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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
GET IN SHAPE FRANCHISE, INC.	)	
	)	
Plaintiff,	)	
v.	)	C.A. NO. _____
	)	
TFL FISHERS, LLC; ROSALYN R. HARRIS,	)	
THINNER FOR LIFE, INC. and	)	
FIT CHICKS, LLC	)	
	)	
Defendants.	)	
_____	)	

**COMPLAINT FOR TRADEMARK INFRINGEMENT, INJUNCTIVE RELIEF,  
BREACH OF CONTRACT, UNFAIR COMPETITION,  
BREACH OF THE COVENANT OF GOOD FAITH,  
UNJUST ENRICHMENT, DECLATORY JUDGMENT, AND FRAUD.**

Plaintiff, Get In Shape Franchise, Inc. (“Plaintiff” “GISFW” or “Franchisor”) alleges for its complaint trademark infringement, injunctive relief, breach of contract, unfair competition, breach of the covenant of good faith, unjust enrichment, fraud and declaratory judgment against Defendants, TFL Fishers, LLC; Rosalyn R. Harris; Thinner for Life, Inc.; and Fit Chicks, LLC (together referred to as “Ms. Harris” or “Defendant”) as follows:

NATURE OF THE ACTION

1. This action is brought by GISFW to remedy a breach of contract, among other claims, by one of its franchisees, Ms. Harris. GISFW brings this action to: (1) discontinue Defendant’s infringement of Get In Shape For Women’s registered trademarks; (2) obtain immediate injunctive relief due to breach of contract, unfair

competition and breach of the covenant of good faith; (3) seek enforcement of Ms. Harris' post-contractual obligations. Further, despite Ms. Harris' full knowledge of the legal and contractual obligations under the Franchise Agreement, Ms. Harris intentionally failed to comply and affirmatively took steps to harm the goodwill of GISFW. As a result of Ms. Harris' willful violations, GISFW has suffered substantial damages and therefore brings this lawsuit to establish Ms. Harris' responsibility for her deliberate violations and to recover the damages her wrongful actions have caused.

### JURISDICTION AND VENUE

2. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332 as the matter in controversy is reasonably likely to exceed the value of \$75,000 and the parties are citizens of different states. Further, the case arises under 15 U.S.C. § 1051 et seq. and therefore under the principals of supplemental jurisdiction, the Court also has claims against the Defendant arising solely under state law.

3. Venue is proper in this Court in accordance with 28 U.S. C. § 1391 because a substantial part of the events or omissions giving rise to the Plaintiff's claims occurred in the district as a result of the defendants engaging in trade and/or commerce in this District.

### PARTIES

4. Plaintiff, Get In Shape Franchise, Inc. is a Massachusetts corporation, with its principal place of business in Massachusetts. Get In Shape Franchise, Inc. offers for sale franchises to do business as "Get In Shape For Women."

5. Defendant TFL Fishers, LLC is an Indiana Limited Liability Company. TFL Fishers, LLC is a Franchisee doing business as Get In Shape for Women.

6. Defendant Rosalyn R. Harris is a resident of the State of Indiana, with an address of 13255 Parkside Drive #313, Fishers, Indiana 46038. Rosalyn R. Harris is the sole member of TFL Fishers LLC.

7. Defendant Fit Chicks, LLC is an Indiana Limited Liability Company. Ms. Harris is the registered agent of Fit Chicks LLC.

8. Defendant Thinner For Life, Inc. was an Indiana for-profit domestic corporation, owned and operated by Ms. Harris. Thinner For Life, Inc. was administratively dissolved in May of 2015.

FACTUAL BACKGROUND  
GET IN SHAPE FOR WOMEN MARKS

9. GISFW is a Massachusetts based Franchisor with 87 locations across the United States. GISFW, through its franchisees (the “Franchisees”), offers small group personal training to women.

10. GISFW’s trademarks and logos (the “GISFW Marks”) are on the principal register of the United States Patent and Trademark Office. GISFW has the exclusive right to use and to license the GISFW Marks and derivations thereof, as well as the distinctive Get In Shape For Women system and standards which provide small group personal training to women to produce significant weight loss and body transformation. GISFW has continuously used the GISFW Marks since the date for their registration.

11. The GISFW Marks are in full force and effect, unrevoked, uncancelled, and incontestable pursuant to 15 U.S.C. § 1111.

12. GISFW markets, promotes and provides services to its franchisees throughout the United States. In order to identify the services offered by the Franchisees, GISFW allows its Franchisees to utilize the GISFW Marks in the marketing and promotion of their franchise studios.

13. GISFW has invested substantial time and effort to develop goodwill in its names and trademarks to cause women throughout the United States to recognize the services and programs offered through Get In Shape For Women franchise locations.

14. The goodwill of the GISFW Marks does not have precise monetary value, but because of the company's quick expansion and the growing appreciation for its unique and effective small group personal training model, the value of GISFW's goodwill exceeds millions of dollars.

#### THE GET IN SHAPE FRANCHISE SYSTEM

15. GISFW does business as "Get In Shape For Women."

16. One of the primary benefits of purchasing a GISFW Franchise is access to the goodwill of the GISFW Marks, and to the proven business and fitness model based on GISFW's systems and standards.

17. The GISFW system is a small group personal training system that focuses on four main components to help women reach their weight-loss goals. GISFW has spent substantial time and effort in developing personal training programs that provide reliable results for women who desire to lose significant weight.

18. The GISFW system and standards include the common use and promotion of the GISFW Marks, training programs, advertising, systems and standards, color schemes, design layout, and other techniques for operating a GISFW studio.

19. Each GISFW studio is required to operate its business in strict conformity with the GISFW systems and standards as a condition of its franchisee agreement to ensure that all clients are achieving their weight loss goals.

#### THE TFL FRANCHISE AGREEMENT

20. On July 28, 2010, Plaintiff entered into a franchise agreement with a third party for the rights to own and operate and do business as “Get In Shape For Women” in the territory defined as Fishers, Indiana.

21. On April 1, 2013 GISFW and TFL Fishers, LLC and Ms. Harris, in her capacity as President of TFL Fishers LLC, entered into a written Franchise Agreement (the “TFL Fisher Franchise Agreement”). Pursuant thereto, Ms. Harris agreed to pay GISFW six percent (6%) of gross sales as royalties in exchange for the authority to own and operate and do business as “Get In Shape For Women” and to assume all rights to the Fishers, Indiana territory. Ms. Harris paid a transfer fee of \$14,500 to the GISFW to assume the rights to the territory until the expiration date of July 28, 2020. A full and accurate copy of the Franchise Agreement is attached as Exhibit A.

22. On or about April 1, 2013 Ms. Harris assumed operation of the Get In Shape For Women studio located at 11720 Olio Road, Suite 800, Fishers, Indiana (the “Fishers Studio”)

23. Pursuant to Section 6(a) of the TFL Franchise Agreement, Ms. Harris agreed to operate the Fishers Studio in compliance with the systems and standards set forth by GISFW. In addition, pursuant to section 6(b), Ms. Harris agreed to only use the Get In Shape For Women systems, names and marks for the operation of the Fishers Studio and not in connection with any other line of business.

24. Pursuant to Section 8 of the TFL Franchise Agreement, Ms. Harris is required to report all gross sales into the web-based reporting application whose use is required by GISFW.

25. Pursuant to Section 13 for the TFL Franchise Agreement, Ms. Harris specifically acknowledged that she received valuable specialized training and confidential information, including information regarding operations, sales, promotional and marketing methods and techniques for the operation of the Studio.

Further, Pursuant to Section 13, Ms. Harris may not:

- a. “directly or indirectly compete with franchisor, including starting any business in competition with Franchisor or Get In Shape for women....”
- b. “Assist in the starting of any new business in competition with Franchisor or Get In Shape For Women.”
- c. “Assisting any existing competing business in the design, development or enhancement of any existing competing business by adding or incorporating any methods, practices, designs, concepts configurations, techniques or principals utilized by Get In Shape For Women.”
- d. Solicit[ ] franchisees of client from Franchisor or any Get in Shape For Women studio...”
- e. “divert or take away business or customers of the studio....”
- f. “do or perform, directly or indirectly any other act injurious or prejudicial to the good will associated with the Names and Marks or the Systems, or both..”

26. In the event Ms. Harris breaches any of the above listed provisions in Item 22 of the TFL Franchise Agreement, GISFW, under section 13(e) of that agreement, is entitled to injunctive relief, and Ms. Harris waives any requirement of the posting of a bond.

27. Pursuant to Section 16 of the TFL Franchise Agreement, “this Agreement restricts Franchisee's right to assign the Agreement to a third party. Neither this Agreement, nor any of Franchisee's rights or privileges, shall be assigned, transferred, shared, redeemed or divided by operation of law or otherwise, in any manner, without the prior written consent of Franchisor, which consent will not be withheld or delayed unreasonably.”

28. Section 18 of the TFL Franchise Agreement, specifies the duties and obligations of the Ms. Harris upon the termination of the that agreement, including among other things:

- a. Franchisee shall cease using all Franchisor’s systems, names and marks (Section 18(a)).
- b. Franchisee shall comply with her convent not to compete, including the non-solicitation of clients and employees and the agreement to maintain the confidentiality of the proprietary information (Section 18(a)).
- c. Franchisee shall return the Operations Manual and other materials, training aids, and any other manuals and checklists provided to Franchisee (Section 18(e)).
- d. Franchisee shall turn over other manuals, computer programs, software, customer lists, records, files, instructions, correspondence and brochures and any and all other confidential and proprietary materials relating to the operation of the Studio.
- e. Franchisor may purchase inventory and equipment at fair market value if Franchisor provides Franchisee written notice of their intent to purchase (Section 18(f)).

- f. Franchisor may assume the lease for the Fishers, Indiana location if Franchisor provides Franchisee written notice of their intent to assume the lease within 30 days (Section 18(g)).
- g. Franchisee shall pay any money owed to Franchisor within 15 days of the receipt of the date of termination, which includes all damages, costs and expenses (including reasonable Attorney's fees) incurred (Section 18(h)).
- h. Pursuant to Section 16 of the Franchise Agreement, Franchisor may purchase the Studio for the same price and with the same terms and conditions if Franchisor provides Franchisee written notice of the intent to do so within 30 days of a bona fide offer from a third party. To enable Franchisor to determine whether to exercise this option, Franchisee shall provide such information and documentation as may be required.

CLOSING OF THE FISHERS STUDIO AND  
OPERATION OF A COMPETING BUSINESS

29. On June 24, 2015, GISFW received an email (the June 24<sup>th</sup> Email”) from Ms. Harris, notifying GISFW that the assets of Defendant TFL Fishers, LLC had been sold to a third party and that the Fishers Studio was being closed. A true and correct copy of the June 24<sup>th</sup> Email is attached hereto as Exhibit B. In the June 24<sup>th</sup> Email, Ms. Harris stated that notarized notice would be sent to GISFW. GISFW received no such notice. Following receipt of June 24<sup>th</sup> Email, GISFW emailed Ms. Harris asking to speak to her immediately to discuss the contractual and legal issues involved in her unauthorized closing of the Fishers Studio. Ms. Harris did not respond.

30. On June 30, 2015, despite what had been reported by Ms. Harris in the June 24<sup>th</sup> Email, GISFW discovered that the Fishers Studio was continuing to operate under the name ‘Fit Chicks’ and had not closed. This information was discovered by a photograph taken of the former Fishers Studio location on June 30, 2015. The photo showed the GISFW Marks only partially covered by a tarp sign reading “Fit Chicks”.

Outside the former Fisher Studio location was an ‘A-Frame’ marketing sign still displaying the GISFW Marks. A true and correct copy of the photograph is attached hereto as Exhibit C.

31. Defendant Fit Chicks LLC is registered with the State of Indiana at Control No. 2015061800528. Fit Chicks, LLC has a creation date of July 1, 2015.

32. Ms. Harris of 13255 Parkside Drive #313, Fishers, Indiana 46038 is the registered agent for Fit Chicks, LLC.

33. Upon information and belief, Ms. Harris operates the website (the “Harris Website”) <http://coachrozharris.com> which displays the “Get In Shape For Women” name and GISFW Marks. A picture of the Harris Website’s homepage is attached here to as Exhibit D.

34. Ms. Harris also operates the Facebook page found at <https://www.facebook.com/Getinshapeforwomenfisherscarmel?fref=ts> (the “Harris Facebook Page”) which she is using to market Fit Chicks, LLC, yet nevertheless continues to use the “Get In Shape For Women” name.

35. On June 30, 2015, GISFW sent written notices (the “Demand Notices”) demanding that Ms. Harris cease and desist the operation of the Fit Chicks, Studio, in violation of the TFL Franchise Agreement, and demanded compliance with the post-termination procedures expressly set forth in the TFL Franchise Agreement. A copy of the Demand Notices are attached hereto as Exhibit D.

36. Ms. Harris responded to the Demand Notices stating that she did not own the Fit Chicks Studio.

37. As of July 21, 2015, Ms. Harris is still operating the Fit Chicks Studio.

38. On July 19, 2015, Ms. Harris sent out an email to an unknown number of people from the email address [MyFitChicksStudio@gmail.com](mailto:MyFitChicksStudio@gmail.com). The email promoted the Fit Chicks Studio and contained a brief message purporting to explain why Ms. Harris was no longer operating as a Get In Shape For Women studio. The email contained the following information: ‘*copyright © Thinner For Life, Inc., All rights reserved.*’ And “*Our mailing address is: Thinner For Life, Inc., 11720 Olio Road #800, Fishers IN 46037*”. As noted above, Thinner For Life, Inc. was a corporation owned and operated by Ms. Harris, until, according to the public records, it was administratively dissolved in May of 2015.

39. While Ms. Harris was operating the Fishers Studio as a “Get In Shape For Women” franchise, Ms. Harris was using a separate credit card processing application which allowed her to process sales paid by credit card without entering the sales into the Get In Shape For Women mandatory sales reporting application. Ms. Harris’ willful disregard for the mandatory reporting requirements caused an under reporting of gross sales at the Fishers Studio to GISFW.

40. GISFW was contacted by former clients of Ms. Harris who reported that their paid-in-full contracts were not being refunded despite Ms. Harris’ actions in ceasing operations at the Fishers Studio. A neighboring “Get In Shape for Women” franchise owner located in Carmel, Indiana reported receiving complaints from former clients of the Fishers Studio who were upset with the illegal actions taken by Ms. Harris.

CAUSES OF ACTION

FIRST CAUSE: VIOLATION OF THE LANHAM ACT

41. GISFW repeats and makes part hereof each and every allegation set forth in 1 through 40 of the Complaint.

42. Section 32 of the Lanham Act, 15 U.S.C. § 1114(1)(a), provides in pertinent part that “[a]ny person who shall, without the consent of the registrant -- use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive . . . shall be liable in a civil action by the registrant . . . .”

43. Defendants are marketing and promoting Fit Chicks, LLC studio, while continuing to display the Get In Shape For Women Name and GISFW Marks and such use is likely to cause confusion or mistake among prospective or actual customers, in violation of Section 32 of the Lanham Act.

44. Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), provides in pertinent part that “[a]ny person who, on or in connection with any goods or services . . . uses in commerce any word, term, name, symbol . . . or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which is likely to cause confusion, or to cause mistake, or to deceive as to affiliation . . . or as to the origin, sponsorship, or approval of goods [or] services . . . shall be liable in a civil action . . . .”

45. Defendants' marketing and promotion of Fit Chicks at the Fishers

Studio location, while also continuing to display the Get In Shape Marks, constitute:

- (a) a false designation of origin;
- (b) a false and misleading description of fact; and
- (c) a false and misleading representation of fact;

that are likely to cause confusion, mistake or deception to the effect that GISFW has ensured that the services offered by Fit Chicks, LLC meet the quality standards GISFW requires of its Franchisees in violation of Section 43(a) of the Lanham Act.

46. Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), provides in pertinent part that "[t]he owner of a famous mark shall be entitled, subject to the principles of equity and upon such terms as the court deems reasonable, to an injunction against another person's commercial use in commerce of a mark or trade name, if such use begins after the mark has become famous and causes dilution of the distinctive quality of the mark, and to obtain such other relief as is provided in this subsection."

47. Defendants' display of the GISFW Marks in connection with providing goods and services of Fit Chicks in violation of the TFL Franchise Agreement causes dilution and disparagement of the distinctive quality of the Get In Shape Name and GISFW Marks, and is lessening the capacity of the GISFW Marks to identify and distinguish the services of offered at Get In Shape For Women studios, in violation of Section 43(c) of the Lanham Act.

48. Defendants' acts of infringement violate Sections 32, 43(a), and 43(c) of the Lanham Act and are malicious, fraudulent, willful and deliberate.

49. Defendants' acts of infringement violate Sections 32, 43(a), and 43(c) of the Lanham Act and are inflicting irreparable harm on GISFW.

50. GISFW has no adequate remedy at law.

51. No previous injunctive relief has been awarded with respect to this matter in this case or any other case.

SECOND CAUSE: BREACH OF CONTRACT – INJUNCTIVE RELIEF

52. GISFW repeats and makes part hereof each and every allegation set forth in 1 through 51 of the Complaint.

53. TFL Fishers LLC and Ms. Harris breached its contract with GISFW by:

- a. Terminating the TFL Franchise Agreement without authorization or approval before the expiration date of July 28, 2020;
- b. Assigning assets to Fit Chicks LLC without GISFW prior written authorization;
- c. Failing to comply with the post-termination provisions set forth in said TFL Franchise Agreement;
- d. Failing to pay all royalties and fees due to GISFW;
- e. Failing to accurately report all gross sales to GISFW;
- f. Failing to attend mandatory additional training and annual convention;
- g. Failing to operate the Fishers Studio in conformity with the standards and specifications set forth in the TFL Franchise Agreement
- h. Directly competing with GISFW
- i. Soliciting GISFW's clients and employees in violation of the TFL Franchise Agreement;
- j. Diverting GISFW's business or customers to an competitor by direct and indirect inducement;

- k. Performing acts which are injurious and prejudicial to GISFW's goodwill, names and marks; and
- l. Any such other acts or omissions to be shown at trial on the merits.

54. Pursuant to Section 13 of the TFL Franchise Agreement, the Defendants acknowledge that they "will receive valuable specialized training and confidential information, including, without limitation, information regarding the operational, sales, promotional and marketing methods and techniques of Franchisor and the System. Franchisee and its owners as well as all employees must sign non-competition and confidentiality covenants." And further "Franchisee covenants that, except as otherwise approved in writing by Franchisor, Franchisee shall not, during the term of this Agreement and for a continuous uninterrupted period commencing upon the expiration or termination of this Agreement, regardless of the cause for termination, and continuing for two (2) years thereafter, either directly or indirectly for itself, or through, on behalf of, or in conjunction with, any person, persons, or legal entity, own, maintain, operate, engage in, be employed by, or have any interest in any fitness center, health club, personal training studio, or any other business concepts that directly compete with Get In Shape For Women<sup>®</sup> within a eight (8) mile radius of the studio location designated hereunder, or within a eight (8) mile radius of any other Get In Shape For Women<sup>®</sup> in existence or planned as of the time of termination or expiration of this Agreement."

55. Despite formal demand by GISFW for Defendants to cease and desist operation of Fit Chicks in breach of the non-competition clause in the TFL Franchise Agreement, Defendants have continued to operate the Fit Chicks Studio.

56. The Fishers Studio did not close or have significant renovations between changing its name to Fit Chicks, therefore the equipment, color schemes, services and trade dress of GISFW is still being used in the operation of the Fit Chicks Studio.

57. The continued operation of the Fit Chicks Studio is in breach of the TFL Franchise Agreement and causes irreparable harm to GISFW. The use of the GISFW systems, standards and intellectual property in direct competition with GISFW causes unique harm to GISFW that cannot be adequately remedied by monetary damages.

58. Pursuant to Section 18 of the TFL Franchise Agreement, upon termination of the TFL Franchise Agreement, Ms. Harris is required to, among other things: (1) cease using Franchisor's systems, names and marks; (2) cease operating studio; (3) Not adopt confusingly similar marks; (4) cancel assumed names and transfer the phone number; (5) return operation materials; (6) allow GISFW to purchase equipment; (7) allow GISFW to assume the lease; and (8) pay all money owed to GISFW.

59. Despite GISFW's demands, Defendants have not followed any of the mandatory post termination procedures as outlined in Section 18 of the TFL Franchise Agreement. Defendants' failure to follow any post termination procedures prohibits GISFW from being able to assume ownership and operation of the Fishers Studio location to continue to service its customers. The closing of the Fishers Studio also causes harm to nearby "Get In Shape For Women" locations and affects GISFW's ability to grow and expand in the greater Indianapolis area.

60. GISFW has no adequate remedy at law.

61. No previous injunctive relief has been awarded in respect to this matter in this case or any other case.

THIRD CAUSE: BREACH OF CONTRACT – DAMAGES

62. GISFW repeats and make part hereof each and every allegation contained in paragraphs 1-61 of the complaint.

63. Defendants breached the TFL Franchise Agreement when they used an unknown credit card processing application to under report gross sales to GISFW, thus illegally reducing her royalty payments to GISFW.

64. As set forth in an addendum to the TFL Franchise Agreement (a true and correct copy of which is attached hereto as Exhibit E) the termination date for the TFL Franchise Agreement was July 28, 2020 (the “Termination Date”).

65. Under Section 16 of the TFL Franchise Agreement, Defendants were to continue to operate the Fisher Studio until the Termination Date, unless obtaining prior written approval from GISFW. Defendants did not request approval to terminate the TFL Franchise Agreement as required therein.

66. Pursuant to Section 6(b) of the TFL Franchise Agreement, Defendants are required to pay royalty fees to GISFW on a weekly basis. Royalty payments are calculated based upon 6% of the gross income the sales report from the location through GISFW’s proprietary payment processing system.

67. Due to the unauthorized termination of the TFL Franchise Agreement, GISFW will not be able to collect royalty payments for the remainder of the agreement through the Termination Date.

68. Because of Defendants under reporting of gross sales during operation, and unapproved closing of the Fishers Studio, GISFW has suffered significant monetary damages.

FORTH CAUSE OF ACTION: BREACH OF THE COVENANTS OF  
GOOD FAITH AND FAIR DEALINGS

69. GISFW repeats and make part hereof each and every allegation contained in paragraphs 1-68 of the Complaint.

70. Implied into every contract, including the contracts between GISFW and the Defendants is a covenant of good faith and fair dealings.

71. Pursuant to the terms of the TFL Franchise Agreement, Defendants acknowledged that the systems and standards taught by GISFW are predicated on proprietary information that contain trade secrets made available to the Defendants.

72. Notwithstanding their contractual obligations and the implied obligation to deal in good faith, fairly and honestly with GISFW, Defendants have refused to offer any explanation for the disregard of contractual obligations under the TFL Franchise Agreement to continue operation of the Fishers Studio and to refrain from competing with GISFW.

73. GISFW has suffered significant monetary damages as a result of Defendants' material breach of the TFL Franchise Agreement.

FIFTH CAUSE OF ACTION: UNJUST ENRICHMENT

74. GISFW repeats and make part hereof each and every allegation contained in paragraphs 1-73 of the complaint.

75. Upon terminating the TFL Franchise Agreement, Section 18 requires Defendants to turn over all confidential and proprietary information, which includes customer lists, records and files.

76. Defendants have not turned over the Fishers Studio customer lists, records and files and have continued to offer services to clients and to use a form of “Get In Shape For Women” contract with their current Fit Chicks clients.

77. Defendants have refused to honor prior client contracts and, upon information and belief, have pressured current clients to pay a higher \$29.00 per session price than the average GISFW session price that is currently between \$21.00 and \$26.00 (based on a paid-in-full model).

78. Defendants’ retention of GISFW’s proprietary client information and other valuable confidential and proprietary information has allowed them to continue to receive considerable payments from clients, which constitutes unjust enrichment that has significantly damaged GISFW.

SIXTH CAUSE OF ACTION: UNFAIR COMPETITION

79. GISFW repeats and make part hereof each and every allegation contained in paragraphs 1-78 of the complaint.

80. By the foregoing acts, Defendants have engaged in unfair competition

81. As a result of such unfair competition, GISFW has been damaged and continues to suffer immediate and irreparable harm in that it is being deprived of its good business, goodwill and continuing relationship with clients, while its confidential proprietary information continues to be used by Defendants in direct and illegal competition against GISFW.

82. GISFW has no adequate remedy at law.

SEVENTH CAUSE OF ACTION: FRAUD

83. GISFW repeats and make part hereof each and every allegation contained in paragraphs 1-82 of the complaint.

84. Defendant Fit Chicks, LLC, was created and organized in order for Ms. Harris to remove any assets held by TFL Fishers, LLC used in operating the Fishers Studio to another entity in order to wrongfully terminate the TFL Franchise Agreement. Ms. Harris is operating the Fit Chicks Studio under Thinner For Life LLC, which is or was an entity owned by Ms. Harris.

85. Defendants' creation of Fit Chicks, LLC for the purpose of shielding Ms. Harris' assets from her creditors constitutes fraud.

WHEREFORE, GISFW respectfully seeks judgment against the Defendants as follows:

1. Ordering pursuant to 15 U.S.C. § 114, and 125(a) and (c) the Defendants, jointly and severally, be:
  - a. Permanently, together with their affiliates, subsidiaries, officers, agents servants, employees and attorneys, and all those who act in concert with or participation with them, enjoined from using any Get In Shape for Women names and GISFW Marks in the marketing or promotion of Fit Chicks.
  - b. Ordered to pay GISFW compensatory damages, treble damages, attorney's fees, prejudgment interest, cost of suit and such other further relief as this court shall deem just and proper.
2. GISFW further requests that the Court enter a preliminary and permanent injunction restraining and enjoining Defendants from:
  - a. Operating, assisting in operation, and being employed by or for Fit Chicks or any other women's small group personal training program in the Fishers, Indiana territory.

- b. Competing with GISFW within the Territory of 'Fisher, Indiana'.
  - c. Disclosing to Fit Chicks or to any other person or entity any GISFW's confidential and proprietary information.
3. GISFW further requests that the Court enter a preliminary and permanent injunction:
  - a. Restraining and enjoining Ms. Harris and another person or entity to whom Ms. Harris has provided Get In Shape For Women's confidential information from relaying on or otherwise using Get In Shape for Women's confidential information.
  - b. Compelling Ms. Harris to immediately return to Get In Shape for Women all confidential and proprietary information.
  - c. Compelling Ms. Harris to immediately comply with Section 18 of the TFL Franchise Agreement as it pertains to post-termination procedures, including but not limited to allowing GISFW to assume the lease for 1170 Olio Road, Suite 800, Fishers, Indiana 46037
4. Enter Judgment in favor of GISFW for damages, in an amount to be determined at trial on Counts I – VII of this complaint, including to all damages associated with Defendants' breach of the covenant to act in good faith, unjust enrichment, and fraud, the value of which will be determined at trial, together with interest, attorney's fees costs and fees and such other relief as the court deems appropriate.
5. Enter judgment in favor of GISFW for costs, attorneys, fees and such the relief, as the Court deems just and appropriate.

Dated: July 21, 2015

GET IN SHAPE FRANCHISE, INC.

By its attorneys,

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