Dear Counsel:

The Court, having reviewed the papers submitted by the parties, and having heard oral argument on August 26, 2016, grants Plaintiffs' motion for Class Action Certification. The Court sets forth its reasons below.

I.

This matter arises out of a dispute over the membership agreement and fees between customers and Retrofitness, LLC. Defendant RetroFitness is a New Jersey-based company that engages in the business of offering and granting franchises to qualified applicants for the operation of high quality, low cost fitness facilities. Defendant RetroFitness licenses the use of its federally registered trademark to franchisees who, in turn, independently own and operate the said fitness facilities. As a condition of becoming a member of any specific RetroFitness facility, individuals are required to enter into a membership agreement with that particular gym. The Complaint identifies that the membership agreements signed by Plaintiffs may be different in both form and substance from other franchises.

Z Times Three, LLC d/b/a RetroFitness of Kenilworth is a domestic business that owned and operated a RetroFitness health club franchise at 505 North Michigan Avenue, Kenilworth, New Jersey 07033. Defendant Britcarianna, LLC d/b/a/ RetroFitness of Fairfield is a domestic business which owned and operated a RetroFitness health club franchise located at 10 Kingsbridge Road, #5, Fairfield, New Jersey 07004. Defendant PJ'S Fitness Express, Inc. d/b/a RetroFitness of Bordentown is a domestic business which owned and operated a RetroFitness health club franchise located at 860 U.S. Highway Route 206, Bordentown, New Jersey 08505.

On January 17, 2014, Plaintiffs filed the instant Complaint in the New Jersey Superior Court, Law Division, Middlesex County. In March 2014, Defendant ABC Financial Services filed a Notice of Removal, asking the Court to remove the present matter from the New Jersey Superior Court to the United States District Court, which was granted. In December 18, 2014, the Federal Court granted Plaintiffs' motion to remand back to New Jersey Superior Court, and denied Defendants' motions to dismiss.

Subsequently, Defendants RetroFitness, LLC, Z Times Three, LLC, Britcarianna, LLC, PJ's Fitness Express, LLC, ABC Financial Services, Inc. and PJR Holdings, LLC d/b/a RetroFitness of Wall (respectively "Defendants") filed motions to dismiss in this Court. On May 14th, 2015, the Court denied RetroFitness, LLC, Z Times Three, LLC, Britcarianna, LLC, PJ's Fitness Express, LLC, ABC Financial Services, Inc. and PJR Holdings, LLC's motion to dismiss the Complaint.

Plaintiffs now seek class certification for one class and two subclasses on three separate class claims arising from alleged unlawful provisions in Defendants' membership agreements. Count One, open to all class-members, would assert claims under the Truth-in-Consumer Contract, Warranty and Notice Act (TCCWNA), N.J.S.A. 56:12-14-18 in conjunction with violations of the Health Club Services Act (HCSA) , N.J.S.A. 56:8-39, and the Retail Installment Sales Act of 1960 (RISA), N.J.S.A. 17:16C-1. Count Two, claims pertaining to the first sub-

class, asserts claims under RISA, and the Consumer Fraud Act (CFA), N.J.S.A. 56:8-2. Lastly, Count Three asserts claims for the second sub-class under the CFA and HCSA.

II.

The issue before the Court is whether the proposed class in the instant matter should be approved, and whether a consideration of the case's merits should be made in conjunction with that determination. Plaintiffs assert they have satisfied the requirements for certification under R. 4:32-1 and therefore the class certification should be granted. Defendants have suggested that the Plaintiffs have failed to meet the criteria for a class action and that there should also be a determination on the merits of the case prior to certification, as Defendants would suffer irreparable harm by later providing notice to all 400,000 or more members of Retrofitness and other potential class members.

III.

The standards that govern class action certification have been addressed by the New Jersey Supreme Court in Intern. Un. Loc. 68 Welf Fund v. Merck, 192 N.J. 372 (2007) and Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88 (2007). Class action certification in New Jersey is governed by R. 4:32-1, which includes both general and specific requirements. See R. 4:32-1(a),(b). Intern. Un. Loc. 68 Welf Fund, 192 N.J. at 382; Iliadis, 191 N.J. at 106.

Class actions are "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." Iliadis, 191 N.J. at 103 (quoting Califano v. Yamasaki, 442 U.S. 682, 700-01 (1979)). Class action adjudication furthers "judicial economy, cost-effectiveness, convenience, consistent treatment of class members, protection of defendants from inconsistent obligations and allocation of litigation costs among numerous, similarly-situated litigants." Iliadis, 191 N.J. at 104. Class action helps to equalize adversaries, "a purpose that is even more compelling when the proposed class consists of people with small claims. In such disputes, where the claims are, in isolation, 'too small . . . to warrant recourse to litigation,' the class-action device equalizes the claimants' ability to zealously advocate their positions."). Id. (quoting In re Cadillac, 93 N.J. at 435).

Plaintiffs must satisfy all prerequisites set forth in R. 4:32-1(a), including numerosity, commonality, typicality and adequacy of representation, as well as one of the three alternative types of class actions described in R. 4:32-1(b). Iliadis, 191 N.J. at 106. Plaintiffs bear both the burden of persuasion and the burden of proof on class certifications. Muise v. GPO, Inc., 371 N.J Super. 13, 32 (App. Div. 2004).

(1) R. 4:32-1(a) Requirements

R. 4:32-1(a) provides four prerequisites for class certification. Class certification is appropriate only if:
(1) the class is so numerous that joinder of all members is impracticable ["numerosity"],

(2) there are questions of law or fact common to the class ["commonality"],

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class ["typicality"], and

(4) the representative parties will fairly and adequately protect the interests of the class ["adequacy of representation"].

Iliadis, 191 N.J. at 106 (citing R. 4:32-1(a)).

i. Numerosity

R. 4:32-1(a)(1) requires the proposed class to be so numerous that joinder of all members would be impracticable. There is no minimum number of plaintiffs required to maintain a class action. Stewart v. Abraham, 275 F. 3d 220, 227 (3d Cir. 2001). However, generally a class of over 40 plaintiffs is deemed sufficient. Id. Joinder need not be impossible; rather it must simply be extremely difficult or inconvenient. Szczubelek v. Cendant Mortg. Corp., 215 F.R.D. 107, 116 (D.N.J. 2003). Impracticability depends upon the surrounding circumstances. Id. A plaintiff need not demonstrate the precise number of class members when a reasonable estimate can be inferred from facts in the record. Id.

ii. Commonality

R. 4:32-1 (a)(2) requires that there be questions of law or fact common to the class, although not all questions of law or fact raised need be in common. Delgozzo v. Kenny, 266 N.J Super. 169, 185-186 (App. Div. 1993). Commonality does not require an identity of claims among class members, rather the named plaintiffs must simply share at least one question of fact or law with the grievances of the prospective class. Szczubelek, 215 F.R.D. at 117.

iii. Typicality

R. 4:32-1(a)(3) requires the claims of the representative parties to be typical of the claims of the class. The claims of the representative "must have the essential characteristics common to the claims of the class." In re Cadillac V8-6-4 Class Action, 93 N.J. 412, 425 (1983). Claims of the class members and class representative must arise from the same event, practice or course of conduct and be based upon the same legal theory. Baby Neal v. Casey, 43 F.3d 48 (3d Cir. 1994). The court in Laufer v. U.S. Life Insurance Co. noted that "since the claims only need to share the same essential characteristics, and need not be identical, the typicality requirement is not highly demanding." 385 N.J. Super. 172, 180 (App. Div. 2006).

iv. Adequacy of Representation

The fourth requirement of R. 4:32-1(a) requires that the representative parties must fairly and adequately protect the interest of the class. The prerequisite is presumed to be met in New Jersey and the defendant bears the burden of demonstrating that the proposed representative will be inadequate. Delgozzo, 266 N.J Super. at 188. This prerequisite is satisfied when the plaintiff does not have interests antagonistic to those of the class. Id. at 188.

The adequacy requirement of R. 4:32-1(a)(4), which requires "representative parties" to fairly and adequately protect the interests of the class also applies to their counsel under R. 4:32-2(g)(1)(B). See also Rebish v. Great Gorge, 224 N.J. Super. 619, 623-24 (App. Div. 1988).

(2) R. 4:32-1(b) Requirements

Once the requirements of R. 4:32-1(a) have been met the Court next must analyze whether the class applicants satisfy the requirements of one of the three alternative types of class actions described in R. 4:32-1(b). Iliadis, 88 N.J. at 106. Most relevant to the instant matter is R. 4:32-1(b)(3).

In order for the Court to certify this class action under R. 4:32-1(b)(3), it must find that "the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." R. 4:32 (1)(b)(3). The New Jersey Supreme Court has addressed the requirements of R. 4:32-1(b)(3) in Intern. Un. Loc. 68 Welf. Fund and Iliadis.

In making the relevant predominance and superiority assessments, a certifying court must undertake a "rigorous analysis" to determine if the Rule's requirements have been satisfied. Carroll v. Cellco Partnership, 313 N.J. Super. 488 (App. Div. 1998). The Court's review includes searching "beyond the pleadings" to gain an understanding of the "claims, defenses, relevant facts, and applicable substantive law." Iliadis, 191 N.J. at 107 (quoting Carroll, 313 N.J. Super. at 495).

An examination of the predominance and superiority requirements must include consideration of the following factors:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;
(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
(C) the desirability or undesirability in concentrating the litigation of the claims in the particular forum;
(D) the difficulties likely to be encountered in the management of a class action.

R. 4:32-1(b)(3); Iliadis, 191 N.J. at 107.

i. Predominance

The predominance requirement is similar to but "far more demanding" than the commonality requirement of R. 4:32-1(a)(2). Amchem Prods., Inc. v. Windsor, 521 U.S. 591 (1997). The court in Iliadis opined that in determining whether the predominance requirement is met, the number and significance of common questions must be considered. 191 N.J. at 108. The

core of the case must consist of common issues of fact and law. In re Cadillac V8-6-4 Class Action, 93 N.J. 412, 435 (1983). In addition, the Court must decide whether the "benefit from the determination in a class action [of common questions] outweighs the problems of individual actions." Iliadis, 191 N.J. at 108 (quoting Id. at 430). Lastly, predominance requires, at minimum, a "common nucleus of operative facts." Id.

Our courts are also in agreement that there is no requirement that individual issues be absent. Id. (citing Varacallo v. Mass. Mut. Life Ins. Co., 332 N.J. Super. 31, 45 (App. Div. 2000), or "that the common issues dispose of the entire dispute." Id. Rule 4:32-1 was modeled after Fed. R. Civ. P. 23. Our courts have consistently looked for guidance to federal court interpretations of the class action rule. Delgozzo, 266 N.J. Super. at 188 as recognized in Norbrega v. Edison Glen Assocs., 167 N.J. 520 (2001). Predominance does not require that all issues be identical among class members or that each class member be affected in precisely the same manner. Fiore v. Hudson County Employees Pension Comm'n, 151 N.J Super. 524, 528 (App. Div. 1977).

ii. Superiority

R. 4:32(1)(b)(3) requires a finding that "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." This involves a comparison of the fairness to all parties between such alternative methods and a class action. Intern. Un. Loc. 68 Welf Fund, 192 N.J. at 382. Our courts have held that superiority is met where the small amount of each claim would effectively preclude "most suits" if the case was not certified as a class action. Delgozzo, 266 N.J. at 193.

iii. Manageability

The Supreme Court summarized the prevailing New Jersey theory on manageability in Iliadis, 191 N.J. at 117-8.

> "Denial of class status due to manageability concerns is disfavored and, "in view of the public interest involved in class actions, should be the exception rather than the rule." In re Bristol Bay, Alaska, Salmon Fishery Antitrust Litig., 78 F.R.D. 622, 628 (W.D. Wa. 1978); *see also Klay v. Humana, Inc.*, 382 F.3d 1241, 1272-73 (11th Cir. 2004) (finding manageability "will rarely, if ever, be in itself sufficient to prevent certification of a class"); Carnegie, supra, 376 F.3d at 661 ("[C]lass action has to be unwieldy indeed before it can be pronounced an inferior alternative . . . to no litigation at all."). Complexity is an inherent trait of class litigation, and "[m]any courts have recognized . . . that potential management difficulties are not grounds for class denial when justice can be done only through the class action device." Conte & Newberg, supra, § 4:32 at 277. In sum, "courts should be careful not to overemphasize management difficulty considerations when contrasted with judicial economy, small claims access, and deterrence goals of the class device." Id. § 4:45 at 336. Although we acknowledge the difficulties inherent in managing this state-wide class action, a finding of unmanageability requires more than mere difficulty in trying the case or the existence of novel challenges." Iliadis, 191 N.J. at 117-8.

IV.

a. Timeliness

Firstly, the Court would like to address Defendants' contention that the instant motion seeking class certification is untimely due to the lack of discovery performed at time of the filing deadline for oppositions. Defendants assert that by that time only half of the six named Plaintiffs (at that time) had been deposed and only limited paper discovery had been exchanged. It is the understanding of the Court that by the time of the August 26, 2016 return date that all named Plaintiffs were deposed. The Appellate Division has found as recently as 2015 that there is no "bright-line rule prohibiting examination of the propriety of class certification until discovery is undertaken." Myska v. New Jersey Mfrs. Ins. Co., 440 N.J. Super. 458, 478 (App. Div. 2015).

Defendants' contend that the deadline for opposition to the instant motion, provided by Rule. 1:6-3(a), and the discovery deadlines provided in this Court's Case Management Order dated July 29, 2016, constitute a violation of their XIV amendment right to due process because this Court refused to "adjourn the Motion to allow Defendants the opportunity to depose ***all*** of the Plaintiffs and obtain ***all*** necessary discovery prior to opposing the motion." Def. Opp. at 8 (Emphasis retained).

Ultimately, the issue of timeliness is determined by whether the proposed class meets the factors required to show "predominance" and "superiority" under Rule 4:32-1. Myska, 440 N.J. Super. at 478. The Court notes the instant motion was filed back on June 22, 2016 and had undergone discovery and mediation related to the November 30, 2015 stipulation of stay of litigation. Both the deadline provided under the rules and the discovery which took place since the case's inception provided sufficient time for both parties to gain sufficient familiarity with the case and prepare the voluminous briefs which were delivered onto this Court prior to the August 26, 2016 return date. Furthermore, in a letter dated July 22, 2016, the Court recognized that it was Defendants own late noticing of depositions and that concerns over incomplete depositions were self-inflicted. The Court allowed Defendants additional time to supplement their opposition by August 19, 2016 and all depositions of named defendants were completed by the time of Oral Argument on August 26, 2016.

Defendants' assertion that the timing violated binding precedent and amounted to a "stark violation of Defendants' Due Process rights" runs in contrast to our State's own Appellate Division in the recent case on-point, Myska, which rejected the notion of a "bright-line rule prohibiting examination of the propriety of class certification until discovery is undertaken." Myska v. New Jersey Mfrs. Ins. Co., 440 N.J. Super. 458, 478 (App. Div. 2015). Accordingly, the Court finds it improper to make a determination on timeliness prior to its Rule. 4:32-1 analysis.

b. The Law of the Case

The Court reiterates its prior finding that the October 4, 2013 dismissal without prejudice in Essex County did not bar the instant action in Middlesex. The Court seeks to clarify this point after the topic was broached during arguments, that the Court has already determined the prior Essex County action was a distinct matter and therefore there are no grounds to preclude the instant complaint or certification under the entire controversy doctrine or to relitigate this motion as one to dismiss the action on its merits after the July 17, 2015 decision denying Defendants motion to reconsider this Court's prior denial of their motions to dismiss for failure to state a claim.

c. R. 4:32-1(a)

1. Numerosity

The Court finds the proposed class to be sufficiently numerous to require the use of a class action proceeding. According to Defendants' responses to discovery and the analysis conducted by Plaintiff, 381,053 persons are potentially eligible for membership in the Class, 150,569 persons for the 1st subclass, and 70,989 persons for the 2nd subclass. Pla. Supp. Cert. Aug. 4, 2016 Ex. C. Given the size of the proposed classes, it would be difficult, if not impossible, to join all potential plaintiffs in a standard action. Therefore, a finding of numerosity is consistent with both Stewart v. Abraham, 275 F. 3d 220, 227 (3d Cir. 2001), in which it was determined a class over 40 plaintiff was generally considered numerous, and Szczubelek v. Cendant Mortg. Corp., 215 F.R.D. 107, 116 (D.N.J. 2003), which discussed the impracticability of administering large-scale claims in a traditional format.

2. Commonality and Typicality

The Court finds the existence of questions of both law and fact which are common to the named Plaintiffs' as well as potential class members. R. 4:32-1 (a)(2) requires that there be questions of law or fact common to the class, although not all questions of law or fact raised need be in common. Delgozzo v. Kenny, 266 N.J Super. 169, 185-186 (App. Div. 1993). Commonality does not require an identity of claims among class members, rather the named plaintiffs must simply share at least one question of fact or law with the grievances of the prospective class. Szczubelek, 215 F.R.D. at 117. Plaintiff has provided a number of points of commonality related to the contracts and business practices utilized by Retro Fitness and its affiliates.

Defendants have alleged that these contracts may not be identical and contain different provisions than the form provided by Retro Fitness to its franchisees. The argument follows that the result would be thousands of mini-trials over the course of litigation. The Court finds those concerns to be unsubstantiated in the record as the statistics provided to the Court have already isolated the total number of prospective plaintiffs with the same, or similar, contract provisions at issue and the contract and business practices at issue follow the same provisions and business practices throughout the proposed class and subclasses.

R. 4:32-1(a)(3) requires the claims of the representative parties to be typical of the claims of the class. The claims of the representative "must have the essential characteristics common to the claims of the class." In re Cadillac V8-6-4 Class Action, 93 N.J. 412, 425 (1983).Claims of the class members and class representative must arise from the same event, practice or course of conduct and be based upon the same legal theory. Baby Neal v. Casey, 43 F.3d 48 (3d Cir. 1994). "[C]laims only need to share the same essential characteristics, and need not be identical, the typicality requirement is not highly demanding." Laufer v. U. S. Life Ins. Co. in City of N.Y., 385 N.J. Super. 172, 180 (App. Div. 2006). Therefore, The Court finds the claims to be typical of the named and prospective class members as they arise from the same factual circumstances, the written membership agreements and business practices of Defendants, and are being pursued through identical statutes and causes of action under the TCCWNA, HCSA, RISA, and CFA.

3. Adequacy of Representation

The Court finds Plaintiffs' counsels and the proposed named class representatives to be adequate for the purposes of representing the proposed class. There is a presumption that counsel is adequate. Delgozzo, 266 N.J Super. at 188. Plaintiffs' counsels all appear to have extensive prior experience in consumer class action litigation, and evidence on record shows counsel would "fairly and adequately protect the interests of the class." R. 4:32-2(g)(1)(B). Likewise, the Court is unable to evidence from the record a potential conflict which may disqualify the named Plaintiffs from representing the proposed class and subclass. Accordingly, the Court finds the prospective class representatives to have no "interests antagonistic to those of the class."

d. Rule 4:32-1(b)

Defendants have asserted that the "rigorous analysis" required of a Court when conducting the R. 4:32-1(a) requires the Court to extend said "rigorous analysis" to the merits of the underlying complaint under Carroll v. Cellco Partnership, 313 N.J Super. 488, 495 (App. Div. 1998). The Court rejects that interpretation of Carroll and finds Defendants proposed interpretation to be inconsistent with both the Appellate Division's findings and prevailing New Jersey case law.

The Appellate Division found that, in making the relevant predominance and superiority assessments, a certifying court must undertake a "rigorous analysis" to determine if the Rule's requirements have been satisfied. Carroll v. Cellco Partnership, 313 N.J. Super. 488, 495 (App. Div. 1998). The Court's review includes searching "beyond the pleadings" to gain an understanding of the "claims, defenses, relevant facts, and applicable substantive law." Iliadis, 191 N.J. at 107 (quoting Carroll, 313 N.J. Super. at 495).

> "Although class certification does not occasion an examination the dispute's merits, Olive v. Graceland Sales Corp., 61 N.J. 182, 189, 293 A.2d 658 (1972); see also Castano v. Am. Tobacco Co., 84 F.3d 734, 744 (5th Cir. 1996) (noting "unremarkable proposition that the strength of a plaintiff's claim should not affect the certification decision"), a cursory review of the pleadings is nonetheless insufficient. "The 'rigorous analysis requirement' means that a class is not maintainable merely because the complaint parrots the legal requirements" of the class-action rule." Iliadis, 191 N.J. at 107.

The factual context of the Carroll and Castano opinions provides a clear basis for the distinction between requiring a trial court to conduct a "rigorous analysis" of the complaint before certifying a nationwide class action which faced potential conflicts of law from varying state common and statutory law and Defendants' attempt to brief and argue their opposition to the instant class action certification on many of the same grounds this Court considered when denying Defendants' previous motions to dismiss for failure to state a claim. Accordingly, the Court refers the Parties to its prior rulings in this matter, including but not limited to the July, 17, 2015 decision denying Defendants' motion for reconsideration. The Court finds the absence of similar considerations for complexity and case history for its "rigorous analysis" to warrant a third decision on the sustainability of Plaintiffs' complaint.

1. Predominance

The Court finds that the questions of law and fact common to the members of the class predominate over any questions affecting only individual members. The core of the case must consist of common issues of fact and law. In re Cadillac V8-6-4 Class Action, 93 N.J. 412, 435 (1983). In addition, the Court must decide whether the "benefit from the determination in a class action [of common questions] outweighs the problems of individual actions." Iliadis, 191 N.J. at 108 (quoting Id. at 430). Lastly, predominance requires, at minimum, a "common nucleus of operative facts." Id.

The Court refers the Parties to its findings for commonality and, for the sake of brevity, to Plaintiffs' twenty-seven questions of facts and law common to the class and/or subclasses. Pla. Brief at 19-21. The Court finds Plaintiffs' complaint arises from membership agreements identical or similar to that of all proposed class members on identical issues of New Jersey Law. Therefore, the case consists of common issues of fact and law. As the agreements in question are common, whether identically or similarly, to that of all 381,053 potential class members, there would be substantial benefit to a unified proceeding on the allegations arising from the many similarly situated plaintiffs.

Our courts are in agreement that there is no requirement that individual issues be absent. Id. (citing Varacallo v. Mass. Mut. Life Ins. Co., 332 N.J. Super. 31, 45 (App. Div. 2000), or "that the common issues dispose of the entire dispute." Id. R. 4:32-1. With several hundred thousand potential class members, there will naturally be individual issues which require the Court's individual consideration, however the Court finds there to be no individual issues raised at this time which would frustrate a fair, efficient, and proper adjudication on the predominant issues arising from the membership agreement shared by all Plaintiffs. Predominance does not require that all issues be identical among class members or that each class member be affected in precisely the same manner. Fiore v. Hudson County Employees Pension Comm'n, 151 N.J Super. 524, 528 (App. Div. 1977). Accordingly, the proposed class and subclasses are therefore "sufficiently cohesive to warrant adjudication by collective action through a class representative." Lee v. Carter-Reed Co., L.L.C., 203 N.J. 496, 521 (2010).

2. Superiority and Manageability

The Court finds that a class action would be the superior way to adjudicate the instant matter because the 381,053 potential class member with similar claims arising from common questions of fact and law would be inefficient and unduly burdensome, if not impossible to conduct. R. 4:32(1)(b)(3) requires a finding that "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." This involves a comparison of the fairness to all parties between such alternative methods and a class action. Intern. Un. Lae. 68 Welf Fund, 192 N.J. at 382. Our courts have held that superiority is met where the small amount of each claim would effectively preclude "most suits' if the case was not certified as a class action. Delgozzo, 266 N.J. at 193.

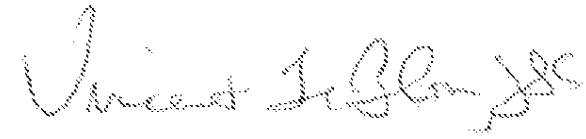
While the exact amount owed to each individual plaintiff is indeterminable at this time, the Court is able to find that the amount is small enough to dissuade any one rational plaintiff from undertaking the cost of obtaining counsel and commencing litigation, therefore most, if not all, class members would be effectively precluded from exercising their causes of action. Defendants' have expressed concern that a class action notice sent to all 381,053 potential plaintiffs' would irreparably damage their reputation, particularly if they later prevail in this action. That consideration is not enough to prevent class members to a complaint previously found to have viable claims against Defendants from being effectively forced to bring their claim. Any litigation bears the risk of reputational harm, but as a matter of public policy it would be untoward for this Court to prevent certification of non-frivolous claims on the grounds that a potentially liable party will suffer harm, particularly when the conduct alleged is neither outrageous nor shocking to the conscience.

The Court also finds that the proposed class action would be manageable because there are no related cases pending elsewhere and the large size and lack of relative complexity lends itself to the class action format. "Denial of class status due to manageability concerns is disfavored and, "in view of the public interest involved in class actions, should be the exception rather than the rule." In re Bristol Bay, Alaska, Salmon Fishery Antitrust Litig., 78 F.R.D. 622, 628 (W.D. Wa. 1978); *see also Klay v. Humana, Inc.*, 382 F.3d 1241, 1272-73 (11th Cir. 2004) (finding manageability "will rarely, if ever, be in itself sufficient to prevent certification of a class"). Further, there is no evidence that a class action would require the parties to conduct many separate "mini-trials" to deal with each individuals factual circumstances because as previously discussed, the Plaintiffs' all share the same essential characteristics. Namely, they entered into similar/identical membership agreements with Defendants' and now seek to assert causes of action on the terms provided in the contract.

V.

For the reasons stated above, the Court grants Plaintiffs' motion for Class Certification. The Court has executed the order submitted by Plaintiffs' attorney and a copy is attached hereto.

Truly yours,



Honorable Vincent Le Blon, J.S.C.

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FILED
JAN 19 2017
Judge Vincent LeBlon

4791

JOSEPH ARDINO; SAMANTHA ARDINO; KRISTA A. DEFAZIO; SCOTT RICHTER; JAMES HEANEY; and PHILLIP MAZZUCCO, on behalf of and all others similarly situated

Plaintiffs,

vs.

RETROFITNESS, LLC; ABC FINANCIAL SERVICES COMPANY, INC; Z TIME STHREE LLC d/b/a RETROFITNSESS OF KENILWORTH; BRITCARIANNA, LLC d/b/a RETROFTINESS FAIRFIELD; PJ'S FITNESS EXPRESS, INC. d/b/a RETROFITNESS OF BORDENTOWN; PRJ HOLDINGS, LLC d/b/a RETROFITNESS OF WALL; JOHN/JANE DOES 1-100; DEFENDANT RETROFITNESS FRANCHISES 1-75 and XYZ CORPORATIONS 1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY
MIDDLESEX COUNTY
LAW DIVISION

DOCKET NO. MID-L-000362-14

CIVIL ACTION

ORDER GRANTING MOTION FOR CLASS CERTIFICATION

THIS MATTER, having been opened to the Court by Plaintiffs, Joseph Ardino, Samantha Ardino, Krista A. Defazio, Scott Richter, James Heaney, and Phillip Mazzucco by their attorneys, Jones, Wolf & Kapasi, LLC, Polos LoPiccolo PC, and the Wolf Law Firm, LLC, Matthew S. Oorbeek, Esq. appearing, on Notice of Motion to Defendants, RetroFitness, LLC, ABC Financial Services Company, Inc., Z Times Three LLC d/b/a RetroFitness of Kenilworth, Britcarianna, LLC d/b/a RetroFitness Fairfield, PJ's Fitness Experss, Inc. d/b/a RetroFitness of Bordentown, and PRJ Holdings, LLC d/b/a RetroFitness of Wall, via their attorneys, to certify this matter as a class action, pursuant to R. 4:32-1, to appoint Plaintiffs as representatives of the class and to appoint class counsel; and the Court having reviewed the moving papers and any opposition thereto, and the Court having heard the argument of counsel, if any; and for good cause having been shown;

IT IS on this 19th day of January, 2017;

ORDERED, that

1. Plaintiffs' Motion for Class Certificaiton as to claims brought against all Defendants is granted.

2. The proposed Class, consisting of:

> All persons who, at any time on or after January 17, 2008, enrolled in a health club membership at and/or for use at any RetroFitness health club located in New Jersey, where the Membership Agreement used to enroll that person contained terms the same or similar to the Membership Agreements used in the transaction with named Plaintiffs,

is hereby certified as a class, pursuant to R. 4:32-1(b)(3), as to claims for statutory penalties under the Truth in Consumer Contract, Warranty and Notice Act (TCCWNA), as to all Defendants.

3. Proposed Sub-Class #1, consisting of:

> All members of the Class who paid an annual rate guarantee fee or similar charge,

is hereby certified as a subclass, pursuant to R. 4:32-1(b)(3), as to claims under the Consumer Fraud Act (CFA) as to all Defendants.

4. Proposed Sub-Class #2, consisting of:

All Members of the Class who cancelled or attempted to cancel their Membership Agreement, and who were charged additional monthly payments and/or an annual rate guarantee fee after the cancellation date,

is hereby certified as a subclass, pursuant to R. 4:32-1(b)(3), as to claims under the Consumer Fraud Act (CFA) as to all Defendants.

5. Plaintiffs, Joseph Ardino, ~~Samantha Ardino~~ Krista A. Defazio, Scott Richter, James Heaney, and Phillip Mazzucco are designated as Class Representatives for the Class and Sub-Class #1. Plaintiff Scott Richter is designated as Class Representative for Sub-Class #2.

6. Andrew R. Wolf, Henry P. Wolfe, Matthew S. Oorbeek of The Wolf Law Firm, LLC, Joseph K. Jones and Benjamin Wolf of Jones, Wolf & Kapasi, LLC, and John N. Poulos and Joseph LoPiccolo of Poulos LoPiccolo PC are certified as class counsel the Class and Subclasses.

IT IS FURTHER ORDERED that a copy of this Order shall be served upon all Counsel within seven (7) days from the date hereof.

HONORABLE VINCENT LEBLON, J.S.C.

✓ Opposed

____ Unopposed