

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Anytime Fitness, LLC,

Civil Action File No. _____

Plaintiff,

v.

Jeffrey Joseph Stewart, II, Jerry
Martin and Dacula Express
Fitness, Inc.,

Defendants.

PLAINTIFF'S VERIFIED COMPLAINT
FOR DAMAGES AND INJUNCTIVE RELIEF

COMES NOW Anytime Fitness, LLC ("Anytime Fitness"), Plaintiff in the above-styled action, and for its Verified Complaint for Damages and Injunctive Relief against Defendants Jeffrey Joseph Stewart, II, ("Jeffrey Stewart"), Jerry Martin and Dacula Express Fitness, Inc. ("Dacula Express Fitness"), shows the Court as follows:

1. Anytime Fitness is a limited liability company organized under the laws of Minnesota, with its principal place of business located at 12181 Margo Avenue South, Hastings, Minnesota 55033.
2. Jeffrey Stewart is an individual residing at 2216 Wagon Wheel Trail, Statham, Georgia 30666.
3. Jerry Martin is an individual residing at 312 2nd Avenue, Winder, Georgia 30680.

4. Dacula Express Fitness is a corporation organized under the laws of Georgia, with its principal place of business located at 149 Sunningdale Drive, Winder, Georgia 30680. Jeffrey Stewart is the registered agent for Dacula Express Fitness.

JURISDICTION AND VENUE

5. The amount in controversy exceeds \$75,000, exclusive of interests and costs, and is between diverse parties. Anytime Fitness is a citizen of Minnesota and Defendants are each citizens of Georgia. The Court therefore has diversity jurisdiction over this case under 28 U.S.C. § 1332(a)(2).

6. The Court may properly exercise personal jurisdiction over Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness as each Defendant is domiciled within the Northern District of Georgia and are citizens of the State of Georgia. Each Defendant also conducts systematic and continuous, purposeful, and substantial business within the Northern District of Georgia and the County of Gwinnett, Georgia. Defendants' substantial business within the Northern District of Georgia forms the basis of and gives rise to this lawsuit.

7. Venue is proper under 28 U.S.C. § 1391(b) because all Defendants are residents and citizens of the State of Georgia and all Defendants are domiciled within the Northern District of Georgia. Also, a substantial part of the events giving rise to the claims presented in this action occurred in the Northern District of Georgia and the County of Gwinnett, Georgia.

FACTS

The ANYTIME FITNESS® System

8. Anytime Fitness owns and licenses a system of operating co-ed fitness facilities, which offer a variety of fitness services under the commercial trade name and service mark ANYTIME FITNESS® (the “ANYTIME FITNESS® System”). The ANYTIME FITNESS® System has over 2,200 operating franchise fitness centers located across the United States and Canada, and over 750 more locations around the world, which are owned and operated by hundreds of franchisees. Most franchised locations have between 500 and 900 members, and many locations have significantly more than 900 members. Franchisees offer Anytime Fitness’s members a range of membership contracts, which may vary from month-to-month to multi-year contracts. The typical membership contract is for one year. Most of Anytime Fitness’s members visit the center regularly.

9. Anytime Fitness owns the trademark ANYTIME FITNESS®,  (the “Running Man Logo”), and certain other trademarks, trade names, service marks, logos, designs, and commercial systems (collectively, the “Names and Marks”). Anytime Fitness has registered its Names and Marks on the Principal Register of the United States Patent and Trademark Office.

10. Anytime Fitness has developed the ANYTIME FITNESS® System, under which it licenses its franchisees to use the Names and Marks. Anytime Fitness has expended substantial sums of money and other resources in developing, promoting, and

establishing the ANYTIME FITNESS® System. As a result of Anytime Fitness's efforts, customers have come to understand Anytime Fitness's Names and Marks as unique, distinctive symbols for the operation of Anytime Fitness's franchised locations and the services they offer.

11. Members are drawn to Anytime Fitness's franchised locations because of the Names and Marks that identify a high level of quality and service, the reciprocity members have with 3,000 other Anytime Fitness clubs worldwide, access to Anytime Fitness's proprietary mobile application, and other benefits of being one of Anytime Fitness's members.

Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness Execute the Franchise Agreement and Personal Guaranty

12. On June 27, 2014, Anytime Fitness and Dacula Express Fitness entered into a renewal Franchise Agreement (the "Franchise Agreement") for the continued operation of an Anytime Fitness center located at 720 Dacula Road, Suite 3A, Dacula, Georgia (the "Dacula Anytime Fitness Center"). A true and correct copy of the Franchise Agreement is attached as Exhibit A. Dacula Express Fitness previously operated the Dacula Anytime Fitness Center pursuant to a franchise agreement entered into in June 2009. Dacula Express Fitness previously operated a series of Anytime Fitness Centers near Dacula, Georgia, and has sold all but the Dacula Anytime Fitness Center.

13. Section 2.A of the Franchise Agreement provides for a term of six years, with Dacula Express Fitness having the option to renew the Franchise Agreement for an additional five-year term. Anytime Fitness and Dacula Express Fitness entered into an

Amendment to Franchise Agreement limiting the franchise arrangement to a term of five years. A true and correct copy of this Amendment to Franchise Agreement is attached as Exhibit B.

14. When Dacula Express Fitness entered into the Franchise Agreement in 2014, Jeffrey Stewart and Jerry Martin each executed a Personal Guaranty and Agreement to be Bound Personally by the Terms and Conditions of the Franchise Agreement (the “Personal Guaranty”), attached to the Franchise Agreement, agreeing that each would “become surety and guarantor for the payment of all amounts and the performance of the covenants, terms and conditions in the [Franchise] Agreement” and “be personally bound by each and every condition and term contained in the [Franchise] Agreement.”

15. Pursuant to section 20.D of the Franchise Agreement, the Franchise Agreement and the franchise relationship between Anytime Fitness, Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness is governed by the laws of the State of Minnesota.

Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness Obtain the Benefits of the ANYTIME FITNESS® System Under the Terms of the Franchise Agreement

16. As Anytime Fitness franchisees for over six years, Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness obtained, among other things, the use of Anytime Fitness’s Names and Marks, marketing and advertising services, training programs, highly confidential proprietary manual and other materials, including computer software, to be used in connection with the operation of the fitness center.

17. Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness also received, as Anytime Fitness franchisees, the information and know-how to get their fitness business up and running, and then to successfully operate it, including: what equipment to purchase, club layout, the “menu” of services offered and the recommended pricing of those services, access to Anytime Fitness’s suppliers, training in the methods of operating a co-ed fitness business, Anytime Fitness’s membership agreement, which Anytime Fitness prepared for distribution exclusively to Anytime Fitness franchisees, training in the promotion and sales of fitness club memberships, access to Anytime Health, which is an interactive health website provided to Anytime Fitness’s members, access to comprehensive security system and related technology that allows for proper security for a co-ed fitness business, and numerous other trade practices of Anytime Fitness and the ANYTIME FITNESS® System.

18. Another feature offered by Anytime Fitness exclusively to its franchisees is the internet-based “Dashboard.” The Dashboard provides a means for Anytime Fitness to quickly communicate with its franchisees and is now the primary means by which Anytime Fitness does so. The Dashboard allows franchisees the opportunity to instantly share ideas with each other without access to their ideas by competitors. The Dashboard contains Anytime Fitness’s operations manual and other propriety information, including information relating to personal training programs, virtual roundtables on such topics as getting started, club operations, marketing, club culture, corporate partnerships, customer service standards, competitors, technical issues, “Ask Corporate,” Anytime Health,

personal training, and the Franchise Advisory Council, which is a committee comprised of Anytime Fitness's franchisees.

19. Jerry Martin has utilized the Dashboard to solicit advice from other franchisees on whether to offer video fitness classes as a replacement for live fitness classes. Eight different franchisees provided Jerry Martin with confidential and proprietary advice in response to his inquiry. A true and correct copy of Jerry Martin's Dashboard communication is attached as Exhibit C hereto.

20. Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness had the benefit of learning the entire ANYTIME FITNESS® System of methods, procedures, standards, specifications, and the trademarks within the model that Anytime Fitness created.

21. Third parties who have tried to adopt Anytime Fitness's businesses model have added services or space that add expense and destroy the model, including features such as pools, saunas, and daycare centers. The ANYTIME FITNESS® System works, and its franchisees learn the ANYTIME FITNESS® System, and therefore have significant advantages over other competitors. Anytime Fitness teaches its franchisees, just as it taught Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness, how to open and operate a successful fitness center.

22. As set forth in the Franchise Agreement, Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness have acknowledged that the information relating to the ANYTIME FITNESS® System is confidential. Section 10.A of the Franchise Agreement states:

You acknowledge that all the information you have now or obtain in the future concerning the System and the concepts and methods of promotion franchised hereunder is derived from us pursuant to this Agreement, and that you will treat such information in confidence. You agree 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 You will disclose such confidential information only to such of your employees as must have access to it in order to operate your Anytime Fitness Center and use it only for the operation of your Anytime Fitness Center. At our request, you will be required to deliver to us confidentiality agreements and non-compete agreements in a form satisfactory to us from your owners, the spouses of your owners, and your employees. The scope of the confidentiality agreements shall be consistent with the provisions of this Section 10.A., and the scope of the noncompete agreements shall be consistent with the provisions of Section 17 of this Agreement.

23. In light of the confidential information that Anytime Fitness shared with Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness, in addition to other valuable services and consideration provided by Anytime Fitness, they agreed to not compete with Anytime Fitness during the Franchise Agreement's term. Section 17.A of the Franchise Agreement provides:

During Term. You will 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 owning, operating, or managing any other fitness center, wherever located, whether within the Protected Territory or elsewhere.

24. Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness further agreed not to compete with Anytime Fitness for a period of two years after the termination of the Franchise Agreement. Section 17.B of the Franchise Agreement provides:

After Expiration, Termination, or Transfer. You will not, directly or indirectly for a period of two (2) years after the transfer by you, or the expiration or termination of this Agreement, on your own account or as an employee, consultant, partner, officer, director, shareholder, lender, or joint venturer of any other person, firm, entity, partnership, corporation or company, own, operate, lease to or lease from, 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 within the Protected Territory or within a ten (10) mile radius of any Anytime Fitness center, wherever located, whether within the Protected Territory or elsewhere; provided, however, that in metropolitan areas having a population of more than 50,000 persons, the forgoing ten (10) mile radius will be limited to a radius of five (5) miles from any Anytime Fitness center (including the one you formerly operated under this agreement).

25. Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness agreed to a Protected Territory including the area within a three-mile radius of their Anytime Fitness Franchise Location, 720 Dacula Road, Suite 3A, Dacula, GA 30019.

26. Anytime Fitness has never waived Jeffrey Stewart's, Jerry Martin's, or Dacula Express Fitness's covenants not to compete with Anytime Fitness. Each remains in force at the time of this Verified Complaint.

Jeffrey Stewart, Jerry Martin and Dacula Express Fitness Acquire an Interest In, and Become Involved With, Another Competitive Gym Under the Name "Fit Body Boot Camp"

27. On October 9, 2015, Anytime Fitness learned from one of its franchisees that Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness acquired an interest in, and

become involved with, another competitive gym – Fit Body Boot Camp, and an entity which operates franchise fitness centers of the same, Fit Body Family LLC. More specifically, Jeffrey Stewart and Jerry Martin’s wife, Amy Martin, opened a business called Fit Body Family LLC used to operate Fit Body Boot Camp franchise fitness centers. In addition, Jerry Martin has become employed and otherwise engaged in, connected with, interested in, and affiliated with Fit Body Boot Camp and the franchise fitness centers owned and operated by Fit Body Family LLC, Jeffrey Stewart, Amy Martin, and Jerry Martin.

28. On and around August 22, 2015, Jerry Martin and Amy Martin attended the Fit Body Boot Camp World Conference (“FBBC World Conference”) at the Irvine Marriott in Irvine, California. Numerous photographs of Jerry Martin and Amy Martin at the FBBC World Conference are displayed on Jerry Martin’s Facebook page, Amy Martin’s Facebook page, and another Fit Body Boot Camp owner, Bob Patrick’s, Facebook page. These Facebook pages also display a variety of photographs of Jerry Martin at Fit Body Boot Camp fitness centers and under Fit Body Boot Camp signs and banners. A nonexclusive set of true and correct copies of these photographs are attached as Exhibit D. Some of these photos show Jerry Martin wearing Fit Body Boot Camp apparel, and others show Jerry Martin at Fit Body Boot Camp fitness centers. The accompanying “posts” and photo descriptions identify Jerry Martin as part of the “Fit Body Family,” and as a representative of Grayson Fit Body Boot Camp sponsoring a charity run in September 2015.

29. The very next week after Jerry Martin attended the FBBC World Conference, prior to Anytime Fitness's discovery that the Defendants owned and operated competitive franchised fitness facilities, Jerry Martin attended Anytime Fitness's Annual Conference wherein he obtained additional confidential and proprietary information about the ANYTIME FITNESS® System, including information relating to Anytime Fitness's franchise development and membership development strategies.

30. On September 8, 2015, Jeffrey Stewart and Amy Martin organized Fit Body Family LLC as a domestic limited liability company under the laws of the State of Georgia. According to Fit Body Family LLC's Articles of Organization, filed with the Georgia Secretary of State, Amy Martin and Jeffrey Stewart are "organizers" of Fit Body Family LLC, fitness and recreational sports centers. A true and correct copy of the Certificate of Organization and Articles of Organization for Fit Body Family LLC are attached as Exhibit E.

31. The Georgia Secretary of State's Corporations Division lists Amy Martin as the registered agent of Fit Body Family LLC, available for service at the 312 2nd Avenue, Winder, Georgia 30680 address associated with Jerry Martin. The Fit Body Family LLC business has a principal office address at 31 South Center Street, Winder, Georgia 30680. A true and correct copy of the Fit Body Family LLC Business Information from the Georgia Secretary of State Corporations Division is attached as Exhibit F.

32. Jeffrey Stewart and Amy Martin own and operate three Fit Body Boot Camp fitness centers: one in Grayson, Georgia (2301 Loganville Highway, Suite A,

Grayson, Georgia 30017), a second in Braselton, Georgia (6323 Grand Hickory Drive, Suite 300E, Braselton, Georgia 30680), and a third in Lawrenceville, Georgia (3370 Sugarloaf Parkway #9, Lawrenceville, Georgia 30044). Two of these Fit Body Boot Camp fitness centers, Braselton and Lawrenceville, are less than one mile from neighboring Anytime Fitness centers. The Defendants' third Fit Body Boot Camp location, in Grayson, is less than five miles from the Anytime Fitness center in Lawrenceville, Georgia.

33. Jerry Martin's Facebook page notes that he works at "FitBody BootCamp," "Sugarloaf Fit Body Boot Camp" (in Lawrenceville, Georgia) and "Braselton Fit Body Boot Camp." Jerry Martin engaged in, connected with, is interested in, and assists in managing these Fit Body Boot Camp fitness centers, using confidential and proprietary information, training, and materials misappropriated from Anytime Fitness.

34. Jeffrey Stewart is an organizer and owner of Fit Body Family LLC, and as a result, has acquired an interest in Fit Body Family LLC. Furthermore, upon information and belief, Jerry Miller and his wife, Amy Miller, have acquired interests in Fit Body Family LLC and Fit Body Boot Camp in organizing, owning, operating Fit Body Family LLC and owning, operating, and working at Fit Body Boot Camp fitness centers in Grayson, Georgia; Braselton, Georgia; and Lawrenceville, Georgia.

35. Neither Jeffrey Stewart nor Jerry Martin deny that they are operating, and otherwise involved with, fitness centers in violation of their Franchise Agreement and Personal Guarantees.

36. Fit Body Boot Camp fitness centers have a number of features that resemble the ANYTIME FITNESS® System and are directly competing fitness centers. Each provides health and wellness services, access to personal training services, and advertises as convenient, affordable, and fun. Fit Body Boot Camp and the ANYTIME FITNESS® System appeal to the same fitness clients and customers.

37. Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness use confidential information misappropriated from the ANYTIME FITNESS® System in the operation of Fit Body Family LLC and Fit Body Boot Camp.

38. As renewal franchisees whose relationship with Anytime Fitness began in 2009, Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness were well aware of their obligations not to compete with Anytime Fitness. Section 17.A of the Anytime Fitness Franchise Agreement makes their agreement not to compete during the term of the Franchise Agreement, and for two years thereafter, abundantly clear.

39. In Section 17.E of the Franchise Agreement, Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness agreed that Anytime Fitness would have the right to petition the Court for injunctive relief to enforce the provisions of the Franchise Agreement relating to their covenant not to compete.

40. In Section 18.A of the Franchise Agreement, Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness agreed that if Anytime Fitness is “successful in obtaining an injunction, or any other judicial relief or order . . . [they] will pay [Anytime Fitness] an amount equal to all of [Anytime Fitness’s] costs of prosecuting and/or defending the

action, including reasonable attorneys' fees, costs of investigation, and court costs, and other litigation . . . expenses."

COUNT I
Breach of Contract

41. Anytime Fitness hereby repeats and reasserts Paragraphs 1 through 40 above, as though set forth fully herein.

42. Under the terms of the Franchise Agreement and Personal Guaranty, Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness are bound by the noncompetition provisions in Section 17 of the Franchise Agreement.

43. Section 17 the Franchise Agreement, which prohibits Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness from competing with Anytime Fitness, is reasonable, necessary, and enforceable to protect Anytime Fitness's legitimate business interests.

44. Jeffrey Stewart's, Jerry Martin's, and Dacula Express Fitness's actions described above constitute a breach of the Franchise Agreement.

45. Anytime Fitness's goodwill and relationships with customers and potential customers have been diverted or misappropriated in violation of the Franchise Agreement.

46. The Franchise Agreement provides for the recovery of damages, injunctive relief, and attorneys' fees upon its successful enforcement by Anytime Fitness.

47. As a direct and proximate cause of the breaches of contract by Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness, Anytime Fitness seeks damages in an amount to be determined at trial but in excess of \$75,000.

48. As a direct and proximate cause of the breaches of Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness, Anytime Fitness also seeks temporary and permanent injunctive relief.

COUNT II
Misappropriation of Trade Secrets

49. Anytime Fitness hereby repeats and reasserts Paragraphs 1 through 48 above, as though set forth fully herein.

50. Over the course of Jeffrey Stewart's, Jerry Martin's, and Dacula Express Fitness's franchise relationship with Anytime Fitness, they had access to Anytime Fitness's confidential information and trade secrets, including but not limited to the confidential information related to the ANYTIME FITNESS® System, and the information described above in Paragraphs 16 through 21.

51. Such information derives independent economic value from not being generally known, or not being readily ascertainable through proper means, by others.

52. Anytime Fitness has taken reasonable steps to safeguard such confidential and proprietary information.

53. Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness have acted and intend to continue to act to misappropriate trade secrets of Anytime Fitness. Their actions violate Minnesota's Uniform Trade Secrets Act as codified in Minn. Stat. ch. 325C.

54. As a result of Jeffrey Stewart's, Jerry Martin's, and Dacula Express Fitness's misappropriation, Anytime Fitness is entitled to injunctive relief under Minn. Stat. § 325C.02(a), which prohibits their disclosure of such information, and entitles

Anytime Fitness to damages in an amount to be determined, plus compensatory and exemplary damages, in an amount in excess of \$75,000 as set forth in Minn. Stat. §§ 325C.03 and 325C.04.

COUNT III
Tortious Interference

55. Anytime Fitness hereby repeats and reasserts Paragraphs 1 through 54 above, as though set forth fully herein.

56. Anytime Fitness and its affiliates had a reasonable expectation of continued business relations with customers that joined the ANYTIME FITNESS® System.

57. Anytime Fitness and its affiliates had a reasonable expectation of business relations with customers that may join the ANYTIME FITNESS® System.

58. Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness are aware that Anytime Fitness had agreements and prospective economic relationships with customers. With full knowledge of those agreements and prospective economic relationships, Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness have undertaken steps to tortiously and purposely induce persons who joined the ANYTIME FITNESS® System to terminate their agreements and prospective economic relationships with Anytime Fitness and its affiliates.

59. The aforementioned interference is wrongful and unjustified.

60. As a direct and proximate cause of the wrongful conduct, Anytime Fitness seeks damages including attorneys' fees, in an amount in excess of \$75,000, the precise amount to be determined at trial.

COUNT IV
Unfair Competition

61. Anytime Fitness hereby repeats and reasserts Paragraphs 1 through 60 above, as though set forth fully herein.

62. Jeffrey Stewart's, Jerry Martin's, and Dacula Express Fitness's wrongful actions and omissions as described above constitute unfair competition.

63. As a result of Jeffrey Stewart's, Jerry Martin's, and Dacula Express Fitness's wrongful actions and omissions, Anytime Fitness has been and continues to be damaged.

64. Upon information and belief, Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness committed these acts knowingly, maliciously, willfully, and intentionally.

65. As a result of Jeffrey Stewart's, Jerry Martin's, and Dacula Express Fitness's unfair competition, they should be ordered to disgorge all profits made by and as a result of their wrongful actions and omissions, and Anytime Fitness should be awarded all losses and damages it has suffered as a result of Jeffrey Stewart's, Jerry Martin's, and Dacula Express Fitness's wrongful conduct, the precise amount to be determined at trial but in excess of \$75,000.

COUNT V
Unjust Enrichment

66. Anytime Fitness hereby repeats and reasserts Paragraphs 1 through 65 above, as though set forth fully herein.

67. Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness have received a benefit from Anytime Fitness by using Anytime Fitness's confidential and proprietary information and by trading upon Anytime Fitness's goodwill while having ownership interests in Fit Body Family LLC and Fit Body Boot Camp fitness centers, and being otherwise wrongfully involved with the Fit Body Boot Camp fitness centers.

68. As a result of their wrongful conduct, Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness have been unjustly enriched such that it would be morally wrong for them to be permitted to enrich themselves at the expense of Anytime Fitness.

69. As a result of Jeffrey Stewart's, Jerry Martin's, and Dacula Express Fitness's unjust enrichment, they should be ordered to disgorge all profits made by and as a result of their misappropriation of Anytime Fitness's confidential information, and Anytime Fitness should be awarded all losses and damages it has suffered as a result of the wrongful conduct in an amount to be determined at trial, but in excess of \$75,000.

COUNT VI Injunctive Relief

70. Anytime Fitness hereby repeats and reasserts Paragraphs 1 through 69 above, as though set forth fully herein.

71. Jeffrey Stewart's, Jerry Martin's, and Dacula Express Fitness's conduct in violation of their during-term franchise obligations and covenant not to compete is causing serious and irreparable injury to Anytime Fitness, and, unless enjoined, their conduct will continue to injure Anytime Fitness's business, goodwill, and customer relations.

72. Anytime Fitness has no adequate remedy at law to protect itself from the continuing damage and injury which has been or will be caused by Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness. Anytime Fitness has been and will continue to be subject to irreparable harm if Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness are permitted to continue violating the Franchise Agreement.

73. Anytime Fitness has been and will continue to be subject to irreparable harm if Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness are permitted to continue having ownership interests in Fit Body Family LLC and Fit Body Boot Camp fitness centers, as well as being involved with and employed by Fit Body Boot Camp fitness centers.

74. Anytime Fitness seeks preliminary and permanent injunctive relief in order to prevent irreparable injury.

COUNT VII
Attorneys' Fees and Costs

75. Anytime Fitness hereby repeats and reasserts Paragraphs 1 through 74 above, as though set forth fully herein.

76. Under Section 18.A of the Franchise Agreement, Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness are obligated to pay all costs and attorneys' fees incurred by Anytime Fitness in pursuing its rights and remedies under the Franchise Agreement. Anytime Fitness has incurred and will continue to incur attorneys' fees and costs and is entitled to recover all amounts incurred in prosecuting this action.

PRAYER FOR RELIEF

WHEREFORE, Anytime Fitness respectfully requests that this Court enter judgment against Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness as follows:

- (a) For an award of damages in an amount to be determined at trial but in excess of \$75,000;
- (b) For injunctive relief precluding dissemination or other misuse of Anytime Fitness's confidential information, including but not limited to use in the operation of any other competitive fitness center;
- (c) For injunctive relief enjoining Jeffrey Stewart, Jerry Martin, and Dacula Express Fitness from violating their covenant not to compete;
- (d) For prejudgment interest on all damages awarded;
- (e) For Anytime Fitness's attorneys' fees, costs, and disbursements; and
- (f) For such other and further relief as the court may deem just and equitable.

Respectfully submitted this 11th day of December, 2015.

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