
(Common Law)

60. AFI restates and realleges each and every allegation contained in the paragraphs above.

61. Defendants' conduct constitutes trademark infringement in violation of the common law.

62. Upon information and belief, Defendants' conduct is willful, intentional and in conscious disregard of the rights of AFI.

63. As a direct result of Defendants' violations of common law, AFI has suffered loss and damage, the precise amount to be determined at trial.

COUNT V
BREACH OF FRANCHISE AGREEMENT
(Violation of Trademark Provisions)

64. AFI restates and realleges each and every allegation contained in the paragraphs above.

65. Pursuant to Section 3.C. of the Franchise Agreements, Defendants agreed that their right to use the Marks and System "applies only to the Franchised Location, and exists concurrently with the term of this Agreement and only so long as you are in complete compliance with our quality standards. You will have the right to use the Marks and System only in the manner prescribed, directed and approved by us in writing."

66. AFI has not approved of the use of its Marks or System in any manner in conjunction with Defendants' competing business.

67. In violation of the Franchise Agreements, Defendants have advertised and used the Marks and System in conjunction with their competing fitness business.

68. As a direct and proximate result of the breaches by Defendants of the Franchise Agreements, AFI has suffered loss and damage, the precise amount to be determined at trial.

69. AFI is also entitled to preliminary and permanent injunctive relief, enjoining Defendants from further and continuing breaches of the Franchise Agreements through improper use of the AFI Marks and System.

COUNT VI
VIOLATIONS OF THE MINNESOTA DECEPTIVE TRADE PRACTICES ACT

70. AFI restates and realleges each and every allegation contained in the paragraphs above.

71. Defendants' conduct, as described above, violates the Minnesota Deceptive Trade Practices Act ("MDTPA"), Minn. Stat. § 325D.44, *et seq.*

72. As a direct and proximate result of Defendants' violations of the MDTPA, AFI is entitled to preliminary and permanent injunctive relief enjoining Defendants from further and continuing acts of deceptive trade.

COUNT VII
VIOLATIONS OF THE MINNESOTA UNLAWFUL TRADE PRACTICES ACT

73. AFI restates and realleges each and every allegation contained in the paragraphs above.

74. Defendant's conduct, as described above, violates the Minnesota Unlawful Trade Practices Act, Minn. Stat. § 325D.09, *et seq.*

75. Upon information and belief, Defendants' conduct was willful, intentional and in conscious disregard for the rights of AFI.

76. As a direct and proximate result of Defendants' violations of the Minnesota Unlawful Trade Practices Act, AFI has suffered loss and damage in an amount to be determined at trial. AFI also is entitled to preliminary and permanent injunctive relief restraining further violations of the Act by Defendants.

COUNT VIII UNJUST ENRICHMENT

77. AFI restates and realleges each and every allegation contained in the paragraphs above.

78. Defendants have received and are receiving a benefit from AFI by using the Names, Marks and System, without the authorization or consent of AFI, to advertise, promote, and attract customers to one or more businesses unaffiliated with AFI.

79. As a result of this wrongful conduct, Defendants have been unjustly enriched, at the expense of AFI.

80. As a result of Defendants' unjust enrichment, Defendants should be ordered to disgorge all profits made by and as a result of Defendants' infringement of the Names and Marks and Defendants' breaches of the Franchise Agreement. AFI should be awarded all losses and damages it has suffered as a result of Defendants' wrongful conduct, the precise amount to be determined at trial.

COUNT IX COMMON LAW UNFAIR COMPETITION

81. AFI restates and realleges each and every allegation contained in the

paragraphs above.

82. Defendants' wrongful actions and omissions as described above constitute unfair competition.

83. As a result of Defendants' wrongful actions and omissions, AFI has been and continues to be damaged.

84. Upon information and belief, Defendants' wrongful acts were committed knowingly, maliciously, willfully, and intentionally.

85. As a result of Defendants' unfair competition, Defendants should be ordered to disgorge all profits made by and as a result of their wrongful actions and omissions. AFI should be awarded all losses and damages it has suffered as a result of Defendants' wrongful conduct, the precise amount to be determined at trial.

86. AFI is also entitled to preliminary and permanent injunctive relief enjoining Defendants from further and continuing acts of unfair competition.

**COUNT XI
MISAPPROPRIATION OF TRADE SECRETS**

87. AFI restates and realleges each and every allegation contained in the paragraphs above.

88. As AFI franchisees, Defendants have access to confidential information and trade secrets. Such information derives independent economic value from not being generally known to, or not being readily ascertainable through proper means by others.

89. AFI has taken reasonable steps to safeguard such confidential and proprietary information.

90. In owning and operating their competing fitness businesses, Defendants have acted and intend to continue to act to misappropriate trade secrets of AFI. Defendants' actions violate the Uniform Trade Secrets Act as adopted in the State of Minnesota in Minnesota Statute § 325C.01, *et seq.*

91. As a result of that misappropriation, AFI is entitled to injunctive relief pursuant to Minn. Stat. § 325C.02(a) prohibiting the disclosure by Defendants of such information and paying damages in an amount to be determined plus compensatory and exemplary damages, as set forth in Minn. Stat. § 325C.03 and 325C.04.

**COUNT X
BREACH OF FRANCHISE AGREEMENT
(USE OF CONFIDENTIAL AND TRADE SECRET INFORMATION)**

92. AFI restates and realleges each and every allegation contained in the paragraphs above.

93. Pursuant to Section 10.A. of the Franchise Agreements, Defendants agreed that the System, and the concepts and methods of promotion of franchises would be treated in confidence. They agreed "never to, directly or indirectly, engage in or abet the misappropriation . . . or the disclosure, divulgence, or distribution of all or any part of the System and the concepts and methods of promoting franchises hereunder."

94. In violation of the Franchise Agreements, Defendants have used the System, concepts, and method of promoting franchises in conjunction with their competing fitness business.

95. As a direct and proximate result of the breaches by Defendants of the Franchise Agreements, AFI has suffered loss and damage in an amount to be determined at trial.

96. AFI is also entitled to preliminary and permanent injunctive relief, enjoining Defendants from further and continuing breaches of the Franchise Agreements through improper use of the System, concepts and methods of promoting franchises.

COUNT XII
TORTIOUS INTERFERENCE WITH CONTRACT AND PROSPECTIVE
ECONOMIC RELATIONS

97. AFI restates and realleges each and every allegation contained in the paragraphs above.

98. AFI and its affiliates had a reasonable expectation of continued business relations with customers that joined the System.

99. Defendants are aware that AFI and its affiliates and franchisees, including Defendants themselves, had agreements and prospective economic relationships with customers. With full knowledge of those agreements and prospective economic relationships, Defendants intend to tortiously and purposely induce persons who joined the System to terminate their agreements and prospective economic relationships with AFI and its affiliates.

100. The aforementioned interference is wrongful and unjustified.

101. As a direct and proximate cause of the Defendants' wrongful conduct, AFI seeks damages including attorneys' fees, the precise amount to be determined at trial.

COUNT XIII
BREACH OF PERSONAL GUARANTIES

102. AFI restates and realleges each and every allegation contained in the paragraphs above.

103. As set forth above, the Fagans are the personal and unconditional guarantors of the performance of the obligations owed to AFI under the Franchise Agreements

104. As a direct and proximate result of the breaches by Defendants of the Franchise Agreements, AFI has suffered loss and damage in an amount to be determined at trial and is entitled to recover all such amounts against the Fagans personally.

105. AFI is further entitled to an order from the Court directing injunctive relief and specific performance against the Fagans of all of Defendants' obligations under the Franchise Agreements.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Anytime Fitness, Inc. prays for entry of an Order of this Court and judgment against as follows:

1. For preliminary and permanent injunctive relief;
2. For an award of damages in an amount to be determined at trial;
3. For an award of treble damages under 15 U.S.C. § 1117;
4. For an award of costs, disbursements, and attorneys' fees;
5. For an award of prejudgment interest; and
6. For such other and further relief as the Court may deem just and equitable.

Dated: August 20, 2009

s/Cynthia M. Klaus

James M. Susag (261038)

Cynthia M. Klaus (27883X)

Larkin Hoffman Daly & Lindgren Ltd.

1500 Wells Fargo Plaza

7900 Xerxes Avenue South

Minneapolis, Minnesota 55431-1194

Phone: (952) 835-3800

Fax: (952) 836-3333

Attorneys for Plaintiff Anytime Fitness, Inc.

VERIFICATION

I, Jennifer Yiangou, am the Vice President of Operations for Anytime Fitness, Inc. I have read the foregoing Complaint, know its contents, and believe the same to be true and correct, except as to such matters stated upon information and belief, and as to such matters I believe them to be true.

I declare, under penalty of perjury, that the foregoing Verification statement is true and correct. Executed at Hastings, Minnesota on August 20, 2009.

s/Jennifer Yiangou
Jennifer Yiangou

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