

CAUSE NO. DC-22-01388

STATE OF TEXAS,
Plaintiff,

v.

BRITTANY DAWN DAVIS AND
BRITTANY DAWN FITNESS LLC,
Defendants.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

95TH JUDICIAL DISTRICT

ORDER ON PLAINTIFF’S MOTION FOR DISCOVERY SANCTIONS

On this day the Court considered Plaintiff’s Motion for Discovery Sanctions and any response thereto. After reviewing the motion and considering the arguments of the Parties, the Court is of the opinion that the following order should issue:

It is **ORDERED** that Plaintiff’s Motion for Sanctions is **GRANTED**. It is further **ORDERED** that the following sanctions shall be imposed on Defendants:

A. It is deemed to be established in this cause that Defendants represented that Defendant Davis would provide one-on-one coaching and/or modify the workouts and nutritional guidelines via weekly coaching, as part of a personalized fitness plan, but she did not provide such coaching or modifications.

B. It is deemed to be established in this cause that Defendants represented that Defendant Davis would provide individual nutrition assessments, modifications, and plans, but Defendant Davis failed to do so and provided the same assessment/plan, or essentially the same assessment/plan, to all consumers.

C. Defendants are prohibited from opposing the Plaintiff’s claims that there is no evidence that Defendants provided coaching or individualized macro nutritional assessments or plan to over 93% of their consumers.

D. Defendants are prohibited from introducing evidence that Defendants provided coaching or individualized macro nutritional assessments or plans to more than 7% of their consumers.

E. Defendants are prohibited from using documents not previously produced in discovery, including, but not limited to, as deposition exhibits or at trial.

F. Defendants are ordered to pay the Plaintiff's attorneys' fees and expenses incurred for the preparing, filing, and appearing on Plaintiff's Motion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

2. The Court makes the following findings in support of the sanctions imposed for discovery abuse:

A. The Court finds that the Defendants have failed to produce responsive documents to Plaintiff's First Requests for Production, including:

- Documents identifying the consumers who purchased nutrition and fitness plans from Defendants as well as the payments made to Defendants;
- Documents showing the personalized macronutrient recommendations for consumers and the process of how such personalized recommendations were determined; and
- Documents, such as communications, evidencing consumer check-ins and promised coaching.

B. Defendants have failed to comply with this Court's Order regarding the above listed Requests for Production. *See* Order Granting Plaintiff's Motion to Compel on September 8, 2022. Therefore, the Court takes judicial notice that the Defendants are in violation of this Court's Order compelling production of responsive documents with respect to their former customers.

C. There is a direct relationship between the sanctions and the offensive conduct. All Defendants are responsible for this offensive conduct. Defendant Brittany Dawn Davis is the is the managing member of the corporation, Defendant Brittany Dawn Fitness, LLC. It is an entity she personally controls. Defendants were responsible for complying with the Court's Order and responding to the discovery requests.

D. These sanctions are no more severe than necessary to promote full compliance with the Rules. These sanctions do not strike Defendants pleadings, establish a presumption in favor of Plaintiff, nor render a default judgment for abuse of discovery process. Defendants have had numerous opportunities to comply with the Plaintiff's Requests for Production and the Court's Orders but have produced only fractional parts of their business operations. Defendants continued evasion over the course of a year justifies sanctions against Defendants that prohibiting Defendants from introducing evidence to contradict the Plaintiff's claims and prohibiting Defendants from introducing evidence to contradict the Plaintiff's evidence at trial. *Cire v. Cummings*, 134 S.W.3d 835, 842-43 (Tex. 2004). Any lesser sanctions, such as only prohibiting Defendants from introducing evidence that was not produced in discovery, would allow Defendants to hide behind their discovery abuses and misconduct at trial and would provide an unjust result. These sanctions are necessary to prevent Defendants from engaging in similar conduct going forward in discovery and to prevent Defendants from similar conduct during trial.

It is **SO ORDERED**.

Signed this _____ day of _____, 2023.

HON. MONICA PURDY
Presiding Judge, 95th District Court

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