



this reclassification, and to take all necessary steps to ensure that they are complying with the consequences of that reclassification (e.g., paying employment taxes, paying overtime as required by law, offering employee health insurance as required by law, etc.).

3. DTPA Claim: Alternatively, in the event that the finder of fact determines that Plaintiff is not properly classified as an employee, she seeks to recover economic, actual, and treble damages under the Texas Deceptive Trade Practices Act (“DTPA”) (Tex. Bus. Comm. Code, Ch. 17), based on CG’s multiple omissions and misrepresentations to trainers regarding the nature of the service it offers, and based on its failure to comply with the Texas Business Opportunity Act (“BOA”) (Tex. Bus. & Com. Code § 41.302). She further seeks an injunction, requiring CG to: (1) comply with the BOA by registering with the Texas Secretary of State as such, obtaining a surety bond, establishing a trust account, or obtaining an irrevocable letter of credit before recruiting potential trainers, and by providing all current and potential trainers with the written disclosure statement as required by the BOA; (2) requiring CG to amend all of its trainer recruiting materials (online job postings, recruiting videos, social media advertisements, and the like) to accurately describe the nature of, and the full requirements of, the “Primary Trainer” opportunity at CG, and (3) to cease use of all inaccurate or misleading trainer recruitment materials.

#### **JURISDICTION AND VENUE**

4. Jurisdiction is conferred on this Court by 29 U.S.C. § 216, 28 U.S.C. § 1331, and y. 28 U.S.C. § 1367.

5. Venue is proper in this Court under 28 U.S.C. § 1441(a).

**PARTIES**

6. The named Plaintiff is a current, non-supervisory employee of Defendant. She is employed in the position of “Primary Trainer.” She has consented to the filing of this action.

7. Defendant is a Texas corporation, which can be served with process via its Registered Agent for service (Ally Kelly Davidson, 2908 Warren Circle, Irving TX 75062), or via any officer located at its headquarters: 9185 Research Blvd., Ste. 200, Austin TX 78758.

**FACTS:**

8. CG is Texas corporation, doing business in the states of Texas, Oklahoma, Florida, Louisiana, and North Carolina. It operates “bootcamp” style outdoor fitness classes for large groups of individuals, who are called “campers.” Each “camp” is designed as a 4-week fitness course.

9. Campers can purchase a single 4-week “camp,” which allows them to attend as many bootcamp classes as they like, at as many locations as they like, during that 4-week period. Campers may also purchase longer-term memberships – for example, a 6-month or 1-year membership. When a camper purchases this type of long term membership, they are said to have been “converted” to a “CG BOLD” camper.

10. Typically, there is one trainer who runs each outdoor bootcamp class. A single bootcamp class could have anywhere from 5 campers, to well over 100 campers, depending on the location and time of the class. The trainers who run these bootcamp classes are called “Primary Trainers.”

11. To be a Primary Trainer with CG, one must have a current, nationally accredited personal training certification (such as NSCA, NASM, Cooper, ACE, or ACSM), as well as a current CPR/AED certification.

I. THE UNPAID INTERNSHIP:

12. To become a Primary Trainer with CG, a trainer must first submit a written application for the job. Qualifications include the certifications listed above, plus “personal training experience,” and the possession of various personality characteristics (ex: “communication and listening skills, honesty and personal integrity....passionate, enthusiastic, personable and driven”). The advertised job responsibilities are:

- “Design and implement dynamic workouts;
- Provide fitness motivation, encouragement and education to all campers;
- Be punctual and professional;
- Provide exceptional customer service to all clients and members;
- Stay knowledgeable on current trends in fitness training and exercise science; and
- Maintain required certifications and CECs.”

13. Interested trainers are also invited to attend “Information Sessions,” which are held regularly in and around the cities where CG conducts business. These sessions are run by current CG trainers, and are designed to give potential new trainers information about becoming a CG trainer – what type of work it is, what’s required, what the benefits are, the basic pay structure, information about the company’s background and mission, etc.

14. After the Information Session, there is often an “audition” or “field interview,” in which potential trainers are invited to demonstrate their training skills. They typically direct a brief workout for the other potential trainers in attendance, as if they were conducting a real bootcamp. They are observed and evaluated by the current CG trainers.

15. If a trainer is invited by CG to continue past the Audition/Field Interview, he or she will be invited to begin the “CG Trainer Internship.”

16. As CG states on its website, this internship “is different from those sought to earn credit for a college course. It is a training program intended for those starting a career with Camp Gladiator.” During the Information Sessions, at least one current CG Regional Director describes the internship as “an extended interview” for the position of Primary Trainer.

17. During the CG Trainer Internship, potential trainers are given a list of job requirements that they must fulfill in order to complete their internship and become a full-fledged Primary Trainer. Interns are required, at least, to:

- (a) Attend a certain number of bootcamp classes in their area as “campers.” When they attend as campers, they are expected to “be a leader on the field,” “take workout notes,” and “be early and stay late.” This phase may take up to three weeks to complete.
- (b) Watch a sales training video and engage in role-playing exercises with their Regional Directors to practice their sales skills.
- (c) Under the direction of current CG trainers, complete a minimum of 10 sales (with a minimum \$690 revenue) within 21 days to new “campers” – e.g., convince a minimum number of individuals who are new to CG to purchase a single 4-week camp or a longer-term “CG BOLD” membership.
- (d) Attend at least two marketing events under the supervision of current CG trainers – for example, help to staff a CG tent at a local 5k run event.
- (e) Act as an “assistant trainer” at a certain number of additional bootcamp classes – this entails helping the Primary Trainer set up for, and clean up after, the class, making sure that all campers are checked in, and directing the bootcamp class for some, or all of the 1-hour camp time.
- (f) Create one workout for each week of the CG bootcamp cycle (e.g., “Endurance, Functional Training, Interval Training, and Metabolic Conditioning”), and submit them to the Regional Director.
- (g) Pay their own travel, lodging, and registration costs to attend the “CG Academy” - a multi-day company workshop held in Austin, Texas.
- (h) Give CG at least 100 email addresses of their friends, family members, or other acquaintances, so CG can add them to its email marketing list.
- (i) Attend all-trainer meetings with the current CG trainers.

- (j) Attend various lunches and other social events with current CG trainers.
- (k) Lead a 30-minute minimum workout scheduled by a Regional Director.
- (l) Create and submit a Business Plan to a Regional Director.
- (m) Come up with names of at least 3 other trainers who could be recruited to join CG, and provide that information to a Regional Director.
- (n) Purchase either a \$500.00 or a \$750.00 “CG Starter Pack,” which gives the trainer a CG Email Address, CG Business Cards and a CG Business Card Holder, a few items of CG logo clothing, and CG logo items to use at their bootcamp classes (a CG flag, table cover, and fliers) – in short, materials that they will be required to use when working as a Primary Trainer.

18. The length of the internship varies, since some potential trainers are able to complete these tasks faster than others. On average, however, a CG trainer’s internship will last approximately 6 to 10 weeks.

19. On average, an intern will work approximately 20 hours per week during their internship.

20. CG does not affirmatively designate its interns as “employees,” “independent contractors,” or otherwise during this time period. It simply refers to them as “interns.” Interns are not paid for the work that they perform during their internships.

21. Taking into account the factors considered by the Internal Revenue Service (“IRS”), by the Texas Workforce Commission (“TWC”), and in the “economic realities” test often used in FLSA claims, CG Interns are properly classified as employees, not independent contractors (*see e.g.* Section II, below – which applies with even greater force to intern trainers, who have far less responsibility, and far more supervision, than Primary Trainers).

22. The Department of Labor has developed a six-factor test (*see* “Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act”) for determining when it is permissible not to pay interns for their work. All six factors must be met in order for an

employer to legally run a “unpaid internship” program. By CG’s own admissions, the CG internship program does not meet all of these requirements:

DOL Factors	The CG Internship Program
<p><b><u>Factor 1:</u></b>  “The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment.”</p> <p>(Additional <u>DOL Guidance</u>: “Does it teach skills that can be used in multiple employment settings, as opposed to skills particular to one employer’s operation?”)</p>	<p>On the FAQ section of its website, Defendant states: “The internship with Camp Gladiator is different from those sought to earn credit for a college course. It is a training program intended for those starting a career with Camp Gladiator.”</p> <p>Interns are not provided with training that is similar to the education necessary to become a personal trainer. Indeed, potential CG trainers are expected to obtain that training and certification on their own, through third party providers.</p> <p>What interns do learn is how to work at CG – they are taught CG’s training style, its sales model, and told a little bit about the Primary Trainer job requirements -- i.e., skills that are particular to CG’s operation.</p>
<p><b><u>Factor 2:</u></b>  “The internship experience is for the benefit of the intern.”</p> <p><b><u>Factor 3:</u></b>  “The intern does not displace regular employees, but works under close supervision of existing staff.”</p> <p><b><u>Factor 4:</u></b>  “The employer that provides the training derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded.”</p> <p>(Additional <u>DOL Guidance</u>: “Does the intern does perform the routine work of the business on a regular and recurring basis?”).</p>	<p>During their internships, interns run the bootcamps – directing workouts for the campers, setting up and cleaning up, and checking in campers. They attend marketing events, attend trainer meetings, and make sales. In short, they perform all of the routine work of a Primary Trainer.</p> <p>Defendant derives an immediate advantage from the intern’s work – particularly with regard to the requirements that an intern: (a) close sales for CG, (b) provide it with email addresses, and (c) recruit additional trainers for CG.</p>

<p><b>Factor 5:</b></p> <p>“The intern is not necessarily entitled to a job at the conclusion of the internship.”</p> <p>(Additional <u>DOL Guidance</u>: “unpaid internships generally should not be used by the employer as a trial period for individuals seeking employment at the conclusion of the internship period.”).</p>	<p>This is precisely what the CG internship is for – it is a “trial period” where current trainers watch an intern work, evaluate them, and determine whether they’re good enough to become a Primary Trainer.</p> <p>It is listed on Defendant’s own website under the “Careers” section, as a step toward becoming a Primary Trainer. On the FAQ section of its website, Defendant states: “The internship...is a training program intended for those starting a career with Camp Gladiator.” CG openly refers to the program as “an extended interview.”</p>
<p><b>Factor 6:</b></p> <p>“The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.”</p>	<p>Presumably, interns become aware of this fact at least once they actually start the internship. Given Defendant’s failure to meet any of the other five factors, however, its potential satisfaction of this factor is of no importance.</p>

23. CG Interns are not otherwise exempt from the FLSA’s minimum wage requirements. Nonetheless, interns are paid nothing for the work they perform.

## II. CG MISCLASSIFIES ITS TRAINERS AS INDEPENDENT CONTRACTORS.

24. CG takes great pains to identify its trainers as “independent contractors,” “owners,” “operators,” or “business partners.” They even require their trainers to sign an “Independent Contractor Agreement.” The factual reality, however, indicates that CG’s trainers are in fact employees.

25. The Texas Workforce Commission and the Internal Revenue Service have both set forth factors that should be considered when classifying a worker as an “employee” or an “independent contractor.” Federal courts also look to the “economic realities test” to make this determination – a test which incorporates many of the same factors adopted by the TWC and the IRS. Under any of these tests, CG’s trainers should be classified as employees:

True Independent Contractors	CG Primary Trainers
An Independent Contractor uses his or her own methods, and thus need not receive training from the purchaser of those services.	Trainers are required to attend company-wide training meetings several times per year to receive company training. And once every 5 weeks, trainers must attend a region-wide meeting to review plans for the next “camp.” New trainers must attend a “CG Academy.” When running their bootcamps, trainers must follow CG’s prescribed 4-week fitness training schedule, and they cannot deviate from it.
An Independent Contractor's services are usually separate from the client's business and are not integrated or merged into it.	Trainers’ services are, without question, merged into CG’s overall operation. CG’s success depends on the trainers’ services, and the trainers’ services are the sole product that is sold to CG’s customers (i.e., “campers”). Trainers also make up the vast majority of CG’s workforce.
A true Independent Contractor is able to assign another to do the job in his or her place and need not perform services personally.	Under their contract with CG, a Trainer’s services must be rendered personally. Trainers are sometimes allowed to use a substitute trainer to fill in for them, but <i>only</i> with substitutes that are approved by CG, and that are themselves under contract with CG. When this happens, the substitute is paid directly by CG, and then the cost of paying that substitute is deducted from the Trainer’s paycheck. Trainers are not allowed to “farm out” their camps to other trainers – a minimum of 80% of their camps must be run them personally.
Independent Contractors select, hire, pay, and supervise any helpers used and are responsible for the results of the helpers' labor.	Trainers do not have full discretion to select or hire their substitutes. While they are allowed to use a substitute, the substitute must have already signed a contract with CG, and be approved by CG. CG is responsible for paying the substitute (the cost of which is then deducted from the Trainer’s paycheck). Trainers are also limited as to how often they can use a substitute. At least 80% of a Trainer’s classes must be run personally by them.

An Independent Contractor is usually hired to do one job of limited or indefinite duration and has no expectation of continuing work.	Trainers continue to work for CG month after month, or year after year, for an indefinite duration. CG's website states: "most of our Primary Trainers choose to pursue this opportunity in a full-time capacity." In fact, CG has terminated Trainers who are unable to commit to CG full time (or, as CG puts it, to "be all in," or to "bleed CG.").
A true Independent Contractor is the master of his or her own time and works the days and hours he or she chooses.	Trainers can conduct their bootcamps only during hours and days that are approved by CG. They also must attend monthly regional meetings, and national training meetings, at dates and times set by CG.
A true Independent Contractor cannot be required to devote full-time service to one firm exclusively.	As CG's website states: "most of our Primary Trainers choose to pursue this opportunity in a full-time capacity." In fact, CG has fired Trainers who are unable to commit to CG full time (or, as CG puts it, to "be all in," or to "bleed CG.").
	Some trainers have posted complaints online about this issue, stating: "Never have time off so if you have family, children, pets, bf/gf, might as well tell send them post cards and text messages because you hardly see them in real life," and "Work/Life balance is non-existent," and "If you want to grow, you have to work 16-18 hour days."
Independent Contractors ordinarily work where they choose. The workplace may be away from the client's premises.	Trainers can conduct their bootcamps only at locations that are approved by CG, and where CG has executed a rental/lease agreement for the space.
A true Independent Contractor is concerned only with the finished product and sets his or her own order or sequence of work.	Trainers perform their fitness training services in the order or sequence set by CG – specifically, trainers must follow a specific 4-week fitness training sequence set by CG (endurance, then strength/agility, then HIIT training, then "peak week" training). They are not allowed to deviate from this pattern.
An Independent Contractor is usually not required to submit regular oral or written reports about the work in progress.	Trainers are often required to report back to CG about the number of contacts they've made with their campers (ex: text messages, emails, or calls). Regular reports are also created showing how many campers a Trainer has "converted" to "CG BOLD," how many new "campers" they've signed up, etc.

<p>An Independent Contractor is normally paid by the job, either a negotiated flat rate or upon submission of a bid.</p>	<p>Trainers are paid by CG at stated intervals (10 times per year). They do not submit bids – rather, they apply for the job through a written job application, which is followed by an interview and an “internship” (i.e., unpaid probationary period).</p>
<p>An Independent Contractor ordinarily provides all of the tools and equipment necessary to complete the job.</p>	<p>Trainers furnish some of their own tools for their bootcamps (ex: a few jumpropes, hand weights, cones, and the like). Most of the tools for the job, however, are provided by CG (ex: the Trainer iPad app, the CG website, CG logo marketing items, CG business cards, CG logo clothing, the CG “platform” service, advertising and marketing materials, business and sales training, etc.).</p> <p>Notably, most of the items that Trainers have to purchase for themselves can only be used for their work at CG – not in any other business, because they are CG-branded.</p>
<p>True Independent Contractors usually have a substantial financial investment in their independent business.</p>	<p>Trainers have only a small investment in their own businesses. They purchase a \$500 or \$750 CG “starter pack,” (which, importantly, cannot benefit the Trainer outside of his/her work for CG, because it consists of CG-branded materials), and they purchase a small amount of workout supplies to use in their camps (campers are required to bring their own mats and weights, but Trainers will provide some items, like ropes or kickballs). That is generally the extent of their financial investment.</p> <p>CG, on the other hand, invests large amounts of money in the business – for example, the company’s web presence, its marketing campaigns and advertising, its Headquarters employee salaries, etc. In fact, in the agreement that Trainers are required to sign with CG, they are required to acknowledge that “The Company has invested significantly in developmental cost in organizational costs, such as obtaining and development of customer lists, advertising, website development and maintenance.”</p>

<p>An Independent Contractor can either realize a profit or suffer a loss depending on the management of expenses and revenues.</p>	<p>Trainers realize a profit or loss based primarily on the location of their bootcamp, and the number of camps they run. This type of profit or loss is not a result of their own financial management skills.</p> <p>In fact, Trainer pay is regularly docked for CG's company-wide or region-wide marketing and advertising expenses. These expenses are docked from the Trainer's paycheck, even though the Trainer did not choose to purchase these services. Instead, CG Headquarters chooses what it wants to spend on various marketing campaigns, and then charges a portion of those costs to the Trainers in that region. Trainers have no say in what the company chooses to spend, or on what they are charged.</p> <p>Similarly, Trainers are charged approximately \$4-\$5 for each "free" t-shirt that is given to a new camper at their camp location, and they are charged approximately \$30 whenever a camper uses a "bring a friend to camp" coupon. The Trainer does not choose these promotions, or decide their costs. Instead, CG makes the decision, sets the cost, and unilaterally deducts it from the Trainer's pay.</p> <p>A trainer's income is not significantly impacted by his/her choice to spend less on overhead – because they have no say as to what their overhead costs will be.</p>
<p>An Independent Contractor often works for more than one client or firm at the same time and is not subject to a non-competition rule.</p>	<p>Trainers ordinarily work just for CG. Although some may carry on side projects, such as personal training for one-on-one clients, or selling nutritional supplements, they are contractually prohibited from working for "any business the same as or similar to [CG]."</p>
<p>An Independent Contractor may advertise, carry business cards, hang out a shingle, or hold a separate business license.</p>	<p>Trainers typically do not make their bootcamp fitness training services available to the public except through CG. They carry CG business cards, use a CG email address, wear CG-branded clothing while performing their job duties, and are required to enter into a non-compete in order to become a Trainer with CG.</p>

If the work meets the contract terms, an Independent Contractor cannot be fired without liability for breach of contract.	<p>Trainers can be discharged at any time without liability on CG's part. When a PT is terminated, they are not entitled to any further "profit sharing" from their camps, no matter how much time, "sweat equity," or money they may have put into building that camp.</p> <p>Trainer contracts specifically state that they can be terminated at any time for any reason, and that there are no ongoing obligations to the Trainer on the part of CG.</p>
An Independent Contractor is legally responsible for job completion and, on quitting, becomes liable for breach of contract.	A Trainer may quit work at any time without liability to CG (other than the loss of income from stopping working). PT contracts specifically state that they can be terminated at any time for any reason.

26. Additionally, CG uses a "Trainer Discipline Notice" form to keep trainers in check who fail to follow CG's prescribed rules and methods. Example violations on the form include: "Location Lobbying," insufficient "Camp Growth," insufficient "Team Participation," and "Negative Camper Feedback." For these violations, Trainers can be subjected to a "Yellow Light Probation," an "Action Improvement Plan," or "Termination." The discipline forms are submitted to a trainer's Regional Director, and to "Human Resources" (although, on information and belief, CG does not actually have a human resources department). This practice is highly indicative an employment-type relationship.

27. The IRS Form SS-8 also looks at the following additional factors, which in this case, also point toward an employee designation:

IRS Factor	CG Primary Trainers
"Total number of workers who performed or are performing the same or similar services"	At CG, there are hundreds of Primary Trainers. They are the bulk of CG's workforce.

“How did the worker obtain the job?”	Trainers get the job through a traditional application & interview process (not a bid).
“How does the worker receive work assignments?”	Trainers receive their work assignments (e.g., the location and times for the bootcamp classes, and directives as to the level of sales of “conversions” that must be made by the Trainer) from CG headquarters.
“Who is the worker required to contact if problems or complaints arise?”	Trainers are told to contact their CG Regional Directors (who act as supervisors) if they have a question or problem, then if that doesn’t work, to follow a further chain-of-command within CG. Trainers are required to report to CG, and fill out a CG form, if a camper is injured during the bootcamp.
“Describe any meetings the worker is required to attend and any penalties for not attending.”	<p>Trainers are required to attend several company-wide meetings each year. If they do not attend, they can be terminated or have they paychecks dockeed. They are also required to attend several “Total Transformation” marketing blitz events per year – one in their home region, and two additional “out of region” events. They must pay for their own travel expenses to attend these meetings, and if they do not attend, their pay is docked by thousands of dollars.</p> <p>Some trainers have posted complaints online about this issue, stating that CG “Expect[s] you to do traveling 3-4 times a year to Texas oh and guess what you pay for your whole trip and if you don’t go they penalize you by taking money from your check.”</p>
“Does the worker lease equipment, space, or a facility?”	<p>No, Trainers do not lease the workout spaces or facilities. CG executes lease or rental agreements with the parks or other spaces (ex: a church parking lot) where their bootcamps are held. CG is the only named party in these agreements – the Trainer is not a party.</p> <p>Notably, however, CG permits its Trainers to sign these lease agreements on behalf of CG (another indication of an employment/agency relationship).</p>
“Whom does the customer pay?”	The customer pays CG, typically by entering their credit card online, or on a trainer’s CG iPad app. Payments are directed to CG’s bank account, not the Trainer’s. To enforce this rule, CG does not allow Trainers to accept cash payments from customers.

“Does the worker establish the level of payment for the services provided or the products sold?”	CG sets the payment levels, and these are strictly controlled by CG. Trainers are not allowed to set different prices, or offer discounts, without CG’s approval.
“Under whose business name does the worker perform these services?”	Trainers perform their work under the name of Camp Gladiator. They wear CG-branded clothing when they perform their jobs.
“How does the firm represent the worker to its customers?”	Trainers are represented as CG trainers. They receive CG business cards, use CG email addresses, and wear CG apparel when performing their jobs.
Does the firm offer employee benefits?	While CG fails to comply with most laws regarding employee benefits, it does choose to offer 8 to 11 weeks of maternity leave or sick leave for its Trainers. It requires them to fill out a CG form to request this leave, and to submit a medical certification. It limits the amount of leave a Trainer can take, and has requirements that the Trainer must meet before being allowed to take leave – all behaviors that are typical of an employment relationship.

28. This problem cannot be a surprise to CG. A simple “Google” search for “Camp Gladiator trainer” reveals several online complaints from CG’s trainers about this issue. For example, one comment states: “The term “contractor” is kind of a joke when you consider all of the requirements placed on the trainers and how this is really blurring the line between contractor and employee.” The comment continues: “I know how keeping all of the trainers as contractors is far more beneficial (financially) for the company but you will continue to see a huge turnover as long as you keep them that way and add additional requirements (time, money, events).”

Furthermore, CG’s founder and CEO, Ally Davidson, told friends when she started the company that she wanted to model it after Chick-Fil-A’s franchise set-up. Chick-Fil-A itself has come under significant legal scrutiny, having been sued at least a dozen times on this issue (e.g., that their “independent owners” are actually employees who are misclassified as independent

contractors). In short, it is simply inconceivable that CG has not previously considered this misclassification problem.

III. CG IS NOT COMPLYING WITH THE FLSA'S OVERTIME REQUIREMENTS.

29. Although its Trainers should legally be classified as employees, CG does not keep track of their hours worked, or comply with the FLSA's other record-keeping requirements.

30. Trainers do not always work 40 or more hours per week. Sometimes they work fewer than 40 hours per week, and other times they work more than 40 hours per week. Their schedules vary depending on whether, during a particular week, there is: (a) a company retreat, or meeting that they have to attend at CG headquarters in Austin, Texas; (b) a "TT" marketing blitz going on in which the Trainer must participate; (c) a higher than average level of marketing events taking place; (d) a higher than average level of "promotion" communications with campers that is required; or (e) other increases in work beyond the "typical" workweek of conducting camps.

31. Some trainers will have a significant number of overtime weeks in a year, while others will have fewer weeks like this. Almost all Trainers, however, will have at least a few workweeks throughout the year in which they put in over 40 hours of work for CG.

32. Although Trainers are non-exempt employees under the FLSA, CG does not pay them overtime for the weeks in which they work over 40 hours. It does not keep records of their time, attempt to calculate their regular rates of pay, or otherwise make any attempt whatsoever to comply with FLSA's requirements.

IV. CG MISLEADS TRAINERS IN VIOLATION OF THE DTPA

33. As set forth above, CG contends that its Trainers are not employees, and that it is not the Trainers' employer. Instead, CG identifies itself as a "business opportunity" for trainers – specifically, it says that it sells a "business platform" service to trainers, which can be used by trainers to begin their own "independent businesses." It variously refers to its trainers as "owners," "operators," or "business partners." In recruitment videos, CG states that "it's not a job, it's a business opportunity."

34. Plaintiffs contend that these are false statements, and that the Primary Trainer position is, in fact, a non-exempt job subject to the requirements of the FLSA. But if CG's version of the story is true, then CG is violating the Texas Deceptive Trade Practices Act.

35. CG tells trainers that they are likely to earn a profit in excess of the consideration they put forth for the opportunity to become a Primary Trainer (i.e., what they pay for their CG "starter pack," plus the time they put in being a CG intern). In fact, CG often suggests that trainers can easily earn "six figures!" or "\$12,000 per camp!" or "up to \$100,000!" It does so verbally, in writing – via email, on Facebook and on online job posting sites – and through other media (ex: online recruitment videos, and the trainer "information sessions").

36. CG says that it will provide the trainer with a location, or assist the trainer in finding a location, for the operation of their own boot camp class. CG also claims to provide the trainer with a sales and marketing program (e.g., "advice or training...regarding the sale of [CG] equipment and services, including operational, managerial, technical, or financial guidelines or assistance").

37. All of these characteristics make CG a “business opportunity” under the Texas Business Opportunity Act (Bus. Comm. Code § 51.001, et. seq., actionable via DTPA § 17.50(h)) (“BOA”).

38. Nonetheless, CG: (a) has not registered as a “business opportunity” with the Texas Secretary of State before recruiting potential trainers; (b) has not obtained a surety bond, trust account, or irrevocable letter of credit before recruiting potential trainers; and (c) does not provide potential CG trainers with the BOA’s required written disclosure statement before asking them to sign their contract with CG, collecting money from them, or permitting them to work for CG for free.

39. CG also disseminates statements that materially misrepresent the character of the service they offer to potential CG trainers (a violation of the DTPA, § 17.12), and represents that its service has characteristics and benefits which it does not have (a violation of the DTPA, § 17.46(b)(5)).

40. For example, CG publicly states:

- (a) On Facebook and several other sites: “All of our trainers own and operate their locations.”
- (b) On Facebook and several other sites: “There is NO cost to become a Camp Gladiator Trainer.”
- (c) On Facebook and several other sites: Trainers “create their own schedule.”
- (d) On Facebook and several other sites: “Trainers are able to...earn a lucrative income.” (noting that “around 30 trainers earn over \$100,000 this year alone,” and that “3 will earn over \$250,000”).
- (e) On its website, and multiple other online websites, CG suggests that the Primary Trainer position is all about fitness training. It only lists the following job duties: “Design and implement dynamic workouts, Provide fitness motivation, encouragement and education to all campers, Be punctual and professional, Provide exceptional customer service to all clients and members, Stay knowledgeable on current trends in fitness

training and exercise science, [and] Maintain required certifications and CECs.” It says nothing about the required sales, the pay-your-own-way meetings, the required marketing and promotion work, the requirement to “convert” campers, the requirement to “be all in” and “bleed CG,” or the similar requirements that have nothing to do with being a personal trainer.

- (f) On [personaltrainercity.com](#): “Camp Gladiator Trainers are called Operators,” in a business that is “similar to the Chick-Fil-A business model,” and “trainers...work under the same brand name.”
- (g) On [nationalpti.com](#): “Our pay is very competitive with trainers receiving more than 70% of what clients pay!”
- (h) On [multibriefs.com](#): “The business model that Camp Gladiator runs is a business partnership not a franchise. The trainers do not have to pay to run their own camps,” and “trainers don't have to pay to become a partner,” and “The amount that trainers make is completely up to their dedication to CG.”
- (i) On [multibriefs.com](#): “The corporate office provides the backbone, giving the trainers the opportunity to be creative and have the freedom to operate their camps as they desire without having to deal with the business aspect.”
- (j) On their own website: “I have tripled my income every year for the past three years!” (statement from a current trainer).
- (k) On their own website: “we are committed to our trainers becoming successful business owners.”
- (l) In recruitment videos (posted on Vimeo and Facebook): “we partner with our trainers to help them build successful and long term businesses.”
- (m) In recruitment videos (posted on Vimeo and Facebook): “we’re going to show you how some of our top trainers have taken their business from scratch, to making well over six figures.”
- (n) In recruitment videos (posted on Vimeo and Facebook): “ultimately what you take away from CG academy is the opportunity to launch your business.”
- (o) In a recruitment video (posted on Vimeo and Facebook), a trainer describes why he likes working for CG -- because his “strength is training,” and unlike when he was on his own, with CG he doesn’t have to “spend countless hours doing marketing [and] advertising.”

- (p) In recruitment videos (posted on Vimeo and Facebook): “You don’t have to do all those things that you dread doing – you get to be a trainer and do what you love” (describing how CG headquarters handles all of the “technology,” “accounting,” and “marketing,” so the trainer can focus on training).
- (q) In recruitment videos (posted on Vimeo and Facebook): Trainers do not have to make “those awkward phone calls to people and saying ‘hey you haven’t paid me yet,’ – because “they take care of all of that for us, so we never have to worry about it.”
- (r) In recruitment videos (posted on Vimeo and Facebook): The “headquarters support” provides Trainers with their “business,” “marketing,” “accounting,” and “advertising” needs, so they can simply “be great at what [they] do best...impacting lives on the field” – allowing the trainer “to let everything go and really focus...on what [they] love to do” (e.g. training).
- (s) In recruitment videos (posted on Vimeo and Facebook): Trainers have “an opportunity to earn substantial income” – one “makes more now than...at [her] full time job.” Trainers can “control their income.” The income potential is “completely limitless.”
- (t) At CG information sessions: “It’s easy to earn six-figures, all you have to do is get 100 BOLD campers at your location, and then you’ll start earning the big bucks.”

39. These statements are at best misleading, and at worst, outright lies. Trainers do not “own” anything at CG. They have no legal rights to their profits, the income from their camps, their CG logo materials, or any other part of the business. They cannot sell their business, or otherwise exercise traditional ownership rights over it. If they leave CG, or if CG terminates them, they are entitled to nothing – no matter how much “sweat equity” they put into building up their camps.

40. It is also false that CG trainers can “just focus on training,” while “leaving the rest to CG.” Trainers are, in fact, required to perform a great deal of marketing, promotion, and sales work. In fact, they are punished by CG if they do not do enough of it. CG has also terminated

trainers who refuse to perform sales and marketing activities. Many trainers claim to spend more time on their sales and marketing activities than they do actually training.

41. Trainers must also perform collections work for campers who are behind on payments. If they fail to succeed in this collection work, and CG headquarters has to step and achieve the collection itself, the trainer is not given her “profit share” for that camper.

42. It also false that it “costs nothing” to become a Primary Trainer. Would be trainers must provide free work for several weeks, and then purchase a “CG Starter Kit” for \$500-\$750 before they can become a Primary Trainer. Once they become a Primary Trainer, they must pay for: (a) the cost of their substitute trainers, if any, (b) the marketing costs for their region, as determined by CG; (c) equipment for running their bootcamp; (d) an iPad, which is necessary to run the required CG Trainer iPad app for sales; (e) the “free” t-shirts that are given to new campers; and (f) various other, often unidentified, “administrative costs,” the amount of which are determined by CG.

43. CG’s representations about the income potential are also grossly misleading. CG is set up like a multi-level-marketing company, wherein trainers at the top of the “chain” earn a cut of the profit brought in by their “downline” trainers. So while a few trainers at the top of the chain might make six-figures, this is far from the norm.

44. CG represents that last year, 30 of its trainers earned over \$100,000 (e.g., roughly \$10,000 per camp). This is, of course, the figure they focus on when recruiting new trainers. They do not disclose the fact that this represents just 6% of CG’s trainer workforce. As of May 2016, the median trainer income for the then-most-recent camp was only \$3,238.08. Nearly half of the trainers (47%) earned less than \$3,000.00. A third (33%) of the trainers earned less than

\$2,000.00. 17% of the trainers earned less than \$1,000.00. Twelve trainers earned \$0.00, and one trainer even ended up in debt to CG.

Even if one looks just at the trainers who have over 100 “BOLD” campers (the point at which trainers supposedly will start to make “six figures”), less than a third of them (30%) earned a camp income that, annualized, would give them over \$100,000 per year. It’s generous to assume that the income a trainer earns in April or May (during the prime training season) would be replicated at every other camp of the year – so the percentage is likely even smaller than that.

Under the Texas BOA, this is exactly the type of information that must be disclosed to potential trainers before they sign a contract with CG, pay CG money, or perform free work for CG. CG does not do so.

45. Similarly, CG intentionally refrains from disclosing certain information about its service to potential CG trainers, with the intention of getting them to: (a) work as an “intern” for no pay; (b) purchase the “CG Starter Pack;” and/or (c) sign up as a “Primary Trainer” with CG – transactions into which they would not have entered had they been given the all of the information they should have been given under law (a violation of the DTPA § 17.46(b)(24)).

46. For example, CG does not disclose the large number of required meetings, the amount of required sales and marketing work, the required collections work, or the many paycheck deductions (which are not just for “expenses,” but are also used as a punishment when a trainer fails to perform as requested or close enough sales). Nor does it disclose the actual average or median incomes for its trainers.

47. Indeed, in their own recruitment videos, CG says of the “CG Academy” (which comes after a trainer has already put in significant unpaid work as an intern): “For a lot of trainers, it is their first peek behind the curtain of what Camp Gladiator really is.”

48. Due to the above omissions and misrepresentations by CG in its trainer recruiting activities, many trainers do seek to purchase CG’s business opportunity. Unfortunately, they do so without the benefit of material information about what they are purchasing.

49. As a result, trainers are misled into giving up their compensable time (*via* the unpaid internship), their actual cash (*via* the mandatory purchase of a \$500-\$750 “CG Starter Pack”), and often, their income potential (*via* the foregoing of other other jobs that would have brought them more income). CG’s statements and omissions are the producing causes of these losses to trainers.

50. Plaintiff has provided Defendant with a preliminary notice of this claim, on July 8, 2016. A full 60-day notice period, however, is not practicable in this case due to the running of the state of limitations.

51. CG has also taken actions to dissuade its trainers from asserting their legal rights, and as a result, the additional 180-days should be added to the DTPA limitations period, as provided in the DTPA § 17.565. For example:

- a) CG tells trainers that their CG contracts (which set forth the terms of their engagement with CG) are confidential, and cannot be discussed with others;
- b) CG openly labels trainers who they deem to be “not all in” or who do not “bleed CG” as traitors, snakes, or disloyal;
- c) On at least one occasion, at a company meeting at CG headquarters, Jeff Davidson (co-owner) told trainers: “people have tried to sue us before, but we’ve got plenty of money to fight lawsuits, and we’ll spend whatever it takes to make sure we win.”

- d) Similarly, Mr. Davidson posted to Facebook, the day after receiving notice of this claim: “How much would you spend to defend a core value? I think it’s probably worth everything you have – especially when that value is loyalty” – prompting responses from other CG higher-ups such as: “If you don’t have loyalty nothing else matters because no one will ever trust you,” and “people only show loyalty when something benefits them” – openly demonstrating the blackballing process that occurs when someone raises a disagreement with CG.
- e) In Trainers’ contracts with CG, they are required to “always conduct themselves “in a positive manner in all communications and actions with...[CG],” and to not “ever insult...[CG],” or “prejudice...[CG].” In short, CG contractually prohibits its Trainers from asserting their legal complaints against the company, on pain of an allegation that they have breached their contract.

**FIRST CLAIM -  
(FLSA COLLECTIVE ACTION) -  
FAILURE TO PAY MINIMUM WAGE TO INTERNS**

52. By the acts and omissions set forth herein, CG has violated Plaintiff’s and the putative class members’ rights under the FLSA. Specifically, it has failed to pay its “interns” any wages whatsoever for the compensable, non-exempt work that they have performed for CG.

53. Plaintiff Shannon Schoellhorn brings this collective action under § 216(b) of the FLSA on behalf of herself, and on behalf of the proposed Class. She seeks to represent only those members of the below-described group who, after appropriate notice of their ability to opt in to this action, have provided consent in writing to be represented by her as required by 29 U.S.C. § 216(b). The proposed Class definition is as follows:

*All individuals who have performed any amount of unpaid work as an “intern” for Camp Gladiator during the Class Period.*

54. The “Class Period” is the time period beginning three (3) years before the date that an individual class member opts in by filing a consent form with the court.

55. This action is appropriate for class or collective action status because Defendant has acted in the same manner, and followed the same company-wide policies, with regards to all members of the class. The internship is always unpaid, it has always required essentially the same type of work of the intern, it has always been treated as an “extended audition” for the role of Primary Trainer, and it has always suffered from the same lack of compliance with the DOL’s 6-factor test. The internship’s requirements and purposes are set forth in company-wide policy documents, which are followed uniformly for all internships. In short, the putative class members are together the victims of a “single decision, policy, or plan” of CG’s. There is a discrete question that, if answered “yes” as to the representative plaintiff, can be mechanistically extrapolated to each member of the class – specifically: “is the internship job exempt under the FLSA?” The only individual differences among the putative class members are ones of computational math (e.g., how many hours did they work), as opposed to subjective, individual inquiries of coverage.

56. Defendant’s violation of the FLSA was willful. It either knew (through consultation with counsel or a similar consultant, or through complaints from trainers, or from its own analysis of the issue) that its interns were likely non-exempt employees, *or* it has shown reckless disregard for whether its interns were properly classified (by failing to inquire into the situation or consult with an attorney or other consultant on the issue).

57. Plaintiffs seek to recover an amount equal to the required minimum wage payment for the hours worked by Plaintiffs as “interns” for CG, together with an equal amount as liquidated damages. Plaintiffs further seek to recover their attorney’s fees, costs, and pre- and post-judgment interest at the highest rate allowed by law.

58. Plaintiffs further seek a declaration that CG's "interns" are non-exempt employees under the FLSA, who are entitled to minimum wage and overtime payments. The legal status of CG's interns is an actual controversy. Declaring their rights will have the force and effect of a final judgment, and will serve to ensure all interns – whether or not they opt in to this collective action – are aware of their status.

59. Finally, Plaintiffs seek a permanent injunction to be entered against CG, requiring it to: (a) going forward, pay its "intern" trainers at least the minimum wage for each hour of work that they perform as an "intern" for CG; (b) affirmatively notify all future "interns" that they are non-exempt employees under the FLSA; and (c) otherwise comply with all of the FLSA's requirements, including recordkeeping. An injunction is necessary to ensure that CG continues to comply with the law with regard to *all* interns – not just the ones who opt into this collective action. Irreparable harm to future interns is likely to occur unless CG is enjoined – and there is no possibility of harm to CG in issuing this injunction, since it would only require CG to comply with the law, as it should have already been doing. This requested injunction is also in the public interest, because it would send a message to other employers who improperly use "unpaid interns" that their conduct is unlawful, and should be corrected.

**SECOND CLAIM -  
(FLSA COLLECTIVE ACTION) -  
FAILURE TO PAY OVERTIME TO PRIMARY TRAINERS**

60. By the acts and omissions set forth herein, CG has violated Plaintiff's and the putative class members' rights under the FLSA. Specifically, it has misclassified its Primary Trainers as independent contractors, and as a result, it has failed to pay them any overtime wages for the weeks that they have worked in excess of 40 hours.

61. Plaintiff Shannon Schoellhorn brings this collective action under § 216(b) of the FLSA on behalf of herself, and on behalf of the proposed Class. She seeks to represent only those members of the below-described group who, after appropriate notice of their ability to opt in to this action, have provided consent in writing to be represented by her as required by 29 U.S.C. § 216(b). The proposed Class definition is as follows:

*All individuals who, during the Class Period, have on at least one occasion performed over 40 hours of work in a single workweek as a Primary Trainer for Camp Gladiator, and who were not paid any overtime premium for the work done in excess of 40 hours.*

62. The “Class Period” is the time period beginning three (3) years before the date that an individual class member opts in by filing a consent form with the court.

63. This action is appropriate for class or collective action status because Defendant has acted in the same manner, and followed the same company-wide policies, with regard to all members of the class. The misclassification decision has been applied across-the-board to all Primary Trainers. The putative class members are, therefore, together the victims of a “single decision, policy, or plan” to misclassify them as independent contractors. All Primary Trainers have the same job description and the same job requirements and duties, and they all work under the same, company-wide compensation policy. The only individual differences among the putative class members are ones of computational math (e.g., how many overtime hours did they work), as opposed to subjective, individual inquiries of coverage.

64. Defendant’s violation of the FLSA in this regard was willful. It either knew (through consultation with counsel or a similar consultant, or through complaints from trainers) that its trainers could be misclassified, *or* it has shown reckless disregard for whether its trainers

were properly classified (by failing to inquire into the situation or consult with an attorney or other consultant on the issue).

65. Plaintiffs seek to recover an amount equal to the overtime payments lawfully owed to them for the weeks in which they worked over 40 hours, together with an equal amount as liquidated damages. Plaintiffs further seek to recover their attorney's fees, costs, and pre- and post-judgment interest at the highest rate allowed by law.

66. Plaintiffs further seek a declaration that CG's Primary Trainers are non-exempt employees under the FLSA, who are entitled to minimum wage and overtime payments. The legal status of CG's Primary Trainers is an actual controversy. Declaring their rights will have the force and effect of a final judgment, and will serve to ensure that all current and future Primary Trainers are aware of their legal status.

67. Finally, Plaintiffs seek a permanent injunction to be entered against CG, requiring it to: (a) formally reclassify its trainers as non-exempt employees; (b) to notify all Primary Trainers of this reclassification; and (c) to take all necessary steps to ensure that they are complying with the consequences of that reclassification (e.g., paying employment taxes, paying overtime as required by law, offering employee health insurance as required by law, etc.). Unless CG is enjoined, irreparable harm is likely to occur against CG's future and current Primary Trainers. There is no harm to CG in the issuance of an injunction, since it would only be required to comply with the law – as it should have been doing already.

**THIRD CLAIM –**  
**VIOLATION OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT**  
*(Asserted in the Alternative)*

68. Trainers, including Plaintiff, are "customers" within the meaning of the DTPA. They are individuals who have sought to purchase the "business platform" service offered by

CG. CG is a proper defendant under the DTPA – it is a corporation, not subject to any of the DTPA’s exclusions.

69. Through their failure to comply with the Texas Business Opportunity Act, and through their multiple misrepresentations and omissions to potential trainers, as set forth above, CG has violated the Texas Deceptive Trade Practices Act (“DTPA”).

70. CG’s actions and omissions were the producing cause of Plaintiff’s damages. Specifically, Plaintiff relied on CG’s multiple mispresentations and omissions when she agreed to: (a) perform uncompensated work for CG as an “intern,” or (b) pay money to CG for the opportunity to become a Primary Trainer (ex: purchasing a “CG Starter Pack”); and (c) sign up to be a Primary Trainer with Camp Gladiator, to her detriment.

71. Plaintiff seeks to recover her economic damages (ex: the loss of wages associated with performing uncompensated work for CG as an “intern,” and the amount of money she paid for her “CG Starter Pack”), her benefit-of-the-bargain damages (ex: the difference between the value of the CG opportunity as represented by CG, and the fair market value of what she actually received), her actual damages (lost earning capacity – the difference between what she would have earned at her old job, which she could have kept [or any other job that she could have obtained during her time as a Primary Trainer], and what she has actually earned at CG instead), and mental anguish damages based on CG’s knowing and intentional misrepresentations to her about the nature of the Primary Trainer opportunity.

72. Plaintiff further seeks additional, treble damages under Tex. Bus. & Comm. Code § 17.50(b)(1), based on CG’s knowing violations.

73. Plaintiff further seeks an injunction under Tex. Bus. & Comm. Code § 17.50(b)(2), requiring CG to: (1) comply with the BOA by registering with the Texas Secretary

of State as such, obtaining a surety bond, establishing a trust account, or obtaining an irrevocable letter of credit before recruiting potential trainers, and by providing all current and potential trainers with the written disclosure statement as required by the BOA; (2) requiring to CG to amend all of its trainer recruiting materials (online job postings, recruiting videos, social media advertisements, and the like) to accurately describe the nature of, and the full requirements of, the “Primary Trainer” opportunity at CG, and (3) to cease use of all inaccurate or misleading trainer recruitment materials.

74. Plaintiff further seek to recover pre and post judgment interest, attorneys’ fees and costs of court.

**REQUEST FOR JURY TRIAL**

75. Plaintiff requests that this case be tried before a jury.

**PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that Defendant be cited to appear and answer herein; that this action be certified as an opt-in class action as allowed under the FLSA, with notice being given to all potential Plaintiffs of their right to opt in; and that upon final hearing, the Court grant Plaintiffs and Plaintiff Class members who have given their consent to suit relief as set forth herein, as well as all further relief, whether legal, equitable or injunctive, as may be necessitated to effectuate full relief to the Plaintiff and the Plaintiff class.

*Respectfully submitted,*

TREMAIN ARTAZA, PLLC

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**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

On July 15, 2016, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or *pro se* parties of record electronically or by another manner authorized by Federal rule of Civil Procedure 5 (b)(2).

/s/ Ashley E. Tremain