

## NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT

### IF YOU ARE A SCREEN READER USER, YOUR LEGAL RIGHTS MAY BE AFFECTED. PLEASE READ THIS NOTICE AND THE INSTRUCTIONS CAREFULLY

- This notice is to inform you about the proposed settlement that would resolve the class action lawsuit *Douglass v. iFIT Inc.*, No. 2:23-cv-917-MJH (W.D. Pa.).
- The proposed settlement covers all blind or visually disabled persons who have accessed, attempted to access, been deterred from accessing, will access, will attempt to access, or will be deterred from accessing any website or mobile application operated by iFIT Inc. (“iFIT”) that is publicly available to consumers in the United States, including but not limited to: <https://www.nordictrack.com/>, <https://www.proform.com/>, <https://freemotionfitness.com/>, <https://www.ifit.com/>, and the iFIT At-Home Workout & Fitness mobile application.
- The class action lawsuit alleges that iFIT violated the Americans with Disabilities Act, 42 U.S.C. §§ 12101, *et seq.*, by failing to take the necessary steps to ensure its websites and mobile applications do not discriminate against blind or visually disabled consumers who use screen reader auxiliary aids to access digital content.
- iFIT denies all liability in the class action lawsuit and asserts that its practices do not and have not violated applicable federal, state, and local law.
- The proposed settlement, which must be approved by the Court, would resolve the lawsuit.
- iFIT has agreed to use commercially reasonable efforts to ensure its websites and mobile applications are in substantial compliance with the success criteria of the Web Content Accessibility Guidelines 2.1 (“WCAG 2.1”) and to follow certain steps to ensure that its websites and mobile applications remain in substantial compliance with the success criteria of the WCAG 2.1 and so are accessible to blind and visually disabled persons.
- You have the right to object to the proposed settlement by February 2, 2024.
- The Court will hold a final hearing to determine whether to approve the proposed settlement on April 11, 2024.
- Your legal rights are affected whether or not you act. Please read this Notice carefully.

## **I. WHAT IS THIS LAWSUIT ABOUT?**

This case is a class action lawsuit. In a class action, one or more people sue on behalf of others who have similar claims. The person that sues is the class representative. All of the people who have similar claims are part of a “class.” Individual class members do not file lawsuits. Instead, a court resolves all of their claims at once.

This case is a class action that challenges the accessibility of websites and mobile applications operated by iFIT, including but not limited to <https://www.nordictrack.com/>, <https://www.proform.com/>, <https://freemotionfitness.com/>, and <https://www.ifit.com/>, and the iFIT At-Home Workout & Fitness mobile application. Plaintiff alleged that iFIT’s websites and mobile applications were not accessible to persons with vision disabilities that use screen readers to access the internet. Plaintiff alleged that this violated the Americans with Disabilities Act. Plaintiff sought an order to require iFIT to make its online content accessible to screen reader users. iFIT denies all liability and asserts that its website and mobile application comply with the Americans with Disabilities Act.

## **II. WHO DOES THIS PROPOSED SETTLEMENT AFFECT?**

The proposed settlement covers all blind or visually disabled persons who have accessed, attempted to access, or been deterred from attempting to access, or who will access, attempt to access, or be deterred from attempting to access any website or mobile application operated by iFIT that is publicly available to consumers in the United States, including but not limited to, <https://www.nordictrack.com/>, <https://www.proform.com/>, <https://freemotionfitness.com/>, <https://www.ifit.com/>, and the iFIT At-Home Workout & Fitness mobile application, from the United States.

## **III. WHAT DOES THE PROPOSED SETTLEMENT PROVIDE?**

### **A. iFIT Will Use Commercially Reasonable Efforts to Ensure its Digital Properties are Accessible.**

Under the proposed settlement, iFIT agrees to take additional commercially reasonable steps to ensure websites and mobile applications it operates and that are publicly available to consumers in the United States, including <https://www.nordictrack.com/>, <https://www.proform.com/>, <https://freemotionfitness.com/>, <https://www.ifit.com/>, and the iFIT At-Home Workout & Fitness mobile application, and any new website or mobile application it develops or acquires and makes publicly available to consumers in the United States (collectively “Digital Properties”) provide reasonably effective communication to all blind or visually disabled persons in substantial compliance with the success criteria of the Web Content Accessibility Guidelines 2.1 (“WCAG 2.1”).

**B. iFIT Will Implement Additional Procedures to Ensure Accessibility to Blind and Visually Disabled Persons.**

iFIT will implement additional procedures to ensure its Digital Properties are and remain accessible to blind and visually disabled persons.

1. For each new, renewed, or renegotiated contract with a vendor of Third-Party Content, iFIT will ask the vendor to commit to provide content in a format that substantially complies with WCAG 2.1 or can be made by iFIT to substantially comply with WCAG 2.1.
2. iFIT will designate an employee as its Accessibility Coordinator, who will be responsible for coordinating iFIT's compliance with certain audit, training, and notification requirements.
3. iFIT will retain an Accessibility Consultant knowledgeable about digital accessibility, the ADA, and WCAG 2.1. The Accessibility Consultant will, among other things: (a) assist iFIT in conducting an accessibility audit of a website and mobile application; (b) advise iFIT, if necessary, on how to make the website and mobile application accessible; (c) provide accessibility training to certain iFIT personnel, (d) provide annual quality assurance monitoring of certain websites and mobile applications, and (e) issue iFIT a letter describing the audit and quality assurance monitoring work it performed and identifying the steps taken to ensure the accessibility of the Digital Properties.
4. iFIT's Accessibility Consultant will complete an accessibility audit of [www.nordictrack.com](http://www.nordictrack.com) and the iFIT At-Home Workout & Fitness mobile application, which are technologically representative of the Digital Properties. The accessibility audit will be conducted in a professional manner and will be benchmarked by appropriate processes, including automated and end-user testing, consistent with the Accessibility Consultant's recommendations.
5. iFIT's Accessibility Consultant will train all iFIT employees who have managerial responsibility for the design and development of the Digital Properties in methods designed to ensure the Digital Properties are and remain accessible.
6. iFIT will include invisible anchor text in the header of the homepage of its websites and mobile applications that directs consumers to a webpage that describes iFIT's commitment to accessibility and inclusion for blind and visually disabled persons and solicits feedback.
7. iFIT will take reasonable efforts to modify its bug fix policies, practices, and procedures, if necessary, to include the elimination of bugs that create accessibility

barriers for blind and visually disabled persons so that the Digital Properties substantially comply with WCAG 2.1.

8. iFIT will designate and train at least two employees to receive and prioritize calls from blind and visually disabled persons and to timely assist such individuals within iFIT's published hours of operation ("iFIT's Customer Service Personnel").
9. iFIT's Accessibility Consultant will perform annual quality assurance monitoring on certain Digital Properties. The annual quality assurance monitoring will be conducted in a professional manner and will be benchmarked by appropriate processes, including automated and end-user testing, consistent with the accessibility consultant's recommendations.

**C. The Parties Will Create a Dispute Resolution Procedure to Address Accessibility Issues.**

Additionally, iFIT will instruct its Customer Service Personnel to forward any complaint or issue they receive that directly concerns compliance with the proposed settlement to iFIT's Accessibility Coordinator, who will be instructed to forward the complaint or issue to Class Counsel (defined below), who, if necessary, will work with iFIT to ensure the issue is resolved consistent with the settlement if it is approved. Class Counsel will monitor iFIT's compliance with the settlement as well if it is approved.

**D. iFIT Will Pay Class Counsel's Attorneys' Fees and Costs.**

The proposed settlement also provides that the named individual plaintiff who served as class representative will receive a \$1,500.00 incentive award, subject to Court approval, in return for a release of his individual claims.

Finally, East End Trial Group LLC ("Class Counsel"), the attorneys who represent the class, will have the right to seek attorneys' fees and costs up to (a) \$53,500.00 for work performed during the initial term of the proposed settlement, (b) \$15,000.00 for additional work if the proposed settlement is extended by one extra year, and (c) another \$15,000.00 if the proposed settlement is extended by a second extra year. Class Counsel will file a motion asking the Court to award reasonable fees and costs to reimburse them for work they performed on this case up to these specified amounts. The Court must approve the amount awarded even if the parties reach an agreement on the amount. This motion for fees and costs will be available at <https://www.iFITADAsettlement.com> after it is filed with the Court.

**IV. DOES THE PROPOSED SETTLEMENT AFFECT MY LEGAL RIGHTS?**

All class members will be bound by the terms of the proposed settlement relating to access to the Digital Properties for blind or visually disabled persons if the proposed settlement

is approved by the Court. If the proposed settlement is approved, all class members will release and forever discharge all claims for injunctive relief under all federal, state, and local laws related to alleged discrimination by iFIT against blind or visually disabled persons that arose before the proposed settlement becomes effective. Class members, other than the named plaintiff in the lawsuit, are not releasing any claims for monetary damages.

## **V. CAN I OBJECT TO THE PROPOSED SETTLEMENT?**

You have the right to object to the proposed settlement if you do not like part or all of it.

If you wish to object to the proposed settlement, you must do so in writing on or before February 2, 2024. Your written objections must:

- a) clearly identify the case name and number, *Douglass v. iFIT Inc.*, Case No. 2:23-cv-917-MJH (W.D. Pa.);
- b) be submitted to the Court either by mailing them to the Clerk of the Court for the United States District Court for the Western District of Pennsylvania, 700 Grant Street, Pittsburgh, PA 15219, or by filing them in person at any location of the United States District Court for the Western District of Pennsylvania;
- c) and be received on or before February 2, 2024.

If you wish to appear and present your objection orally at the fairness hearing, you must first submit a written objection and in your written objection you must indicate your intention to appear and be heard at the fairness hearing. If you appear through your own attorney, you are responsible for paying that attorney.

## **VI. DO I HAVE A LAWYER IN THIS CASE?**

The Court has appointed Kevin Tucker, Kevin Abramowicz, Stephanie Moore, and Chandler Steiger of East End Trial Group as Lead Counsel (“Class Counsel”) on behalf of the class members. Class Counsel’s contact information can be found in Section IX.

You do not need to hire a lawyer because Class Counsel is working on your behalf. You do not need to pay Class Counsel, as the proposed settlement provides that iFIT will pay Class Counsel’s fees and costs in an amount approved by the Court.

## **VII. WHEN AND WHERE WILL THE COURT APPROVE THE PROPOSED SETTLEMENT?**

The Court will hold a hearing to decide whether to approve the proposed settlement on April 11, 2024. At this hearing, the Court will consider whether the proposed settlement is fair, reasonable, and adequate. You are not required to attend the final fairness hearing.

## **VIII. HOW DO I GET MORE INFORMATION ABOUT THE PROPOSED SETTLEMENT?**

This notice summarizes the proposed settlement. For the precise terms and conditions of the proposed settlement, please see the Class Settlement Agreement available at <https://www.iFITADAsettlement.com>, contact Class Counsel using the information below, access the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.pawd.uscourts.gov>, or visit the office of the Clerk of the Court for the United States District Court for the Western District of Pennsylvania, 700 Grant Street, Pittsburgh, PA 15219, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

To obtain a copy of this notice in alternate accessible formats, contact Class Counsel using the information below.

## **IX. CONTACT INFORMATION**

Please do not contact the Court, the Court clerk's office, or counsel for iFIT with questions about this proposed settlement. Any questions must be directed to Class Counsel at the numbers and addresses below.

Class Counsel:

Kevin Tucker  
Kevin Abramowicz  
Stephanie Moore  
Chandler Steiger  
EAST END TRIAL GROUP LLC  
6901 Lynn Way, Suite 215  
Pittsburgh, PA 15208  
[ktucker@eastendtrialgroup.com](mailto:ktucker@eastendtrialgroup.com)  
[kabramowicz@eastendtrialgroup.com](mailto:kabramowicz@eastendtrialgroup.com)  
[smoore@eastendtrialgroup.com](mailto:smoore@eastendtrialgroup.com)  
[csteiger@eastendtrialgroup.com](mailto:csteiger@eastendtrialgroup.com)  
Tel. (412) 877-5220  
<https://eastendtrialgroup.com/>