

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

SNAP FITNESS, INC.,

Plaintiff,

v.

M2J, LLC, MATTHEW JERMOV, EMILY*
JERMOV, ENDEAVOR FITNESS, LLC,*
MICHAEL JERMOV, and CONNIE*
JERMOV,

Defendants.

*
*
*
*
*

Case No. _____

COMPLAINT

* * * * *

Plaintiff Snap Fitness, Inc. ("Snap Fitness"), for its Complaint against Defendants M2J, LLC, Matthew Jermov, Emily Jermov, Endeavor Fitness, LLC, Michael Jermov, and Connie Jermov (collectively "Defendants"), states and alleges as follows:

IDENTIFICATION OF PARTIES

1. Plaintiff Snap Fitness is a corporation organized and existing under the laws of the state of Minnesota with its principal place of business also located in Minnesota.
2. Defendant M2J, LLC is a limited liability company organized and existing under the laws of the state of Michigan, with its principal place of business also located in Michigan. Upon information and belief, each member of M2J, LLC is a citizen and resident of the state of Michigan.
3. Defendant Michael Jermov is a citizen and resident of the state of Michigan. Michael Jermov is a member of M2J, LLC.
4. Defendant Emily Jermov is a citizen and resident of the state of Michigan. Upon information and belief, Emily Jermov is married to Michael Jermov, and is also a member of M2J, LLC.

5. Defendant Endeavor Fitness, LLC is a limited liability company organized and existing under the laws of the state of Michigan, with its principal place of business also located in Michigan. Upon information and belief, each member of Endeavor Fitness, LLC is a citizen and resident of the state of Michigan.

6. Defendant Michael Jermov is a citizen and resident of the state of Michigan. Upon information and belief, Michael Jermov is Matthew Jermov's father, and is a member of Endeavor Fitness, LLC.

7. Defendant Connie Jermov is a citizen and resident of the state of Michigan. Upon information and belief, Connie Jermov is Matthew Jermov's mother, and is a member of Endeavor Fitness, LLC.

JURISDICTION AND VENUE

8. Snap Fitness seeks a preliminary and permanent injunction against Defendants ordering them to comply with the post-expiration obligations contained in a Franchise Agreement signed by M2J, LLC and personally guaranteed by Matthew Jermov. Specifically, Snap Fitness seeks an injunction enforcing the terms of a post-expiration covenant against competition, through which M2J, LLC and Matthew Jermov agreed to refrain from competing with Snap Fitness and its franchisees within a defined area. Defendants Emily Jermov, Michael Jermov, Connie Jermov, and Endeavor Fitness, LLC have conspired with Matthew Jermov and M2J, LLC to avoid their contractual post-expiration obligations. Snap Fitness also seeks to recover damages caused by Defendants' unlawful use of Snap Fitness' trademarks in connection with the operation of their fitness business since the expiration of the Franchise Agreement, their tortious interference with contract, and their conspiracy to evade the terms of the Franchise Agreement. Finally, Snap Fitness seeks specific performance of a contractual obligation to

permit Snap Fitness to purchase any or all of the assets of the franchised business formerly operated by M2J, LLC and Matthew Jermov.

9. This Court may exercise jurisdiction over this matter pursuant to 28 U.S.C. § 1331, as Snap Fitness' claims arise in part under federal law. This Court may also exercise jurisdiction over this matter pursuant to 28 U.S.C. § 1332, as complete diversity of citizenship exists between the parties and the value of the rights Snap Fitness seeks to protect exceeds \$75,000. Defendants' unlawful competition with Snap Fitness has caused and will continue to cause irreparable harm to Snap Fitness' customer goodwill and franchise system. Defendants' deliberate effort to convert Snap Fitness® members into members of their competing fitness facilities will cause far more than \$75,000 in damage to Snap Fitness' franchise system.

10. Venue is appropriate in this forum pursuant to 28 U.S.C. § 1391, as Defendants reside within this judicial district.

CONDUCT GIVING RISE TO VIOLATIONS OF LAW

A. The Snap Fitness® Franchise System

11. Snap Fitness is the franchisor of the Snap Fitness® franchise system. Over the past nine years, Snap Fitness and its predecessors have spent considerable time and resources to develop a proprietary business format and system for operating a fitness and workout club featuring state-of-the-art exercise equipment, 24-hour personal keycard access for members, online training tools, and automated member billing and collection procedures and services.

12. Snap Fitness® franchisees are authorized to use federally registered and common law trademarks, trade names, service marks, copyrights, interior and exterior building designs and specific slogans, logos and commercial symbols associated with the SNAP FITNESS® System

(as defined below). A complete list of the asserted trademarks, hereinafter referred to as the SNAP FITNESS® Marks, is attached to this Complaint as Exhibit A.

13. In addition to receiving the right to use the SNAP FITNESS® Marks, franchisees also gain access to the comprehensive SNAP FITNESS® franchise system (the “System”) that details an entire method of doing business. The System includes, among other things, the unique and distinguishing characteristics and methods for the operation of fitness and workout clubs, including without limitation, advertising and promotional materials, marketing techniques, signs, and certain bookkeeping and accounting systems. The System also includes Snap Fitness’ secret, confidential and proprietary Manuals, and all other trade secrets, information, know-how, ideas, techniques, research methods, improvements and copyrighted materials, and the goodwill associated with them. The Manuals cover Snap Fitness’ operating policies, marketing and advertising policies and standards, promotional programs, risk management, loss prevention, accounting, and information relating to other business matters.

14. A central component of each Snap Fitness® franchise is its display of Snap Fitness’ trademarks. Customers patronize Snap Fitness® franchised locations because of those locations’ association with the Snap Fitness® trademarks, from which customers know they will receive a certain type of uniform experience. Snap Fitness has invested substantial effort, including the expenditure of significant sums of money, to develop this goodwill and to cause customers to recognize the Snap Fitness® name. As franchisees, M2J, LLC and Matthew Jermov profited from this goodwill during the term of the Franchise Agreement.

B. The Franchise Agreement and Personal Guaranty

15. Snap Fitness entered into a Franchise Agreement with M2J, LLC with an effective date of September 30, 2008. Through that Franchise Agreement, Snap Fitness granted

M2J, LLC the license and right to operate a Snap Fitness® facility located at 1456 Lawson Drive, Howell, Michigan. A copy of the September 30, 2008, Franchise Agreement is attached as Exhibit B.

16. Contemporaneously with execution of the Franchise Agreement, Matthew Jermov executed a personal guaranty agreement through which he agreed “to be personally bound by each and every condition and term contained in the Franchise Agreement, including but not limited to the non-compete provisions in subparagraph 10.D.” A copy of the personal guaranty agreement is attached as Exhibit C.

17. Pursuant to Article 4(A) of the Franchise Agreement, the term of the license granted to M2J, LLC extended for five years from the effective date of the agreement, or until September 29, 2013.

18. The Franchise Agreement makes clear that Snap Fitness at all times retained ownership of the trademarks licensed to M2J, LLC for use in connection with its franchised business. Through Article 3(A) of the Franchise Agreement, Snap Fitness advised M2J, LLC that:

The Trademarks are our valuable property, and we are the owner of all right, title and interest in and to the Trademarks and all past, present or future goodwill of the Center and of the business conducted at the Authorized Location that is associated with or attributable to the Trademarks. Your use of the Trademarks will inure to our benefit.

Pursuant to Article 3(B), M2J, LLC and Matthew Jermov agreed that they would have the right to display the Snap Fitness® trademarks only as authorized by Snap Fitness.

19. Through Article 6(G), M2J, LLC and Matthew Jermov acknowledged that they would receive manuals and other information from Snap Fitness that would provide details about Snap Fitness’ policies and procedures. Those parties agreed that Snap Fitness’ manual and other materials belong solely to Snap Fitness and that the information contained therein is confidential.

Pursuant to Article 6(H), M2J, LLC and Matthew Jermov agreed not to make any use of Snap Fitness' confidential and proprietary information for any purpose other than operating their Snap Fitness® franchise.

20. In exchange for the rights granted by the Franchise Agreement, M2J, LLC and Matthew Jermov agreed to pay certain fees to Snap Fitness. Among other fees, they agreed to pay Snap Fitness a one-time card fee of \$5.00 per membership card, a \$5.00 fee for each membership agreement, a monthly Billing Maintenance Fee of \$.50 per membership, and a monthly Continuing Fee in the amount of \$399.

C. Post-Expiration Obligations

21. In order to protect Snap Fitness' confidential information, trademarks, and goodwill, the Franchise Agreement imposes a number of post-expiration obligations on M2J, LLC and Matthew Jermov.

22. In connection with the Snap Fitness® trademarks, pursuant to Article 14(A) M2J, LLC and Matthew Jermov agreed to remove immediately Snap Fitness' trademarks from the premises of their facility once their association with Snap Fitness ended. Upon expiration of the Franchise Agreement, they also agreed that:

All of your rights to the use of the Trademarks and all other rights and licenses granted in this Agreement and the right and license to conduct business under the Trademarks at the Authorized Location will revert to us without further act or deed of any party. All of your right, title and interest in, to and under this Agreement will become our property... You must immediately return to us, at your expense, all copies of the manuals then in your possession or control or previously disseminated to your employees and continue to comply with the confidentiality provisions of subparagraph 6.H. You must promptly at your expense and subject to subparagraph 14.B, remove or obliterate all Center signage, displays or other materials in your possession at the Authorized Location or elsewhere that bear any of the Trademarks or names or material confusingly similar to the Trademarks and so alter the appearance of the Center as to differentiate the Center unmistakably from duly licensed centers identified by the Trademarks.

23. With respect to the post-expiration covenant against competition, M2J, LLC and Matthew Jermov acknowledged through Article 10(D) that they would receive from Snap Fitness “training and Confidential Information that [they] otherwise would not receive or have access to but for the rights licensed to [them] under this Agreement.” To protect that confidential information and Snap Fitness’ goodwill, M2J, LLC and Matthew Jermov agreed to accept the following post-expiration covenant against competition:

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, 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 Designated Area or within a ten (10) mile radius of any Snap Fitness Center, wherever located, whether within the Designated Area or elsewhere...

The “Designated Area” is defined as a three-mile driving radius from the licensed location. (Appendix B).

24. Pursuant to Article 10(D)(1), M2J, LLC and Matthew Jermov agreed that the definition of “you” in the above-referenced covenant against competition would include not just themselves, but also “collectively and individually, the Principal Owner (including spouse) and all guarantors, officers, directors, members, managers, partners, as the case may be, and holders of any ownership interest in you.”

25. M2J, LLC and Matthew Jermov further agreed through Article 10(D)(7) that “the length of time of the post-termination covenant not to compete will be tolled for any period during which you are in breach of the covenants or any other period during which we seek to enforce this Agreement.”

26. Pursuant to Articles 9(K) and 12(C), M2J, LLC and Matthew Jermov agreed to reimburse Snap Fitness for any attorneys' fees and costs incurred as a result of efforts to enforce the terms of the Franchise Agreement.

27. Pursuant to Articles 10(D)(6) and 12(B), M2J, LLC and Matthew Jermov agreed that Snap Fitness would be entitled to an injunction to restrain any breach of the obligations imposed by the Franchise Agreement.

28. Pursuant to Article 14(B), M2J, LLC and Matthew Jermov agreed that Snap Fitness would have the right to purchase all or any portion of the assets of their Snap Fitness® facility, including but not limited to the facility's exercise equipment.

D. Breach of the Franchise Agreement's Post-Expiration Obligations

29. By its terms, the Franchise Agreement was scheduled to expire as of September 29, 2013.

30. Snap Fitness reminded M2J, LLC and Matthew Jermov of the expiration date in September 2012, one full year before the Franchise Agreement was set to expire. Over the next twelve months, Snap Fitness reached out repeatedly to M2J, LLC and Matthew Jermov asking whether they wished to renew the Franchise Agreement.

31. On several occasions during 2013, Matthew Jermov advised Snap Fitness that he was considering whether to renew his Franchise Agreement.

32. By email dated September 25, 2013, Matthew Jermov finally advised Snap Fitness that he did not intend to renew the Franchise Agreement. A copy of Jermov's September 25 email is attached as Exhibit D.

33. On September 30, 2013, the day after the Franchise Agreement expired, a Snap Fitness® franchisee located in downtown Howell, Michigan alerted Snap Fitness that the East

Howell Snap Fitness Facebook page contained a new post related to the conversion of the East Howell Snap Fitness® location to a competing fitness facility. A copy of the September 30, 2013, email that Snap Fitness received from its downtown Howell franchisee is attached as Exhibit E.

34. Snap Fitness then reviewed the East Howell Facebook page and found the following post:

Welcome to Endeavor Fitness!!! It is an absolute pleasure to announce an exiting [sic] change at the East Howell Snap Fitness! As of September 30th, the EHSP will proudly change ownership and become Endeavor Fitness! This new model will still have 24/7 access, CYBEX equipment and of course Jared, Ricky, Yvette and myself have stayed on as your loyal staff! In 2 short weeks, the SYNRGY 360 XL by Life Fitness will be arriving! This equipment will be launching our new Group Training programs that are results and price driven!! In the month of October, Endeavor Fitness is offering all Snap Fitness members FREE enrollment and a complimentary RFID wristband. Endeavor Fitness will also be honoring your current membership rate!!! Keep Reading!!! In a few short months Endeavor Fitness will be opening a 30,000 sq ft facility in South Lyon featuring Racket Ball Courts, Sauna, Rocking Climbing Wall, Basketball, Running Track and Child Care!! As a member of Howell Endeavor Fitness, you will be grandfathered into the new location!!

Ms. Jermov identified herself as the Executive Membership Director of Endeavor Fitness. A copy of the September 30 Facebook post is attached as Exhibit F.

35. Upon reviewing that post, Snap Fitness performed its own investigation to determine the status of M2J, LLC and Matthew Jermov's facility. That investigation revealed that Matthew Jermov had been planning for several months to end his association with Snap Fitness and open a competing fitness center in violation of the Franchise Agreement's post-expiration covenant against competition. Matthew Jermov conspired with Emily Jermov, Michael Jermov, and Connie Jermov to create the new Endeavor Fitness, LLC, through which he and the other individual Defendants would wrongfully compete with Snap Fitness. Through its investigation, Snap Fitness learned that:

- a. On January 28, 2013, Michael and Connie Jermov (upon information and belief Matthew's parents) organized a new limited liability company named Endeavor Fitness, LLC. A copy of the paperwork filed by Endeavor Fitness, LLC with the State of Michigan is attached as Exhibit G.
- b. On May 30, 2013, Matthew and Michael Jermov appeared before the City of South Lyon Planning Commission to testify in support of their application for approval to build a new "Endeavor Fitness" facility in South Lyon. According to the minutes of that meeting, Matthew Jermov (whose last name was misspelled Germov), spoke in favor of the proposal. Another individual identified as Mike Gerald "informed the Commission on the SNAP success and reiterated their investment in the community." Snap Fitness believes that "Mike Gerald" is actually Michael Jermov, as the meeting recorder lists Gerald's address as 13756 Merrymeadow, the same address listed as the principal office of M2J, LLC. A copy of the minutes from the May 30, 2013, City of South Lyon Planning Commission meeting is attached as Exhibit H. A copy of the paperwork that M2J, LLC filed with the State of Michigan when it was organized is attached as Exhibit I.
- c. According to her LinkedIn profile, Emily Jermov served as the Membership Director for the East Howell Snap Fitness location until September 2013. At that time, she became the Executive Membership Director for Endeavor Fitness. A copy of Ms. Jermov's LinkedIn profile is attached as Exhibit J.

36. Upon learning of Defendants' plans to open an Endeavor Fitness facility, Snap Fitness wrote to Matthew Jermov on October 3, 2013. Snap Fitness advised Jermov that his continued involvement in the operation of a competing fitness facility at the very site of his former Snap Fitness® facility constituted a violation of the Franchise Agreement's covenant against competition. It also advised Jermov that his use of Snap Fitness' name and trademark to promote his competing business constituted a violation of Snap Fitness' federal trademark rights. Snap Fitness further advised Jermov that it intended to exercise its right under Article 14(B) to purchase his facility's equipment and selected other assets. A copy of Snap Fitness' October 3 letter is attached as Exhibit K.

37. On October 11, 2013, Snap Fitness received an email message from an attorney claiming to represent M2J, LLC and Matthew Jermov. That message falsely claimed that

Jermov had “no affiliation with Endeavor Fitness.” He also claimed that the facility’s equipment was turned over to a creditor, despite Jermov’s previous assertion that he had sold the equipment. Later that day, he sent a second email in which he identified the property that Jermov was willing to return to Snap Fitness. That list did not include any of the facility’s equipment.

38. Defendants continue to operate a competing fitness facility at the same location as the former Snap Fitness® facility operated by M2J, LLC and Matthew Jermov, in violation of the Franchise Agreement’s covenant against competition. Defendants are also making plans to open an additional Endeavor Fitness facility, which will allow them to capitalize impermissibly on the confidential information that M2J, LLC and Matthew Jermov received as Snap Fitness® franchisees. Defendants are impermissibly parlaying their former association with Snap Fitness into a new series of facilities that compete with Snap Fitness for members. In fact, as shown by their Facebook post, Defendants are directly targeting their nearly 400 former Snap Fitness® members to become members of their new Endeavor Fitness facilities. Defendants are engaged in a conspiracy to evade M2J, LLC and Matthew Jermov’s post-expiration obligations under the Franchise Agreement.

39. Snap Fitness is entitled to preliminary and permanent injunctive relief to stop M2J, LLC and Matthew Jermov from violating the Franchise Agreement’s post-expiration covenant against competition. Snap Fitness is entitled to the same relief against Emily Jermov, Michael Jermov, Connie Jermov, and Endeavor Fitness, as those Defendants are conspiring and assisting Matthew Jermov and M2J, LLC in their efforts to evade the Franchise Agreement’s covenant against competition. Snap Fitness is also entitled to an award of damages to compensate it for Defendants’ wrongful use of Snap Fitness’ trademarks to promote their businesses.

COUNT ONE

(15 U.S.C. § 1114(1) – Infringement of Federally Registered Marks)

(ALL DEFENDANTS)

40. Snap Fitness incorporates by reference the preceding paragraphs of this Complaint.

41. Snap Fitness is the owner of the registered SNAP FITNESS® Marks and has the right to protect those Marks as well as the goods, services, and business associated with them, including the right to grant franchisees the use of the SNAP FITNESS® Marks.

42. Since registration of the SNAP FITNESS® Marks, Snap Fitness and its franchisees have extensively advertised the SNAP FITNESS® Marks in connection with their products and services.

43. M2J, LLC and Matthew Jermov's right to use the SNAP FITNESS® Marks ceased on September 29, 2013, when Snap Fitness confirmed that their Franchise Agreement had expired.

44. Notwithstanding the expiration of the Franchise Agreement, M2J, LLC, Matthew Jermov, and those acting in concert with them (the remaining Defendants) continued to use and display the SNAP FITNESS® Marks at their fitness facility. They also continued to make use of the Snap Fitness® name and trademarks to communicate with Snap Fitness® members in an effort to induce those members to stop doing business with Snap Fitness® locations and instead become members of their competing Endeavor Fitness facilities. Defendants' wrongful use of Snap Fitness' Marks has caused and is likely in the future to cause confusion, to cause mistake, or to deceive actual and/or prospective customers.

45. Defendants' continued use and display of the registered SNAP FITNESS® Marks for their own benefit constitutes willful, intentional and bad faith infringement of the SNAP FITNESS® Marks in violation of 15 U.S.C. § 1114(1).

46. Defendants' infringing actions are causing and are likely to cause Snap Fitness, the SNAP FITNESS® Marks, the SNAP FITNESS® System, and the public irreparable harm because Defendants' activities are causing confusion or are likely to cause confusion, or to cause mistake, or to deceive purchasers and others.

47. Snap Fitness has no adequate remedy at law to protect its substantial business and property rights.

48. Snap Fitness is entitled to preliminary and permanent injunctive relief preventing the infringement of the SNAP FITNESS® Marks.

49. Because Defendants' actions are intentional, Snap Fitness is also entitled to recover treble damages and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

COUNT TWO

(False Designation of Origin – 15 U.S.C. § 1125(a))

ALL DEFENDANTS

50. Snap Fitness incorporates herein by reference the preceding paragraphs of this Complaint.

51. Defendants' unauthorized use of the SNAP FITNESS® Marks is likely to cause confusion, to cause mistake, or to deceive the consuming public as to the origin, sponsorship, or approval of the Defendants' products and services by Snap Fitness.

52. Defendants' acts constitute false designation of origin, source, or sponsorship and false or misleading descriptions and representations in violation of section 43 of the Lanham Act (15 U.S.C. § 1125(a)). Such acts were knowing, willful and intentional.

53. Defendants' unlawful acts have caused and continue to cause Snap Fitness to suffer damages in an amount to be proven at trial. Defendants' unlawful acts have caused and continue to cause Snap Fitness irreparable injury to its business reputation, goodwill, and to the integrity of the SNAP FITNESS® Marks.

54. Snap Fitness' remedies at law cannot adequately compensate it for the ongoing injuries threatened by Defendants' continuing conduct. Unless Defendants are restrained and enjoined, they will continue to commit unlawful acts, causing Snap Fitness to suffer further irreparable injury.

55. Because Defendants' infringement is intentional, Snap Fitness is entitled to treble damages and reasonable attorneys' fees under 15 U.S.C. § 1117.

COUNT THREE

(Breach of Contract-Right to Purchase Assets)

(M2J, LLC AND MATTHEW JERMOV)

56. Snap Fitness incorporates herein by reference the preceding paragraphs of this Complaint.

57. Upon expiration of the Franchise Agreement, Article 14(B) gives Snap Fitness the right to purchase all or any portion of the assets of the Snap Fitness® location operated by M2J, LLC and Matthew Jermov.

58. Through its October 3, 2013, letter, Snap Fitness advised M2J, LLC and Matthew Jermov that Snap Fitness intended to exercise its right to purchase some or all of the facility's assets.

59. M2J, LLC and Matthew Jermov have breached the Franchise Agreement by failing to tender to Snap Fitness those assets that Snap Fitness indicated it wished to purchase.

60. M2J, LLC and Matthew Jermov continue to use the equipment previously located in their Snap Fitness® facility to operate a competing fitness facility.

61. Snap Fitness is entitled to an order of specific performance enforcing Article 14(B) of the Franchise Agreement.

COUNT FOUR

(Breach of Contract—Covenant Against Competition)

(M2J, LLC AND MATTHEW JERMOV)

62. Snap Fitness incorporates herein by reference the preceding paragraphs of this Complaint.

63. Pursuant to Article 10(D) of the Franchise Agreement and the personal guaranty agreement, M2J, LLC and Matthew Jermov agreed to abide by the terms of a reasonable post-expiration covenant against competition.

64. Specifically, M2J, LLC and Matthew Jermov agreed that, for a period of two years from the expiration of the Franchise Agreement, they and their principal owners, spouse, guarantors, officers, directors, members, managers, partners, and holders of any ownership interest would not directly or indirectly have any interest in any fitness center located within the Designated Area or within a ten-mile radius of any Snap Fitness® center.

65. Despite the expiration of the Franchise Agreement effective September 29, 2013, M2J, LLC and Matthew Jermov have continued to operate a competing fitness center at the same location as their formerly licensed Snap Fitness® center. They have also made plans to open a second facility that may be located within the proscribed area.

66. Defendants Emily Jermov, Michael Jermov, Connie Jermov, and Endeavor Fitness, LLC have conspired with Matthew Jermov and M2J, LLC to evade the Franchise Agreement's covenant against competition. Those parties may also be enjoined from further violations of the restrictive covenant.

67. Snap Fitness suffers irreparable harm each day that Defendants operate a competing business in violation of the post-expiration covenant against competition.

68. Snap Fitness has a legitimate business interest in protecting its customer goodwill and franchise system through enforcement of the post-expiration covenant against competition.

69. Snap Fitness is entitled to preliminary and permanent injunctive relief restraining all Defendants from operating a competing business in violation of the terms of Article 10(D).

COUNT FIVE

(Breach of Contract—Attorneys' Fees)

(M2J, LLC AND MATTHEW JERMOV)

70. Snap Fitness incorporates herein by reference the preceding paragraphs of this Complaint.

71. Pursuant to Articles 9(K) and 12(C) of the Franchise Agreement and personal guaranty, M2J, LLC and Matthew Jermov agreed to compensate Snap Fitness for any attorneys' fees or other costs incurred in connection with enforcing the terms of the Franchise Agreement.

72. Snap Fitness was required to commence this action to enforce the Franchise Agreement's post-expiration obligations.

73. Snap Fitness is entitled to recover the reasonable attorneys' fees and costs it incurs in connection with this action, in an amount to be proven at trial.

COUNT SIX

(Tortious Interference with Contract)

(EMILY JERMOV, MICHAEL JERMOV, CONNIE JERMOV, AND ENDEAVOR FITNESS, LLC)

74. Snap Fitness incorporates herein by reference the preceding paragraphs of this Complaint.

75. Snap Fitness was a party to a written contract with M2J, LLC and Matthew Jermov until that contract expired on September 29, 2013.

76. Emily Jermov, Michael Jermov, Connie Jermov, and Endeavor Fitness, LLC were aware of the existence of the Franchise Agreement between Snap Fitness and M2J, LLC and Michael Jermov.

77. Emily Jermov, Michael Jermov, Connie Jermov, and Endeavor Fitness, LLC were aware of the post-expiration obligations contained in the Franchise Agreement, including the post-expiration covenant against competition.

78. Emily Jermov, Michael Jermov, Connie Jermov, and Endeavor Fitness, LLC tortiously interfered with Snap Fitness' contractual relationship with M2J, LLC and Matthew Jermov by conspiring with them to convert their Snap Fitness® facility into an Endeavor Fitness facility at the same location, and by making a deliberate attempt to convert the members of M2J, LLC and Matthew Jermov's Snap Fitness® facility into members of their competing businesses.

79. Emily Jermov, Michael Jermov, Connie Jermov, and Endeavor Fitness, LLC acted with the intent to evade and interfere with Snap Fitness' post-expiration rights under the Franchise Agreement.

80. Emily Jermov, Michael Jermov, Connie Jermov, and Endeavor Fitness, LLC's tortious interference with Snap Fitness' contractual rights was intentional and done without justification.

81. As a result of Emily Jermov, Michael Jermov, Connie Jermov, and Endeavor Fitness, LLC's tortious interference with contract, Snap Fitness has been damaged and will continue to suffer damages.

COUNT SEVEN

(Civil Conspiracy)

(ALL DEFENDANTS)

82. Snap Fitness incorporates herein by reference the preceding paragraphs of this Complaint.

83. Emily Jermov, Michael Jermov, Connie Jermov, and Endeavor Fitness, LLC were aware of the existence and terms of the Snap Fitness Franchise Agreement, including the post-expiration noncompete obligations.

84. With full knowledge of those obligations, Emily Jermov, Michael Jermov, and Connie Jermov conspired with M2J, LLC and Matthew Jermov to form Endeavor Fitness, LLC for the purpose of permitting M2J, LLC and Matthew Jermov to compete wrongfully with Snap Fitness after the expiration of the Franchise Agreement.

85. Defendants conspired to convert the members of M2J, LLC and Matthew Jermov's Snap Fitness® facility into members of their competing facilities.

86. Defendants created, planned, and implemented their conspiracy to deprive Snap Fitness of the opportunity to retain the goodwill generated by its trademarks and to avoid the post-expiration obligations imposed by the Franchise Agreement.

87. As a result of Defendants' actions, Snap Fitness has sustained damages in the form of damage to its goodwill, damage to its business reputation, and damage from the loss of opportunity to maintain the goodwill developed in this market under Snap Fitness' trademarks. Snap Fitness will prove the amount of its damages at the trial of this matter.

INJUNCTIVE RELIEF

88. Snap Fitness does not have an adequate remedy at law for the ongoing misconduct of Defendants as set forth above. The harm to Snap Fitness from the continuing misconduct far outweighs any harm to Defendants if they are forced to stop their misconduct, and the public interest is protected by requiring that Defendants live up to their promises and contractual obligations.

89. The Franchise Agreement expressly allows Snap Fitness to seek an injunction to enforce provisions relating to the Snap Fitness® Marks and System or the obligations of M2J, LLC and Matthew Jermov upon expiration of the Franchise Agreement. The other Defendants are equally bound by those provisions as they are engaged in a deliberate conspiracy to assist M2J, LLC and Matthew Jermov in their effort to evade the Franchise Agreement's post-expiration obligations.

SPECIFIC PERFORMANCE

90. Snap Fitness is entitled to specific performance of M2J, LLC and Matthew Jermov's post-expiration obligations as delineated in the Franchise Agreement, including their de-identification of their fitness facility, return of Snap Fitness' confidential and proprietary

materials, compliance with the Franchise Agreement's post-expiration covenant against competition, and compliance with Snap Fitness' right to purchase assets.

PRAYER FOR RELIEF

WHEREFORE, Snap Fitness requests the following:

- (1) An order of preliminary and permanent injunction directing that:
 - (a) Defendants and their agents, servants, employees and attorneys, and all others in active concert or participation with them, immediately cease using or employing any of Snap Fitness' trademarks, or any other name, designation, or mark which is deceptively or confusingly similar to, or likely to cause confusion with, any of Snap Fitness' trademarks in connection with the operation, promotion, or advertising of any business, including their fitness facility;
 - (b) Defendants and their agents, servants, employees and attorneys, and all others in active concert or participation with them, immediately take down or remove any interior and exterior signs or advertising materials using Snap Fitness' trademarks at the location of their fitness facility, or any other location; and
 - (c) Defendants and their agents, servants, employees and attorneys, and all others in active concert or participation with them, immediately cease and desist from using any of Snap Fitness' trade dress, and from otherwise engaging in unfair competition with Snap Fitness.
- (2) An order of preliminary and permanent injunction prohibiting Defendants and their agents, servants, employees and attorneys, and all others in active concert with them, from owning, operating, leasing, franchising, conducting, engaging in, being connected with, having any interest in, or assisting any person or entity in engaging in any fitness center located within the Designated Area or within a ten-mile radius of any Snap Fitness® center, for a period of two years from the date Defendants are first in compliance with their post-expiration obligations;
- (3) An order specifically enforcing the other post-expiration obligations of the Franchise Agreement;

- (4) An award of damages pursuant to 15 U.S.C. § 1117 for Defendants' unlawful use of Snap Fitness' trademarks;
- (5) An award of damages to compensate Snap Fitness' for Defendants' tortious interference with contract and civil conspiracy;
- (6) An award of Snap Fitness' attorneys' fees and costs;
- (7) An order specifically enforcing Snap Fitness' contractual right to purchase assets; and
- (8) Such other relief as the Court may deem just, equitable, or proper.

Dated: October 23, 2013

s/Jason J. Stover
Kerry L. Bundy (#266917)
Jason J. Stover (#30573X)
FAEGRE BAKER DANIELS LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
612-766-7000
kerry.bundy@faegrebd.com
jason.stover@faegrebd.com

ATTORNEYS FOR SNAP FITNESS, INC.

dms.us.52996879.01