

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 05-61580-CIV-ALTONAGA/Turnoff

**UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

and

DAWN GRUNGO,

Plaintiff-Intervenor,

v.

**PH FITNESS, INC. d/b/a FITNESS FIRST and
PBH FITNESS, LLC d/b/a FITNESS FIRST,**

Defendants.

CONSENT DECREE

This cause is before the Court on the Joint Motion for Approval of Consent Decree [D.E. 99]. Being fully advised, the Motion [D.E. 99] is GRANTED by entry of the following consent decree.

I. THE LITIGATION

1. This Consent Decree (“Decree”) is made and entered into by and between Plaintiff, the Equal Employment Opportunity Commission (“Commission” or “EEOC”), Dawn Grungo (“Grungo” or “Ms. Grungo”), PH Fitness, Inc. d/b/a Fitness First and PBH Fitness, LLC d/b/a Fitness First (collectively “Fitness First” or “Defendants”). The

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Commission, Ms. Grungo, and Defendants are collectively referred to as the “Parties” throughout this Decree.

2. On September 28, 2005, Plaintiff, the Equal Employment Opportunity Commission, filed this action alleging Defendants, PH Fitness, Inc. and PBH Fitness, LLC, violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et. seq., (“Title VII”) by discriminating against Charging Party, Dawn Grungo, on the basis of her sex, female, and pregnancy. EEOC later filed an Amended Complaint on December 13, 2005. Ms. Grungo intervened by filing a Second Amended Complaint on June 1, 2006. Specifically, EEOC and Ms. Grungo alleged that Defendants violated Title VII by terminating her employment with Defendants because of her sex, female, and pregnancy.

3. On January 23, 2006, Defendants filed their Answer and Affirmative Defenses to EEOC's Amended Complaint, denying that their actions were discriminatory in any way. Further, on June 15, 2006, Defendants filed their Answer and Affirmative Defenses to Intervener, Grungo's Second Amended Complaint, denying that their actions were discriminatory in any way.

4. In the interests of resolving this matter and avoiding time and future costs of continuing the litigation and as a result of having engaged in comprehensive settlement negotiations, the Parties have agreed that this action should be finally resolved by entry of this Consent Decree (“Decree”). The settlement of this matter does not constitute an admission of liability or wrongdoing by Defendants regarding Grungo's employment with Defendants or at any other time. Nor does the settlement of this matter

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constitute an admission by EEOC or Grungo as to any claims made by Defendants in their Answer and Affirmative Defenses. This Decree is final and binding upon the Parties, their successors and assigns.

5. The Parties agree that this Decree fully and finally resolves all issues and claims arising out of or related to Grungo's employment with Defendants which are alleged in the Complaints filed by EEOC and Grungo in this action and further alleged in EEOC Charge No. 150-2004-04107. The Parties further agree that this Decree does not resolve any Charges of Discrimination that may be pending with EEOC other than the Charge referred to in this paragraph.

6. This Decree constitutes the complete agreement between EEOC, Grungo and Defendants with respect to the matters referred to herein. No representations or inducements to compromise this action have been made, other than those recited or referenced in this Decree. No waiver, modification or amendment of any provision of this Decree shall be effective unless made in writing, approved by all parties to this Decree and approved by the Court or ordered by the Court.

NOW, THEREFORE, the Court having carefully examined the terms and provisions of this Consent Decree, and based on the pleadings filed by the parties, the record and stipulations of the parties, it is **ORDERED, ADJUDGED AND DECREED THAT:**

II. FINDINGS

7. This Court has jurisdiction of the subject matter of this action and over the Parties for the purposes of entering and enforcing this Decree.

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8. No party shall contest the jurisdiction of this Federal Court to enforce this Decree and its terms or the right of EEOC to bring an enforcement suit upon alleged breach of any term(s) of this Decree.

9. The terms of this Decree are adequate, fair, reasonable, equitable, and just. The rights of Ms. Grungo and the public interest are adequately protected by this Decree.

10. This Decree conforms to the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights or privileges of any person. The entry of this Decree will further the objectives of Title VII and will be in the best interests of Dawn Grungo, Fitness First, EEOC and the public.

11. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, and officers of Defendants.

III. GENERAL INJUNCTIVE PROVISIONS

12. Defendants, their officers, managers, employees, agents, partners, successors, and assigns are hereby enjoined from engaging in conduct that discriminates on the basis of sex and/or pregnancy in violation of Title VII of the Civil Rights Act of 1964, as amended.

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13. Defendants, their officers, managers, employees, agents, partners, successors, and assigns are hereby enjoined from engaging in any form of retaliation against any person because such person has opposed any practice made unlawful under Title VII, filed a Charge of Discrimination under Title VII, testified or participated in any manner in any investigation, proceeding, or hearing under Title VII, or asserted any rights under this Decree.

IV. ADOPTION AND DISTRIBUTION OF NEW POLICY AGAINST SEX AND PREGNANCY DISCRIMINATION

14. Defendants shall create a new anti-discrimination policy ("Policy") to be distributed to all current employees within thirty (30) calendar days after entry of this Decree. The Policy shall clearly define prohibited conduct and specifically prohibit discriminating against an employee who is experiencing pregnancy-related illness and specifically prohibit terminating an employee because of her sex and pregnancy. The Policy shall also specify that prohibited behavior will not be tolerated from their employees, customers, clients and any other persons present at any of its facilities. The Policy shall provide that complaints of sex-based and/or pregnancy discrimination may be made to any person in the chain of command above an employee or directly to human resources personnel; employees who make complaints of sex-based and/or pregnancy discrimination harassment or provide information related to such complaints will be protected against retaliation; employees will not be required to complain of sex-based and/or pregnancy discrimination to a person against whom they allege sex-based and/or pregnancy discrimination; the employer will protect the confidentiality of sex-based

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and/or pregnancy discrimination complaints to the extent possible; the employer will take immediate and appropriate corrective action if and when it determines that sex-based and/or pregnancy discrimination has occurred; employees who violate the policy are subject to discipline up to and including discharge. The Policy shall also provide a toll free telephone number that employees may utilize to contact Defendants' Corporate Office in Maryland to discuss pregnancy-related and sex-based discrimination concerns.

15. A copy of the Policy shall be forwarded to EEOC within thirty (30) calendar days of entry of this Decree. This and any other submissions, reports, certifications, notices, or other materials that are required to be submitted to EEOC shall be mailed to: Fitness First Settlement, c/o Trial Attorney Lauren Dreilinger, United States Equal Employment Opportunity Commission, 1 Biscayne Tower, 2 South Biscayne Blvd., Suite 2700, Miami, Florida 33131.

16. The Policy shall be distributed to all of Defendants' employees and management staff and shall be included in any relevant policy or employee manuals kept by Defendants' business within thirty (30) calendar days of entry of this Decree. The Policy shall also be kept and maintained in a conspicuous and accessible place for all employees at all Fitness First facilities and printed in a font that is easily legible (at least 11 point font).

17. A copy of the Policy shall be distributed to each new regular full-time, part-time, and temporary employee within ten (10) business days of the employee's hire date. The manager responsible for distributing the Policy to each new employee shall review the Policy in depth with the employee within twenty (20) business days of the

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employee's hire date. Fitness First shall maintain records demonstrating that each new employee discussed the Policy with the responsible manager.

V. TRAINING

18. In order to insure the effective implementation of Fitness First's anti-discrimination policies, Fitness First will conduct training for all of its managers and supervisory personnel on all aspects of equal opportunity laws (including sex-based and pregnancy discrimination) and the new Policy. Such training will be conducted by the law firm of Akerman Senterfitt or by an organization mutually agreed upon with EEOC within six (6) months of the entry of this Decree. The remainder of the training sessions shall take place annually and no later than September 30th of each year throughout the duration of the Decree.

19. Within ten (10) business days of the completion of training, Defendants shall notify EEOC of the dates the training was conducted, the name and job title of the person(s) who conducted the training, and the name and job title of each person who received the training.

20. Defendants agree to provide EEOC, upon request, with any and all copies of pamphlets, brochures, outlines or other written materials provided to the participants of the training sessions.

VI. POSTING OF NOTICE

21. Within ten (10) business days after entry of this Decree, Defendants shall post an eight and one-half (8½) inches by eleven (11) inches copy of the Notice attached as Exhibit "A" to this Decree. Said Notice shall be posted at all Fitness First facilities in

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a conspicuous location easily accessible to all Defendants' employees. The Notice shall remain posted for three (3) years from the date of entry of this Decree. Defendants shall take all reasonable steps to ensure that the posting is not altered, defaced or covered by any other material. Defendants shall certify to EEOC in writing within ten (10) business days after entry of the Decree that the Notice has been properly posted.

VII. RECORD KEEPING

22. For a period of three (3) years following entry of this Decree, Fitness First shall maintain and make available for inspection and copying by EEOC, records (including name, age, address, telephone number, complaint and resolution of the complaint) of each person complaining about discrimination on the basis of sex and/or pregnancy.

23. Defendants shall make all documents or records referred to in Paragraphs 16, 17, and 20, available for inspection and copying within ten (10) business days after EEOC so requests.

24. Nothing contained in this Decree shall be construed to limit any obligation Defendants may otherwise have to maintain records under Title VII or any other law or regulation.

VIII. REPORTING

25. Defendants shall furnish to EEOC the following written reports twice annually for a period of three (3) years following entry of this Decree. The first report shall be due six (6) months after entry of the Decree. The final report shall be due thirty-six (36) months after entry of the Decree. Each such report shall contain:

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a. A description of each complaint of sex discrimination and/or pregnancy discrimination, including the names of the complaining parties and witnesses and the resolution of such complaint, including the information required pursuant to paragraph 22 herein, occurring within the six (6) month period preceding the report. Defendants agree that they will not discourage employees from cooperating with EEOC.

b. A certification by Fitness First that the Notice required to be posted in Paragraph 21, above, remained posted during the entire six (6) month period preceding the report.

IX. MONETARY RELIEF FOR COMPLAINANT

26. Defendants shall pay a total of one hundred five thousand dollars (\$105,000.00) in full and final settlement of any and all claims Grungo or EEOC has asserted or could have asserted in this lawsuit.

a. Eight thousand dollars (\$8,000) shall be representative of back pay, less amounts required to be withheld for federal, state, and local income taxes. Defendants will issue an IRS Form W-2, and shall be responsible for paying the employer's share of any federal, state and local, income taxes, and social security withholdings.

b. Forty-eight thousand six hundred thirty-eight dollars and thirty seven cents (\$48,638.37) shall be representative of compensatory damages from which taxes and social security shall not be withheld. Defendants shall issue an IRS Form 1099 to Ms. Grungo for this amount.

c. Both payments shall be made within ten (10) business days from

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the Court's execution of this Decree, by certified mail to: Dawn Grungo c/o William Pincus, Esq., Law Offices of William H. Pincus, 328 North Lakeside Court, West Palm Beach, Florida 33407. Copies of the payments, IRS Form W-2 and IRS Form 1099 shall be forwarded to the attention of Lauren G. Dreilinger, Trial Attorney, U.S. Equal Employment Opportunity Commission, One Biscayne Tower, 2 South Biscayne Boulevard, Suite 2700, Miami, Florida 33131.

d. The remainder of the total settlement amount, Forty-eight thousand three hundred sixty-one dollars and thirteen cents (\$ 48, 361.13), shall be representative of Ms. Grungo's attorney's fees and costs incurred in this litigation and payment of this amount shall be made within ten (10) business days from the Court's execution of this Decree, by certified mail to: William Pincus, Esq., Law Offices of William H. Pincus, 328 North Lakeside Court, West Palm Beach, Florida 33407.

27. If Defendants fail to tender the payments described in paragraph 26, above, then Defendants shall pay interest on the defaulted payment at the rate calculated pursuant to 26 U.S.C. Section 6621(b) until the same is paid, and bear any additional costs incurred by EEOC caused by the non-compliance or delay of the Defendants.

X. DISPUTE RESOLUTION

28. In the event that any of the Parties to this Decree believes that a party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the alleged non-complying party in writing of such non-compliance and afford the alleged non-complaining party ten (10) business days to remedy the non-compliance or satisfy the complaining party that it has complied. If the dispute is not resolved within

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ten (10) business days, the complaining party may apply to the Court for appropriate relief.

29. The Parties shall have the right to seek Court intervention. Additionally, no party shall contest the Court's jurisdiction to hear a dispute arising from the Decree nor challenge any Parties' ability to bring an action to enforce the terms of the Decree in this Court.

XI. DURATION OF THE DECREE AND RETENTION OF JURISDICTION

30. The duration of this Decree shall be three (3) years from the date of entry of the Decree. During that time, the Court shall retain jurisdiction over this matter and the Parties for purposes of enforcing compliance with the Decree, including such orders as may be required to effectuate its purposes.

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31. Other than as outlined in paragraph 26 herein, the Parties shall bear their own expenses, costs and attorney's fees.

For the EQUAL EMPLOYMENT OPPORTUNITY
FITNESS, COMMISSION:
FITNESS, LLC:

For DEFENDANTS, PH
INC. and PBH

NORA E. CURTIN, ESQ.
Regional Attorney
New York Bar No. 2357697

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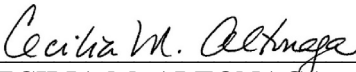
LAUREN G. DREILINGER, ESQ.

For DAWN GRUNGO:

Trial Attorney
New York Bar No. 75028890
1 Biscayne Tower
2 South Biscayne Blvd., Suite 2700
Miami, Florida 33131

WILLIAM H. PINCUS, ESQ.
Law Offices of William H. P
Florida Bar No.: 065595
328 North Lakeside Court
West Palm Beach, FL 33407

DONE AND ORDERED in Chambers, in Miami, Miami-Dade County, Florida
on this 22nd day of March, 2007.



CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

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Copies furnished to: Magistrate Judge William C. Turnoff;
counsel of record

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EXHIBIT "A"

NOTICE TO ALL FITNESS FIRST EMPLOYEES

This Notice is being posted pursuant to a Consent Decree entered by the U.S. District Court in EEOC and Grungo v. PH Fitness, Inc. d/b/a Fitness First and PBH Fitness, LLC d/b/a Fitness First, 05-CV-61580. Fitness First has adopted a policy that prohibits discrimination against employees based on sex and pregnancy in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). Title VII protects individuals from employment discrimination because of their race, religion, color, national origin, and/or sex. Title VII also protects individuals from retaliation for having complained of an unlawful employment practice. Fitness First will not condone employment discrimination of any kind as set forth in federal anti-discrimination laws, including, but not limited to, pregnancy discrimination and sex-based discrimination.

Fitness First will assure its employees that it supports Title VII and will not take any action against an individual because he/she has exercised his/her rights under the law to oppose discriminatory acts or to file charges with EEOC. Appropriate corrective action, up to and including termination, based upon the circumstances involved, shall be taken against any employee (including management personnel) found to have violated Fitness First's policy prohibiting discrimination.

EEOC enforces the federal laws against discrimination in employment on the basis of disability, race, color, religion, national origin, sex, and age. If you believe you have been discriminated against, you may contact the Miami District Office of EEOC at (305) 808-1740. EEOC charges no fees and has employees who speak languages other than English.

This Notice shall remain posted for one (1) year from the date below and shall not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to: Fitness First Settlement, c/o EEOC, 1 Biscayne Tower, 2 South Biscayne Blvd., Suite 2700, Miami, Florida 33131.

Peter Harvey
President

Date:
