

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV040437-590

DANIELLE GALLINARO, on behalf
of herself and all others similarly
situated,

Plaintiff,

v.

EAGER TO MOTIVATE FITNESS,
LLC,

Defendant.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court pursuant to the Determination Order issued on 29 August 2024 by the Honorable Paul Newby, Chief Justice of the Supreme Court of North Carolina, directing the undersigned to determine whether this action is properly designated as a mandatory complex business case in accord with N.C.G.S. § 7A-45.4(a).

2. Plaintiff Danielle Gallinaro, on behalf of herself and all others similarly situated (“Gallinaro”), filed the Class Action Complaint initiating this action in Mecklenburg County Superior Court on 28 August 2024, asserting claims against Defendant Eager to Motivate Fitness, LLC (“E2M”) for (i) breach of contract, (ii) unjust enrichment, (iii) unfair and deceptive trade practices under N.C.G.S. § 75-1, (iv) violation of various state consumer protection statutes, (v) violation of the New Jersey Consumer Fraud Act under N.J. Stat. Ann. § 56:8-1, (vi) fraudulent misrepresentation, and (vii) negligent misrepresentation. (Compl. ¶¶ 41–89.)

Gallinaro timely filed the Notice of Designation (“NOD”) on the same day, contending that designation is proper under N.C.G.S. § 7A-45.4(a)(5).

3. This case arises out of a contract dispute. Gallinaro alleges that “E2M markets and sells an online diet and fitness program for adults,” (Compl. ¶ 5), and told prospective “members” that, upon paying a one-time enrollment fee of \$320, they would receive “perpetual lifetime access” to a members-only Facebook community at no additional cost. (Compl. ¶ 6.) According to Gallinaro, E2M’s online, virtual resources and E2M-created content included: “(i) daily live or recorded personal trainer-guided workouts; (ii) daily motivational talks from certified fitness coaches, mental health experts and doctors; (iii) an 8-week meal plan designed by nutritionists with online access to nutritionists who would respond to member questions; and (iv) access to online chefs who would provide new recipes to accompany the meal plan.” (Compl. ¶ 6; *see also* NOD 3.) Gallinaro avers that E2M promised these lifetime benefits not only to its members but also to each member’s spouse at no additional cost. (Compl. ¶ 8.) Gallinaro asserts that although she and more than 200,000 people paid E2M the \$320 lifetime enrollment fee for access to E2M’s online virtual resources and E2M-created content, (Compl. ¶ 9), E2M recently “releged on its promise . . . by cutting off access to the benefits to which they were promised” and instead notified members that, going forward, E2M’s web-based application would cost a fee of \$19.99 per month for members and an additional \$9.99 per month for members’ spouses. (Compl. ¶¶ 10–11.)

4. Designation under N.C.G.S. § 7A-45.4(a)(5) is proper if the action involves a material issue related to “[d]isputes involving the ownership, use, licensing, lease, installation, or performance of intellectual property, including computer software, software applications, information technology and systems, data and data security, pharmaceuticals, biotechnology products, and bioscience technologies.”

5. Gallinaro argues that “this matter involves a dispute over the use and licensing of intellectual property,” and thus qualifies for designation under section 7A-45.4(a)(5), because (i) she and more than 200,000 other people paid a \$320 fee to E2M “for perpetual access to E2M’s online, virtual resources and E2M-created content,” (NOD 3; *see also* Compl. ¶ 6); (ii) “E2M has received a substantial amount of money from Plaintiff and more than 200,000 other people in exchange for granting perpetual access to E2M’s online intellectual property content,” (NOD 3), and (iii) E2M unlawfully removed Gallinaro’s’ and the other members’ free access to this content. (NOD 3.)

6. Rather than put the underlying intellectual property aspects of E2M’s resources and content at issue in this litigation, however, Gallinaro’s allegations are focused on E2M’s alleged breach of its contract to provide its members and their spouses free “perpetual lifetime access” to these promised materials. As Gallinaro’s claims are now framed, they portend only an inquiry into whether E2M breached its contract by denying promised free access and do not require an examination of the “underlying intellectual property aspects” of the online materials E2M promised to provide nor their “intellectual property characteristics.” As such, the Court concludes

that designation of this action under section 7A-45.4(a)(5) is improper. *See, e.g., Pinsight Tech., Inc. v. Driven Brands, Inc.*, 2020 NCBC LEXIS 23, at *5 (N.C. Super. Ct. Feb. 20, 2020) (quoting *Cardiorentis AG v. IQVIA Ltd.*, 2018 NCBC LEXIS 64, at *6 (N.C. Super. Ct. June 27, 2018)) (“To qualify for mandatory complex business case designation under this section, the material issue must relate to a dispute that is ‘closely tied to the underlying intellectual property aspects’ of the intellectual property at issue.”); *Grifols Therapeutics LLC v. Z Automation Co.*, 2019 NCBC LEXIS 91, at *3 (N.C. Super. Ct. July 3, 2019) (concluding that “the mere fact that intellectual property . . . is the subject of a purchase agreement is insufficient to permit designation under section 7A-45.4(a)(5)[]”); *Knight v. Bechtel Assocs. Pro. Corp.*, 2019 NCBC LEXIS 125, at *3 (N.C. Super. Ct. Dec. 31, 2019) (holding that designation under (a)(5) was improper where resolution of plaintiff’s claims did not turn on the “intellectual property characteristics” of the intellectual property at issue).

7. Based on the foregoing, the Court determines that this action shall not proceed as a mandatory complex business case under N.C.G.S. § 7A-45.4(a)(5) and thus shall not be assigned to a Special Superior Court Judge for Complex Business Cases.

8. Consistent with the Determination Order, the Court hereby advises the Senior Resident Superior Court Judge of Judicial District 26 that this action is not properly designated as a mandatory complex business case so that the action may be treated as any other civil action, wherein designation as a Rule 2.1 exceptional case

may be pursued with the Senior Resident Superior Court Judge if deemed appropriate.

9. The Court's ruling is without prejudice to the right of the parties to otherwise seek designation of this matter as a mandatory complex business case as may be provided under section 7A-45.4.

SO ORDERED, this the 30th day of August, 2024.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Chief Business Court Judge