

DC-22-01388

CAUSE NO. _____

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
BRITTANY DAWN DAVIS AND	§	95th
BRITTANY DAWN FITNESS LLC,	§	
Defendants.	§	_____ JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE DISTRICT JUDGE:

Plaintiff, the STATE OF TEXAS (“State”), acting by and through the Attorney General, Ken Paxton, complains Defendants BRITTANY DAWN DAVIS and BRITTANY DAWN FITNESS LLC (“Defendants”), violated the Texas Deceptive Trade Practices–Consumer Protection Act, Texas Business and Commerce Code section 17.41 *et seq.* (the “DTPA”), and for causes of action would respectfully show the Court the following:

I. DISCOVERY

1. The discovery in this case should be conducted under Level 2 pursuant to Rule 190.3 of the Texas Rule of Civil Procedure (“TRCP”).
2. This case is not subject to the restrictions of expedited discovery under Rule 169 of the TRCP because the relief sought by the State includes non-monetary injunctive relief.
3. In addition to non-monetary injunctive relief, the State seeks monetary relief, including civil penalties, attorneys’ fees, and costs, of over \$250,000, but not more than \$1,000,000.

II. DEFENDANT

4. Defendant Brittany Dawn Davis is an individual and Texas resident. Davis has at all relevant times done business throughout the United States and in Texas through Defendant Brittany Dawn Fitness LLC, an entity she personally controls. Defendant Brittany Dawn Davis is the managing member of the corporation, Brittany Dawn Fitness LLC. She can be served with

process at her last known residence at 6868 Roxanne Way, Fort Worth, Texas, 76135. SERVICE OF PROCESS IS HEREBY REQUESTED.

5. Defendant Brittany Dawn Fitness LLC is a Texas limited liability company that has at all relevant times done business throughout the United State and in Texas, and this proceeding arises out of such business done in this state. Defendant Brittany Dawn Fitness LLC can be served with process by serving its registered agent, Debra L Davis, whose address is 2346 Brumelow Road, Whitesboro, Texas 76273. SERVICE OF PROCESS IS HEREBY REQUESTED.

III. JURISDICTION AND VENUE

6. This enforcement action is brought by Plaintiff, Attorney General Ken Paxton, through his Consumer Protection Division, in the name of the State of Texas and in the public interest, pursuant to the authority granted to him by the DTPA, upon the grounds that Defendants have engaged in false, misleading, and/or deceptive acts and practices in the course of trade and commerce as defined in and declared unlawful by sections 17.46(a) and (b) of the DTPA. In enforcement suits filed under section 17.47 of the DTPA, the Attorney General is authorized to seek civil penalties, redress for consumers, and injunctive relief. In addition, the Attorney General may seek reasonable attorneys' fees and court costs for prosecuting this action as authorized by Government Code section 402.006(c).

7. Under section 17.47(b) of the DTPA, the venue of this suit lies in Dallas County, Texas, because Defendants have done business in Dallas County.

IV. PUBLIC INTEREST

8. Plaintiff, the State of Texas, has reason to believe that Defendants have engaged in the unlawful acts or practices set forth below and that Defendants have caused adverse effects to the lawful conduct of trade and commerce in the State. The Consumer Protection Division of the

Office of the Attorney General of Texas therefore believes and is of the opinion that these proceedings are in the public interest.

V. TRADE AND COMMERCE

9. Defendants have, at all times described below, engaged in conduct which constitutes “trade” and “commerce,” as those terms are defined by section 17.45(6) of the DTPA.

VI. ACTS OF AGENTS

10. Whenever in this Petition it is alleged that either Defendant did any act, it is meant that such Defendant performed or participated in the act or Defendant’s officers, agents, or employees performed or participated in the act on behalf of, and under the authority of, Defendant.

VII. FACTUAL ALLEGATIONS

Overview

11. Beginning in 2014, Defendants profited from the sale of online fitness packages to thousands of consumers with the promise of personalized nutritional guidance and individualized fitness coaching. Specifically, Defendants’ online fitness packages offered “macro” nutritional assessments and, depending on the plan purchased, daily or weekly email training and one-on-one coaching. Defendants’ online nutrition and fitness packages ranged from \$92.00 for a one-time macro consultation to \$300.00 for three-months of personalized macros, trainings, and coaching. However, the online nutrition and fitness plans delivered to consumers were not individualized. Defendants also failed to provide the promised coaching and check-ins. Defendants largely ignored consumer complaints or, if they did respond, offered only partial refunds. In 2019, consumers’ complaints on social media garnered media attention prompting Defendant Davis to make a video apology posted to YouTube. Defendants promptly took the website down.

Influencer Brittany Dawn, bdawnfit.com, and the Fitness Plans

12. Defendant Brittany Dawn Davis is an internet “influencer” and the CEO and face of Brittany Dawn Fitness LLC. “Influencers” are individuals with large followings on social media. An internet “influencer’s” following is typically in a distinct niche such as lifestyle, fashion, beauty, or physical fitness.

13. Defendants Brittany Dawn Fitness LLC and Ms. Davis sold personalized nutrition and fitness plans to consumers via a website, bdawnfit.com. Ms. Davis posted photographs of herself in fitness clothing, and posted exercise tips, information about nutrition—such as “healthy Starbucks hacks”—and body positive and inspirational quotes on her Instagram, Facebook, YouTube Channel, Twitter, Pinterest page and blog, which were all linked back to the bdawnfit.com website for sales.

14. The bdawnfit.com website offered personalized online fitness plans that contained a nutrition component based upon personalized macronutrients, an exercise component and one-on-one coaching. Depending on the length and type of plan, consumers paid anywhere from \$92.00 up to \$300.00. The offered plans included the “30 Day Individualized Macros & Training,” and the “90 Day Individualized Macros & Training.”

15. The bdwanfit.com website also offered a “Macro Consult” which included one recalculation of the consumer’s personalized macronutrients after the initial assessment. Defendants also offered specialized bridal or bikini competition fitness plans that included daily text/email check-ins. A self-guided training plan for \$45.00—a fraction of the cost of the fitness plans with individualized macros and training—and e-books on nutrition were also offered.

16. Regardless of which nutrition or fitness plan was purchased, an essential component of almost every sale on the website was the individualized coaching offered by Defendant Davis. The website identified Ms. Davis as the individual providing the coaching and support. She was

described as “your coach, your confidant, your biggest supporter & friend,” there to “push you, mold you, and to help you find that person that you’ve always wanted to become.”

17. The website instructed consumers purchasing a fitness plan to “fill out the following survey so we can personalize your macros to your goals and needs,” and Ms. Davis’ first email to a purchasing consumer, after the survey was completed, stated “[d]on’t forget that this is just your starting point, and I will be making adjustments as needed throughout the next 4 [or 12] weeks with me.”

18. According to Ms. Davis, the macronutrients for each consumer were customized at the very beginning of the plan based on several factors including a consumer’s weight, height, goals, and activity level, and she adjusted the macronutrients throughout the plan as she determined necessary.

19. In addition to an initial assessment, and continued refinement of macronutrients throughout the plan, as previously noted, an essential component of the goods and services offered by Defendants was the personal fitness coaching. The weekly interactions between the consumers and their coach, Ms. Davis, were to be an integral part of the individualized support necessary to fully customize the plan for each consumer. The coaching, be it weekly emails or daily text messages, were promised for the full 30-day or 90-day duration of the purchased nutrition and fitness plans.

20. However, Defendants repeatedly failed to provide this essential component. Many consumer complainants stated that they did not receive the individualized coaching they purchased as part of their fitness plan. One consumer who purchased a “90-day Individualized Macro & Training Plan” received one email back from Ms. Davis after her initial check-in. No further coaching nor adjustments were offered or made. Another consumer who had purchased a “90-day Individualized Macro & Training Plan” stopped receiving any contact from Ms. Davis

after the first two weeks. Still other consumers complained that any responses they did receive, if even initially to a detailed check-in or specific question, were generic and non-substantive, e.g., “THAT’S MY GIRL! You’re killing it!” or “you’ve got this babe!”

21. Consumers who purchased the personalized online nutrition and fitness plans were given access to a “Team Brittany Dawn” Facebook group which served as a virtual community of consumers on the same fitness journey. It was through the Facebook group that consumers realized that Defendants had given them the same “individualized” nutrition and fitness plans. One consumer commented that “I thought at first you had created this workout plan based on my needs and wants. . .until I referred 2 friends to you and their plans were the same.” Another noted that her plan did not take into consideration her workout schedule frequency nor considered her workout limitations. And, as discussed above, since Defendant Davis was not providing individualized coaching in response to the daily or weekly check-ins, consumers were not receiving the promised adjustments to the workout plan to achieve their individual fitness goals.

22. In addition to the lack of coaching or individualized fitness plans, Defendants did not customize each consumer’s macronutrients at the beginning of the fitness plan. Although consumers answered personal survey questions at registration about their height, weight, goals, and activity level, on the promise of an individual assessment, Defendants delivered generic macronutrient guidelines to consumers. One consumer found that she and another consumer of approximately the same height, had a suggested caloric intake differential of only 60 calories, even though one weighed 140 pounds more.

23. Defendants also failed to provide the adjustments to macronutrient promised for the duration of the fitness plan. One consumer complained she was never provided a macronutrient adjustment, even though she was working out and her body was changing. Another was a

beginner weighing 200 pounds who almost passed out from inadequate nutrition. Defendant Davis did not respond to her emails asking for assistance. Another consumer suffered extreme hunger and sent email after email seeking help from Ms. Davis, who finally responded a month later, scolding her for not letting her know how bad the hunger was earlier, even though each email explained her issue.

Misled Consumers with Eating Disorders

24. Defendant Davis posted videos on YouTube explaining that she overcame her eating disorder through exercise and healthy eating. In the same social media posts, she then offered links to her fitness and nutrition plans. Consumers inferred from Defendant's videos and links to her website that she had special training to address eating disorders. One consumer noted that "the main reason I chose her [Ms. Davis] out of all the coaches out there was specifically that she advertised herself as an 'eating disorder soldier.' It was incredibly important to me that the person I chose to coach me had an idea of what it was like to deal with an eating disorder. Prior to reaching out to her for guidance, I had battled with anorexia and at my worst was below 80 lbs."

25. Ms. Davis denies that she accepted consumers with eating disorders, however, consumer documents tell a different story. At least 14 consumers who sought refunds from Defendants mentioned eating disorders in their complaints. One consumer on her initial survey states "I truly need guidance, help, the right information and support right now. I currently have an eating disorder, horrible body image views . . . I am underweight for my height." Ms. Davis' response was "Great! Welcome to the #teambrittanydawn family." Defendants proceeded to provide cardio exercises and low-calorie macronutrient suggestions that would only be suitable for someone who needed to lose weight, not put it on.

26. Another consumer wrote: “When I filled out your new client questionnaire . . . , I clearly stated that I was currently suffering from a restrictive eating disorder and looking to increase my calorie intake.” The nutrition plan she received from Defendants had a calorie intake significantly lower than what the consumer, who needed to gain weight, had reported.

Charging Shipping Fees for a Digital Product

27. Defendants charged consumers a shipping fee, even though the nutrition and fitness plans were emailed, incurring no mailing or shipping fees.

VIII. FALSE, MISLEADING, OR DECEPTIVE ACTS

28. Plaintiff incorporates Paragraphs 1 through 27, as if fully set forth herein.

29. Defendants, as alleged and detailed above, have in the course of trade and commerce engaged in false, misleading, and/or deceptive acts or practices declared unlawful in section 17.46(a) of DTPA, including by engaging in conduct specifically defined to be false, deceptive, or misleading by section 17.46(b) such as:

- A. By representing that Ms. Davis would provide one-one-one coaching and/or modify the workouts and nutritional guidelines via weekly check-ins, as part of a personalized fitness plan, and then failed to provide such coaching, check-ins, and modifications, defendants misrepresented the characteristics or benefits or quantities of their goods and services, in violation of DTPA § 17.45(b)(5);
- B. By representing that Ms. Davis would provide one-one-one coaching and/or modify the workouts and nutritional guidelines via weekly check-ins, as part of a personalized fitness plan, and then failed to provide such coaching, check-ins, and modifications, defendants misrepresented the standard, quality, or grade of their goods or services, in violation of DTPA § 17.46(b)(7);

- C. By representing, explicitly or implicitly, that Ms. Davis had any special knowledge or training to address eating disorders when she did not, defendants misrepresented the standard, quality, or grade of their goods or services, in violation of DTPA § 17.46(b)(7);
- D. By representing that Ms. Davis would provide individual nutrition assessments and provide one-on-one coaching via weekly check-ins, as part of a personalized online fitness plan, when Ms. Davis provided the same plan, or essentially the same plan, to consumers with no intention of providing individual coaching or making modifications and adjustments to a consumer's macros or routines to help them achieve their fitness goals, defendants failed to disclose information concerning the goods or services which was known at the time of the transaction with the intent to induce the consumers into a transaction into which the consumer would not have entered had the information been disclosed, in violation of DTPA § 17.46(b)(24).
- E. By charging a shipping fee for goods delivered by email, Defendants used false and deceptive acts in the conduct of trade or commerce in violation of DTPA § 17.46(a).

IX. INJURY TO CONSUMERS

30. Defendants have, by means of these unlawful acts and practices, obtained money or property from consumers who are entitled to restitution, or in the alternative, have caused actual damages to identifiable persons who are entitled to compensation.

X. TRIAL BY JURY

31. Plaintiff herein requests a jury trial and will tender the jury fee to Dallas County District Clerk's Office pursuant to Texas Rules Civil Procedure 216 and Texas Government Code section 51.604.

XI. PRAYER FOR RELIEF

32. Plaintiff prays that, after due notice and hearing, the Court enter a Permanent Injunction restraining and enjoining Defendants, Defendants' officers, agents, servants, employees, and attorneys, and any other person in active concert or participation with any or all Defendants who receive actual notice of the order, from engaging in the following acts or practices:

- A. Offering or selling any nutrition or fitness plans that includes personalized nutrition assessments as part of the plan unless Defendants will be providing personalized nutrition assessments based on the information provided by the individual consumer;
- B. Offering or selling any nutrition or fitness plan that includes personalized nutrition reassessments or modifications as part of the plan unless Defendants will be providing personalized nutrition assessments and reassessments or modifications based on the information provided by the individual consumer;
- C. Offering or selling any nutrition or fitness plan that includes individual one-on-one coaching, of any frequency (daily, weekly, monthly coaching sessions) as part of the plan unless Defendants will be providing individual one-on-one coaching on the promised frequency (daily, weekly, or monthly coaching sessions) to support a consumer in achieving a specific nutrition or fitness goal;
- D. Offering or selling any nutrition or fitness plan that includes personalized workout routines as part of the plan unless Defendants will be providing personalized

workout routines based on the individual consumers;

- E. Offering or selling any nutrition or fitness plan that includes personalized modifications or adjustments to any workout routines as part of the plan unless Defendants will be providing personalized modifications or adjustments to the consumer's workout routines to support a consumer in achieving a specific nutrition or fitness goal;
 - F. Offering or selling any nutrition or fitness plans that includes daily or weekly check-ins with a coach as part of the plan unless Defendants will be responding to daily or weekly check-ins from consumers with a personalized message related to specific nutrition and/or fitness progress of that consumer within 48 hours of the check-in;
 - G. Representing that Defendant Brittany Dawn Davis has any special knowledge of training to address eating disorders when she does not;
 - H. Charging a shipping fee for goods or services delivered by email.
33. Plaintiff further requests that this Court award money damages and restitution of monies paid by consumers.
34. Plaintiff further requests that Defendants be ordered to pay to the State of Texas:
- A. Civil penalties of up to \$10,000 per violation for each and every violation of the DTPA as authorized by § 17.47(c)(1);
 - B. Civil penalties of up to \$250,000 when the act or practice that acquired or deprived money or other property from consumers who were 65 years of age or older when the act or practice occurred as authorized by § 17.47(c)(2);
 - C. Pre-judgment and post-judgment interest on all awards of restitution, damages, or civil penalties, as provided by law; and

- D. All costs of Court, costs of investigation, and reasonable attorneys' fees pursuant to section 17.47 of the DTPA and Texas Government Code section 402.006(c).
35. Plaintiff prays for a decree that all of Defendants' fines, penalties or forfeitures are not dischargeable in bankruptcy. *See* 11 U.S.C. Section 523(a)(7).
36. Plaintiff further prays for the Court to order an equitable lien and conservative trust on all of Defendants' assets, personal property, and real property, and grant the State an interest in said assets and property.
37. Plaintiff prays for any such other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

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