

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO, <i>ex rel.</i>	:	
MICHAEL DEWINE	:	CASE NO.
ATTORNEY GENERAL OF OHIO	:	
30 East Broad Street, 14th Floor	:	JUDGE
Columbus, Ohio 43215	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
SOUTH BEACH FITNESS OF	:	
WESTERVILLE, LLC,	:	
c/o Steven Willis	:	
8656 Coldwater Drive	:	
Powell, Ohio 43065	:	
	:	
AND	:	
	:	
STEVEN WILLIS, INDIVIDUALLY	:	
AND DBA SOUTH BEACH	:	
FITNESS OF WESTERVILLE, LLC	:	
8656 Coldwater Drive	:	
Powell, Ohio 43065	:	
	:	
AND	:	
	:	
RAPHAEL ORTIZ, INDIVIDUALLY	:	
AND DBA SOUTH BEACH	:	
FITNESS OF WESTERVILLE, LLC	:	
6919 Epic Drive	:	
New Albany, Ohio 43052	:	

JURISDICTION AND VENUE

1. Plaintiff, Ohio Attorney General Michael DeWine, having reasonable cause to believe that violations of Ohio’s consumer protection laws have occurred, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by the Ohio Consumer Sales Practices Act (“CSPA”), R.C. 1345.01 et seq. and the Prepaid Entertainment Contracts Act (“PECA”), R.C. 1345.41 et seq.

2. The actions of Defendants, hereinafter described, have occurred in Franklin County and the State of Ohio, and as set forth below are in violation of the CSPA, and its Substantive Rules and the PECA.
3. This court has subject matter jurisdiction over this action pursuant to R.C. 1345.04.
4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B), in that some of Defendants' actions complained of herein, and out of which this action arose, occurred in Franklin County, Ohio.

DEFENDANTS

5. Defendant Steven Willis is a natural person residing at 8656 Coldwater Drive, Powell Ohio 43065.
6. Defendant Raphael Ortiz is a natural person residing at 6919 Epic Drive, New Albany, Ohio 43052.
7. Defendant South Beach Fitness of Westerville, LLC ("Defendant South Beach") is an Ohio-registered limited liability company that was intended to be located at 131 Huber Village Blvd., Westerville, Ohio 43081.
8. Defendant Willis had 50% ownership of Defendant South Beach.
9. Defendant Ortiz had 50% ownership of Defendant South Beach.
10. Defendants were suppliers as that term is defined in R.C. 1345.01(C) as Defendants are, or at all times relevant herein were, engaged in the business of effecting consumer transactions by advertising and selling memberships to fitness facilities in Franklin County, Ohio for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).

STATEMENT OF FACTS

11. Defendants intended to provide individual consumer buyers with health spa services, as defined by the PECA, R.C. 1345.41(A)(4).
12. Beginning in 2012, prior to opening Defendant South Beach, Defendants solicited and sold consumers memberships to Defendant South Beach.
13. Defendants solicited consumers to enter into memberships for use of fitness facilities and health spa services.
14. Defendants made representations regarding the fitness facilities and health spa services that would be provided and the timing of when the facilities would open.
15. Consumers, believing the representations that a fitness facility and health spa services would open at 131 Huber Village Blvd., Westerville, Ohio 43081 entered into contracts with Defendant South Beach.
16. These contracts required the consumer to pay in advance, in order to receive services from Defendant South Beach.
17. Defendants required that the buyers pay more than fifty dollars or ten percent of the total contract price, whichever was the lesser amount, prior to the date on which the facility or service was available for use by the buyers.
18. Defendant South Beach has failed to open a fitness facility or provide health spa services.
19. Defendants failed to open the fitness facility or provide health spa services no later than one hundred and eighty days from the date the contracts were entered into.
20. Defendant South Beach has indicated that it will not open a fitness facility or provide health spa services.

21. Consumers have until midnight on the seventh business day after the date on which the first service under the contract is available to cancel their contracts. The fitness facilities and health spa services under the contract have not and will not become available.
22. Defendants have failed to provide immediate refunds to consumers after valid cancellations of their contracts, as the fitness facilities and health spa services under the contract will not be provided.
23. Defendants Willis and Ortiz, at all relevant times, authorized, directed, ratified, and personally committed or participated in the acts and practices described in Paragraphs Eleven through Twenty-Two (11-22) of this Complaint.

PLAINTIFF'S FIRST CAUSE OF ACTION:
VIOLATIONS OF THE PREPAID ENTERTAINMENT CONTRACT ACT

COUNT I

FAILURE TO GIVE PROPER NOTICE

24. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Twenty-Three (1-23) of this Complaint.
25. Defendants have violated the PECA, R.C. 1345.42(B)(6), by entering into contracts with consumers and failing to open no later than one hundred and eighty days from the date the contract was entered into.
26. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT II

REQUIRING EXCESS PAYMENT

27. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set

forth in Paragraphs One through Twenty-Six (1-26) of this Complaint.

28. Defendants have violated the PECA, R.C. 1345.42(B)(9), by requiring that the buyer pay more than the statutory amount in order to enter into a prepaid entertainment contract.
29. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT III

FAILURE TO HONOR REFUND REQUESTS

30. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Twenty-Nine (1-29) of this Complaint.
31. Defendants have violated the PECA, R.C. 1345.42, by failing to honor refund requests.
32. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

PLAINTIFF'S SECOND CAUSE OF ACTION: VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT

COUNT I

FAILURE TO DELIVER GOODS AND/OR SERVICES OR PROVIDE REFUNDS

33. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Thirty-Two (1-32) of this Complaint.
34. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and the Ohio Admin. Code 109:4-3-09(A), by accepting payments from consumers for purchase of a memberships for use of fitness facilities and

health spa services and failing to deliver the goods and services contracted and paid for, and failing to return the payments to the consumers.

35. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT II

UNFAIR AND DECEPTIVE ACTS OR PRACTICES

36. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Thirty-Five (1-35) of this Complaint.
37. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by engaging in inadequate and unfair customer services.
38. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by engaging in acts or practices that violate the PECA, R.C. 1345.42.
39. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court:

- A. ISSUE A declaratory judgment declaring that each act or practice described in Paragraphs Eleven through Twenty-Three (11-23) of Plaintiff's Complaint violates the CSPA in the manner set forth in this Complaint.

- B. ISSUE permanent injunctive RELIEF, pursuant to R.C. 1345.07, enjoining Defendants South Beach Fitness of Westerville, LLC, Steven Willis, and Raphael Ortiz, under their own names or any other names, and all persons acting on behalf of Defendants directly or indirectly, through any corporate or private device, partnership or association, jointly and severally, from engaging in the acts or practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 et seq.
- C. ISSUE permanent injunctive RELIEF enjoining Defendants South Beach Fitness of Westerville, LLC, Steven Willis, and Raphael Ortiz from acting as a supplier and soliciting or engaging in any consumer transactions in the State of Ohio as a supplier until the final ordered resolution of this matter is satisfied in its entirety.
- D. ORDER South Beach Fitness of Westerville, LLC, Steven Willis, and Raphael Ortiz, jointly and severally liable, pursuant to R.C. 1345.07(B), for reimbursement to all consumers found to have been damaged by Defendants' unfair and deceptive acts and practices, including, but not limited to, making restitution to consumers who paid money to Defendants but never received the goods or services for which they paid.
- E. ASSESS, FINE and IMPOSE upon South Beach Fitness of Westerville, LLC, Steven Willis, and Raphael Ortiz, jointly and severally, a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation described herein, pursuant to R.C. 1345.07(D).
- F. ORDER Defendants South Beach Fitness of Westerville, LLC, Steven Willis, and Raphael Ortiz, as a means of insuring compliance with this Court's Order and with the consumer protection laws of Ohio, to maintain in their possession and control for a period of five (5) years, and in a manner designed to secure the privacy of all consumers'

personal information, all business records relating to Defendants' solicitation, offer, and sale of health spa services in the State of Ohio.

- G. ORDER Defendants South Beach Fitness of Westerville, LLC, Steven Willis, and Raphael Ortiz to cooperate with the Ohio Attorney General or his representative by providing the Ohio Attorney General, upon his request and upon reasonable twenty-four (24) hour notice, copies of any and all records necessary to establish compliance with the law and any court order granted herein, or to permit the Ohio Attorney General or his representative to inspect and/or copy any and all such records.
- H. ORDER Defendants South Beach Fitness of Westerville, LLC, Steven Willis, and Raphael Ortiz, jointly and severally, to reimburse the Ohio Attorney General for all costs incurred in bringing this action.
- I. ORDER Defendants South Beach Fitness of Westerville, LLC, Steven Willis, and Raphael Ortiz, jointly and severally, to pay all court costs associated with this action.
- J. GRANT such other relief as the Court deems to be just, equitable and appropriate.

Respectfully submitted,
MICHAEL DEWINE
Attorney General

/s/ Teresa A. Heffernan

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