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U.S. District Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

TINA WARD and ROBIN EMMONS,  
individually and on behalf of  
a class

Plaintiffs

Civil Action No. 95-0277-R

v.

TIDEWATER FINANCE CO.,  
a Virginia corporation t/a  
Tidewater Credit Semites;  
GWP, INC., a Virginia  
corporation; CANDISE M. RICH;  
B-FIT, INC. and S.A.S. FITNESS,  
INC., Virginia corporations t/a  
F.O.R. Associates, a partnership  
t/a New Fitness

Defendants

STIPULATION OF PROPOSED SETTLEMENT

The parties stipulate and agree as follows:

WHEREAS, the. plaintiffs, Tina Ward and Robin Emmons, filed !  
this action against defendants, alleging that defendants /  
Tidewater Finance Co., t/a Tidewater Credit Services, GWP, Inc.,  
Candise M. Rich, B-Fit, Inc. and S.A.S. Fitness, Inc., t/a F.O.R.  
Associates, a partnership t/a New Fitness, defrauded them and  
violated the Racketeering Influenced and Corrupt Organizations 1  
Act, 18 U.S.C. 66 1961 et seq.; that defendants Tidewater Finance 1  
CO, GWP, Inc. and Candise M. Rich violated the Fair Debt 1  
Collections Practices Act, 15 U.S.C. SS 1692 et seq.; and that  
F.O.R. Associates violated the Virginia ~Consumer Protection Act,  
Virginia Code SS 59.1-196 et seq.; and

WHEREAS, plaintiffs Ward and Emmons maintain that they, ,

individually and as class representatives, would ultimately prevail on all issues in this action but deem the proposed settlement set forth below to be in their best interests and in the best interest of the class; and

WHEREAS, defendants deny all liability and maintain that each of them would ultimately prevail on all issues in this action but deem the proposed settlement set forth below to be in their best interests; and

WHEREAS, the court has not ruled on any of the substantive contentions of the parties regarding liability or expressed any opinion with respect to the respective contentions;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the parties, that this action shall be settled and compromised, subject to court approval, upon the terms and conditions set forth below.

1. Definitions. The following terms shall have! the following meanings in this settlement:

(a) The term "settlement class" means all persons who entered contracts with New Fitness health spas in Roanoke and were sued in the courts of Chesapeake by F.O.R. Associates, t/a New Fitness except those persons who were living in Chesapeake at the time suit was brought or whose cases were subsequently transferred to the courts of Roanoke for trial.

~---~(b) The term "settlement subclass" means all persons within the settlement class who have made payments in part or in full after being sued in the courts of Chesapeake.

2. Submission of Stipulation to Court. The parties shall promptly submit this stipulation to the court and jointly request the court to enter its order in the form of Exhibit A (attached).

3. Consideration for Settlement.

(a) The parties agree to entry of judgment by this court / declaring any judgment obtained in the General District Court for / the City of Chesapeake by defendant F.O.R Associates t/a New Fitness against any member of the settlement class to be void, & initio.

PI Upon entry of judgment declaring the aforementioned judgments void, defendants shall promptly enter or arrange entry of notation of the void status into the Chesapeake court file of each New Fitness case filed against each settlement class member against whom judgment is entered. Defendants shall also provide notice of the void judgments with sufficient information for proper identification of each settlement class member to, TRW Business Credit Services and the Credit Bureau of Roanoke Valley.

(c) Defendants will nonsuit any actions in the courts of Chesapeake against members of the settlement class which are pending short of judgment, and will bring no more suits against Roanoke area residents on Roanoke New Fitness contracts in the courts of Chesapeake, unless authorized by Virginia venue statutes.

(d) ----F.O.R. Associates may recommence in a proper court any case in which the judgment was declared void by this court in accordance with this stipulation or nonsuited pursuant to this'

stipulation within six months from the date of the final judgment and order entered in this case or within the prescribed period of limitation under Virginia law, whichever is longer.

(e) Defendants shall refund to each member of the subclass who has duly and timely requested inclusion into the subclass all funds which were paid on the account of the member of the subclass after defendant F.O.R. Associates, t/a New Fitness filed suit against the subclass member in the courts of Chesapeake. Should any person claim membership in the subclass whom defendants do not identify as a member, or should there arise any dispute about the amount of refund due a subclass member, then the parties shall attempt to resolve the dispute. If the parties / are unable to promptly settle any such dispute the dispute shall be submitted to the Magistrate for resolution.

(f) Defendants shall pay plaintiffs Ward and Emmons \$1000 each, in addition to reimbursing to them any funds paid on their accounts. The payments of \$1000 each shall be made promptly upon entry of the order of this court approving the proposed settlement.

(g) Defendants shall pay the costs of preparation of the class list, printing class notices, postage and administrative costs for mailing the class notice, publishing class notices, and follow up notices.

A final copy of the class list shall be filed with the Court on or before the final hearing on approval of settlement along with a verified statement by defendants attesting to the fact

that a diligent, manual search of defendants' files was made to / identify potential members of the settlement class.

(h) Defendants shall be released from liability to the extent set forth in paragraph 6(e) of this stipulation.

p) Defendants shall pay the sum of \$4500 to the Legal Aid Society of Roanoke Valley as full and final settlement of attorney fees accrued to date and to be accrued by the Legal Aid Society in representation of plaintiffs. The payment of \$4500 / shall be made promptly upon entry of the order of this court approving the proposed settlement.

4. Security for Payment. Defendants shall deliver, as set forth in paragraph 5 of the proposed order attached as Exhibit A, a letter of credit as security for: payment of all funds to be reimbursed to members of the subclass, payments to the named plaintiffs, and payment of attorneys' fees and costs as provided in paragraph 3 of this Stipulation. In the event the settlement contemplated hereby is not finally approved and judgment entered as provided in paragraph 6 of this Stipulation, or if payments are made by defendants as provided in paragraph 3 of this Stipulation, no funds shall be drawn on the letter and it shall be, on order of Court, returned and released by the Clerk to the appropriate party and no liability of any kind shall exist in connection with-the letter.

5. Class Notices.

(a) Defendants shall notify each class member of the terms of the settlement by mailing to all identified class members, by:

first class mail, postage prepaid, the Notice to Class Member of Proposed Settlement of Class Action, attached as Exhibit B. Defendants shall include with each mailing to members of the subclass a return postcard with postage prepaid, addressed to counsel for plaintiffs, containing information allowing each subclass member to elect whether to opt-in to the subclass, and allowing each subclass member to update his/her address.

(b) Defendants shall publish the Notice attached as Exhibit C in The Roanoke Times, a newspaper of general circulation, in section A of the paper on Sunday and Wednesday. The notice shall be of a size no less than 21 1/2 column inches and shall be published on the dates described in Exhibit D.

(c) Plaintiffs' counsel may in their discretion and at their own cost cause the settlement notice to be published or publicized by other means.

w In the event that any of the mailings of the Notice to Class Member of Proposed Settlement of Class are returned by the post office, defendants shall take reasonable steps to locate those missing members, and remail the Notice upon obtaining a new address of the missing members.

6. Judgment to be Entered Upon Approval of the Settlement. :  
If the court enters its order in the form attached as Exhibit A, :  
or any other form agreeable to the parties, and all other \  
conditions of this stipulation are satisfied, and the court :  
approves the settlement embodied in this stipulation and the  
attached exhibits without modification, then final judgment shall'

be entered in this action:

(a) Approving the settlement contemplated in this stipulation as lawful, fair, just, reasonable and adequate, after considering, among other things, that the settlement was reached after good faith, arms length negotiations by experienced and capable counsel for the class and in the absence of collusion; the amount of the settlement; the likelihood of plaintiffs' success in obtaining all relief prayed for; the cost, complexity, and duration of the litigation if pursued through trial; the disruption to the business activities of the defendants; and, any other matters bearing on the best interests of the parties; and directing its consummation and that all parties perform in accordance with the terms of this stipulation and the attached exhibits;

(b) Permanently and finally certifying, under Rule 23 (b) (3) of the Federal Rules of Civil Procedure, the "settlement subclass-" for this cause consisting of all members of the settlement class who have timely and duly requested inclusion into the settlement subclass;

(c) Authorizing application to be made for payment against the letter of credit on deposit with the Clerk of this Court under paragraph 4 above, if any defendant defaults under this stipulation and the default remains uncured for a period of 15 days;

(d) Providing that members of the settlement subclass who have not duly and timely requested inclusion into the subclass

may thereafter pursue only their own individual remedies, if any, and not any class actions based on the class damage claims in plaintiffs' complaint;

(e) Providing for the release of defendants, their past and present officers, directors, employees, agents, attorneys, subsidiaries, parent corporations, related entities and affiliates, if any, and their respective successors, heirs and assigns, whomever, from all damage and other claims of Tina Ward and Robin Emmons and all members of the class except members of the subclass who have not opted in, their heirs, representatives, agents, attorneys, successors, or assigns, or anyone claiming on their behalf, which have been raised in Counts I through IV of the Complaint;

(f) Reserving jurisdiction over consummation of the settlement provided for in this Stipulation; and,

(g) Determining that there is no just reason for delay of either enforcement or appeal.

7. Schedule of events. The settlement contemplates the schedule of events taking place on the dates indicated in Exhibit D.

a. Effect of Failure to Consummate Settlement. If the settlement contemplated in this stipulation is not consummated because of (i)-the default by defendant F.O.R. Associates in its obligation to cause each Chesapeake judgment to be noted void, or suit to be nonsuited as under paragraph 3, supra, and the default remains uncured for a period of fifteen (15) days; or (ii)

defendants default in their payment obligations under paragraph 3, supra, and the default is not cured within 'fifteen (15) days; or (iii) defendants fail to provide the irrevocable, letter of credit to the clerk or keep the letter in force, and the default remains uncured for a period of fifteen (15) days; or (iv) defendants fail to take reasonable steps to locate class members whose notice mailings were returned by the post office, then plaintiffs' attorneys shall, upon motion with notice to counsel for defendants, be entitled to the entry of judgment against defendants, jointly and severally, for the total of all sums remaining unpaid under paragraph 3 above, including those sums not refunded under paragraph 3 (e) above, and plaintiffs may immediately execute on that judgment.

If settlement is not consummated because the court does not enter a final judgment and order for a reason other than defendants' default under paragraphs 3, 4, or 5 above, then this action shall proceed in all material respects as if this stipulation and the related orders and papers had not been executed, all substantive and procedural issues having been fully preserved for litigation, and with the letter of credit document ordered returned to the defendants.

IN WITNESS WHEREOF, the parties, by counsel, have signed this stipulation this \_\_\_\_\_ day of \_\_\_\_\_, 1995.

LEGAL AID SOCIETY OF ROANOKE VALLEY  
Counsel for Plaintiffs

by *David D. Beidler*  
Henry L. Woodward VSB# 13548  
David D. Beidler VSB# 24563  
416 Campbell Avenue S.W.  
Roanoke, Virginia 24016-3627  
(540) 344-2088

HEILIG, MCKENRY, FRAIM & LOLLAR  
Counsel for Defendants

by *George H. Heilig Jr.*  
George H. Heilig Jr., Esq. VSB#  
Stoney Point Center  
700 Newtown Road  
Norfolk, Virginia 23502-3999  
(804) 461-2500

CLERK'S OFFICE  
U.S. DISTRICT COURT  
ROANOKE, VIRGINIA  
CT: 2/1/95

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

I Ey. > , .

TINA WARD and ROBIN EMMONS, \*  
individually and on behalf of \*  
a class \*

Plaintiffs \*

v. \* Civil Action No. 95-0277-R

B-FIT, INC. AND S.A.S. FITNESS, \*  
INC., Virginia corporations t/a \*  
F.O.R. Associates, a partnership\*  
t/a New Fitness, et al. \*

Defendants \*

NOTICE TO FORMER NEW FITNESS CUSTOMERS  
OF PROPOSED SE - OF CLASS ACTION

THIS IS TO NOTIFY YOU THAT ANY JUDGMENT OBTAINED AGAINST YOU BY ROANOKE NEW FITNESS HEALTH SPAS IN THE COURTS OF CHESAPEAKE, VIRGINIA WILL BE DECLARED VOID BY THIS COURT UNDER THE TERMS OF A PROPOSED SETTLEMENT OF THIS LAWSUIT. UNDER THE SETTLEMENT YOU ARE ALSO ENTITLED TO HAVE ALL MONEY RETURNED WHICH YOU PAID TO NEW FITNESS AFTER IT FILED SUIT AGAINST YOU IN CHESAPEAKE, UNLESS YOU LIVED IN CHESAPEAKE WHEN SUED OR YOUR NEW FITNESS CASE WAS TRANSFERRED TO ROANOKE FOR TRIAL. THE SETTLEMENT PERMITS NEW FITNESS TO FILE A NEW LAWSUIT AGAINST YOU IN ROANOKE OR OTHER PROPER PLACE IF YOU STILL OWE THEM MONEY, AND GIVES YOU A NEW CHANCE TO DEFEND AGAINST THEIR CLAIM. THIS NOTICE EXPLAINS:

- A. The Lawsuit.
- B. The Class and Subclass.
- C. The Settlement.
- D. Instructions on How to Participate in the Settlement.
- E. Further Court Hearings.
- F. Additional Information.

A. THE LAWSUIT.

Tina Ward and Robin Emmons filed this lawsuit on behalf of themselves and on your behalf. The defendants have denied any wrongdoing and all liability. Tina Ward and Robin Emmons claim that by filing suit against you in Chesapeake instead of Roanoke, certain defendants in this lawsuit intentionally defrauded you and violated the Fair Debt Collections Practices Act, the Racketeering Influenced and Corrupt Organizations Act, and the Virginia Consumer Protection Act. The court has expressed no opinion as to the merits of this claim, or whether you or the defendants would win if your claim went to trial.

B. THE CLASS AND SUBCLASS.

You are a member of the settlement class if you entered a contract with a New Fitness health spa in Roanoke and were later sued in a Chesapeake, Virginia court by F.O.R. Associates, t/a New Fitness. You are not included, however, if your case was later transferred to Roanoke for trial.

You are a member of the settlement subclass if you are a member of the settlement class and you (or anyone for you) made any payments to New Fitness after New Fitness sued you in Chesapeake.

C. THE SETTLEMENT.

1. Under the terms of the settlement, the defendants have agreed to:

a. Have this court declare void all New Fitness judgments obtained in Chesapeake, Virginia. New Fitness will be allowed to refile the suits in Roanoke. If the suits are refiled in Roanoke, you will be allowed to appear in court and raise any defenses to the suits which you might have, except that you will not be able to raise the statute of limitations as a defense in cases refiled within six months after this court's order voiding the Chesapeake court judgments.

b. Refund to each member of the subclass all money paid to New Fitness after suit was filed in Chesapeake. The money returned would include not only payments made directly to New Fitness or someone collecting for them but also money which was paid to New Fitness by garnishment or other collection process. The refunds would total about \$6.7,000 if all subclass members participate in the settlement. ---There are approximately 345 members of the subclass. The amount received by any member of the subclass will depend on the amount New Fitness collected from the member after suit was filed in Chesapeake. .f

plaintiffs Tina Ward and Robin Emmons an additional \$10,000 each. These additional awards are based on the individual claims of Ward and Emmons for damages separate from the class claim.

d. Pay attorneys fees in the amount of \$4500 to the Legal Aid Society of Roanoke Valley, for representing Tina Ward, Robin Emmons and those class members not represented by another attorney.

e. Pay all reasonable costs associated with settling this suit, including costs of postage and printing notices.

2. Under the terms of the settlement, the defendants will be released from further liability to plaintiffs and participating members of the class for the claims raised in the lawsuit.

#### D. INSTRUCTIONS ON HOW TO PARTICIPATE IN THE SETTLEMENT

1. If you wish to participate in the refund aspect of the settlement you must specifically request to do so by signing and dating the enclosed, stamped post card. The post card must be mailed no later than December 9, 1995. However, you should mail it right away. The December 9, 1995 cutoff date has been set so that new addresses can be found for class members whose notices can't be delivered the first time. Also be sure to send your address to plaintiffs' attorneys if you move. Without a current address it may not be possible to deliver the refund check to you if you are entitled to receive a refund.

2. You will be represented by plaintiffs' attorneys if you do not timely appear with your own attorney. The appearance of your own attorney is not necessary to be included in the class settlement. If you want to appear through your own attorney you must do so by December 9, 1995.

2.

3. Under the terms of the settlement, all Roanoke New Fitness cases which were filed by F.O.R. Associates trading as New Fitness in the Chesapeake courts will be declared void by this United States District Court whether you participate in the settlement or not. Any other cases pending in Chesapeake against class members will be dismissed.

4. If you do not want to participate in the refund aspect of this settlement, you do not need to do anything. Only those persons filling out the enclosed card and returning it by the cutoff date will be included in the refund plan. If you do not participate in the refund plan by completing and returning the card within the time allowed, you will be forever barred from making any claim under the settlement. However, you may have the right to bring an individual lawsuit on your behalf against the

defendants within the applicable statute of limitations.

E. FURTHER COURT BEARINGS.

There will be a hearing before the Honorable Samuel L. Wilson at \_\_\_\_\_ a.m./p.m. on \_\_\_\_\_ 1995, in the courtroom of the United States District Court located on the 2nd floor of the Richard H. Poff Federal Building at 210 Franklin Rd. S.W., Roanoke, Virginia, to determine the legality, adequacy and fairness of the proposed settlement. If you wish to be heard, you or your attorney may appear on that date or may file objections with the court prior to that date.

F. ADDITIONAL INFORMATION.

If you wish additional information about this notice of the settlement, you may contact the plaintiffs' attorneys by writing or calling:

Henry i. Woodward, Attorney  
David D. Beidler, Attorney  
Legal Aid Society of Roanoke Valley  
416 Campbell Avenue S.W. .  
Roanoke, Virginia 24016  
(540) 344-2088

The court papers filed in this case are available for inspection in the office of the Clerk of the Court at 210 Franklin Rd. S.W., Roanoke, Virginia on the 3rd floor.

PLEASE DO NOT CONTACT THE COURT OR THE CLERK OF THE COURT REGARDING THIS MATTER.

Signed by direction of the United States District Court for the Western District of Virginia, Roanoke Division

\_\_\_\_\_  
Clerk of the Court

\_\_\_\_\_  
Dated

CLEAN COPY  
ROANOKE VA  
FILED

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT " 5 < ! - ! ; : ELF ; : i  
FOR THE WESTERN DISTRICT OF VIRGINIA ~ : \* ;  
ROANOKE DIVISION i - 1  
1.2 ; : I.

TINA WARD and ROBIN EMMONS, .\*  
individually and on behalf of \*  
a class \*

Plaintiffs \*

v. \*

Civil Action No. 95-0277-R

B-FIT, INC. AND S.A.S. FITNESS, \*  
INC., Virginia corporations t/a \*  
F-0-R. Associates, a partnership\*  
t/a New Fitness, et al. \*

Defendants \*

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A. THE LAWSUIT.

Tina Ward and Robin Emmons filed this lawsuit on behalf of themselves and on your behalf. The defendants have denied any wrongdoing and all liability. Tina Ward and Robin Emmons claim that by filing suit against you in Chesapeake instead of Roanoke, certain defendants in this lawsuit intentionally defrauded you and violated the Fair Debt Collections Practices Act, the Racketeering Influenced and--Corrupt Organizations Act, and the Virginia Consumer Protection Act. The court has expressed no opinion as to the merits of this claim, or whether you or the defendants would win if your claim went to trial.

B. THE CLASS AND SUBCLASS.

You are a member of the settlement class if you entered a contract with a New Fitness health spa in Roanoke and were later

sued in a Chesapeake, Virginia court by F.O.R. Associates, t/a New Fitness. You are not included, however, if your case was later transferred to Roanoke for trial.

You are a member of the settlement subclass if, you are a member of the settlement class and you (or anyone for you) made any payments to New Fitness after New Fitness sued you in Chesapeake.

C. INSTRUCTIONS ON HOW TO PARTICIPATE IN THE SETTLEMENT

If you believe you are a member of the class affected by this lawsuit and you have not already received instructions by mail on how to participate in the lawsuit, you may contact the attorneys for plaintiffs and the class at the following address or phone number:

Henry L. Woodward, Attorney  
David D. Beidler, Attorney  
Legal Aid Society of Roanoke Valley  
416 Campbell Avenue S.W.  
Roanoke, Virginia 24016  
(540) 344-2088

D. FURTHER COURT HEARINGS.

There will be a hearing before the Honorable Samuel L. Wilson at \_\_\_\_\_ a.m./p.m. on \_\_\_\_\_ 1995, in the courtroom of the United States District Court located on the 2nd floor of the Richard H. Poff Federal Building at 210 Franklin Rd. S.W. # Roanoke, Virginia, to determine the legality, adequacy and fairness of the proposed settlement. If you wish to be heard, you or your attorney may appear on that date or may file objections with the court prior to that date.

E. ADDITIONAL INFORMATION.

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PLEASE DO NOT CONTACT THE COURT OR THE CLERK OF THE COURT REGARDING THIS MATTER.

Signed by direction of the United States District Court for the Western District of Virginia, Roanoke Division

\_\_\_\_\_  
Clerk of the Court

\_\_\_\_\_  
Dated

EXHIBIT D  
SCHEDULE OF EVENTS  
FOR PROPOSED SETTLEMENT

DATE	EVENT
September 18, 1995	Presentation to court of proposed Settlement Stipulation.
September 28, 1995	Letter of Credit filed with Clerk.
October 2, 1995	Mailing of class notice.
October 4, 8, 18, 22, 1995 November 1, 5, 1995	Publishing of class notice in <u>m Roanoke Times</u> .
November 10,	Deadline for re-mailing of class notices to members of class whose original notices were undelivered and updated addresses were obtained.
December 9, 1995	Last date for class members mailing responses to class notices.
December 9, 1995	Last date for filing written objections.
_____	Fairness hearing. Payment of \$1000 and refunded payments to each of the named plaintiffs; and payment of attorneys' fees to Legal Aid Society of Roanoke Valley.
December 31, 1995	Deadline for distribution of refund to class members.