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**THIS IS A FINAL  
APPEALABLE ORDER**

COMMON PLEAS COURT  
BERNIE QUILTER  
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

STATE OF OHIO, ex rel.  
ATTORNEY GENERAL  
MICHAEL DEWINE

Plaintiff,

vs.

1871 DEVELOPERS, LLC,  
d/b/a Red Fitness 24/7, et al.

Defendants.

) Case No. CI0201602535

) Judge Linda J. Jennings

) **JUDGMENT ENTRY**

**RECEIVED**

ATTORNEY GENERAL OF OHIO

MAR 08 2017

CONSUMER PROTECTION SECTION  
PUBLIC INSPECTION FILE

This cause came to be heard upon the Plaintiff's Motion for Default Judgment against 1871 Developers, LLC and David Barna, both doing business as Red Fitness 24/7, pursuant to Civ. R. 55(A). Plaintiff commenced this action with the filing of its Complaint on April 27, 2016 for violations of the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq., its Substantive Rules, and the Prepaid Entertainment Contracts Act ("PECA"), R.C. 1345.41 et seq. After attempts to serve the defendants via certified and regular mail were unsuccessful, service was made by publication pursuant to Civ. R. 4.4(A) in *The Blade* newspaper. Service was complete on October 15, 2016, which was the last date of publication. More than 28 days have passed since service was obtained and no responsive pleadings by either of the Defendants have

been filed. Therefore, Plaintiff is entitled to a default judgment pursuant to Civ. R. 55(A) against each defendant.

The Court finds the Plaintiff's Motion for Default Judgment to be well taken and hereby GRANTS same. The Court makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. The actions of Defendants, hereinafter described, occurred in Lucas County, Ohio and other counties in Ohio.
2. Defendant 1871 Developers, LLC owned and operated, at all times relevant to this action, a fitness facility called "Red Fitness 24/7" that was located in Toledo, Lucas County, Ohio.
3. Defendant Barna is a natural person whose last known personal address was 1100 Old Farm Trail, Medina, Ohio 44256 but whose current address is unknown. Defendant Barna is or was the owner, principal representative, and registered agent for Defendant 1871 Developers, LLC.
4. Defendant Barna, by virtue of his position as owner and principal representative of Defendant 1871, alone or in conjunction with others, caused, participated in, controlled, directed, ratified and/or ordered the violations of law alleged in Plaintiff's Complaint and hereinafter described.
5. Defendants issued gym memberships to consumers that often required the consumers to enter into contracts that were typically one to three years in length.
6. In order to use the facility, Defendants required consumers to either pay the full contract price in advance or authorize the company Affiliated Acceptance Corporation to bill the consumers' checking, savings, or credit card accounts monthly.

7. Defendants' contracts contained an "auto-renewable" clause which stated that after the initial contract term, the contract would automatically renew and monthly payments would be automatically withdrawn from consumers' accounts. Some contracts required the consumer to cancel the automatic renewal by issuing written notice directly to the billing company.
8. At the time of the transactions, Defendants failed to provide consumers with proper notices of cancellation forms describing the consumers' rights to cancel.
9. From approximately April 27, 2014 until approximately January 30, 2015, Defendants operated a fitness facility that had certain features, such as an indoor swimming pool and a track. This gym was located at 5424 Airport Highway, Toledo, Ohio 43615.
10. On or about January 30, 2015, Defendants closed their facility and moved their gym to a building that did not have the same or substantially similar features, such as an indoor swimming pool or a track. This facility was located at 2035 S. Reynolds Road, Toledo, Ohio 43614.
11. When Defendants moved to the Reynolds Road facility, some consumers attempted to cancel their memberships due to the substantial change in the features of the facility.
12. Defendants failed to honor the cancellation requests from consumers who wanted to cancel due to the substantial change in facilities and failed to give refunds or arrange for a substantially similar facility within twenty-five miles to accept Defendants' contracts with the consumers.
13. On or about August 26, 2015, Defendants permanently closed their facility on Reynolds Road without giving prior notice to consumers.

14. Defendants closed their facility and did not arrange for a substantially similar facility located within twenty-five miles of the consumers' residences to accept Defendants' obligations under their contracts with consumers.
15. Defendants have not provided refunds to consumers for the unused portions of their pre-paid contracts.
16. Some consumers continued to be billed for membership dues after the gym had closed. Defendants have not provided refunds to these consumers.

### **CONCLUSIONS OF LAW**

17. The actions of Defendants, described above, have occurred in Lucas County, Ohio and, as set forth below, are in violation of the CSPA, R.C. 1345.01 et seq., its Substantive Rules, O.A.C. 109:4-3-01 et seq., and the PECA, R.C. 1345.41 et seq.
18. This Court has jurisdiction over the subject matter of this action pursuant to R.C. 1345.04.
19. Venue is proper pursuant to Civ. R. 3(B)(3) in that in that Lucas County, Ohio is where Defendants conducted the transactions that gave rise to this action.
20. The Ohio Attorney General, acting on behalf of the State of Ohio and in the public interest, is the proper party to this action by virtue of the authority vested in him by the R.C. 1345.07.
21. Defendants are "suppliers" as that term is defined in R.C. 1345.01(C), as Defendants were, at all times relevant to this action, engaged in the business of effecting consumer transactions in Lucas County, Ohio for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).
22. Defendants operated "health spa services," as defined by the PECA, R.C. 1345.41(A)(4).
23. Defendants entered into prepaid entertainment contracts with consumers, as defined by the PECA, R.C. 1345.41(A), as Defendants entered into contracts with individuals for gym

memberships where the consumers paid for the use of Defendants' fitness facility prior to being able to use it.

24. Defendants violated the PECA, R.C. 1345.42(B)(8), and the CSPA, R.C. 1345.02(A), by failing to honor cancellations or provide refunds after Defendants relocated to a facility that was not substantially similar. Defendants did not arrange for a substantially similar facility within twenty-five miles from the buyers' residences to accept Defendants' obligations under their contracts with consumers. Pursuant to R.C. 1345.48, the violations described herein constitute deceptive practices in violation of R.C. 1345.02 of the CSPA.
25. Defendants violated the PECA, R.C. 1345.42(B)(8), and the CSPA, R.C. 1345.02(A), by closing their fitness facility and failing to provide refunds for the unused portions of the contracts. Defendants did not arrange for a substantially similar facility within twenty-five miles from the buyers' residences to accept Defendants' obligations under their contracts with consumers. Pursuant to R.C. 1345.48, the violations described herein constitute deceptive practices in violation of R.C. 1345.02 of the CSPA.
26. Defendants violated the PECA, R.C. 1345.42(B)(7), and the CSPA, R.C. 1345.02(A), by providing contracts to consumers that contained an improper relocation term, stating that no prepaid membership dues would be refunded if a buyer relocated beyond a twenty-five mile radius of the gym. Pursuant to R.C. 1345.48, the violations described herein constitute deceptive practices in violation of R.C. 1345.02 of the CSPA.
27. Defendants violated the PECA, R.C. 1345.44(A) and (B), and the CSPA, R.C. 1345.02(A), by failing to give proper notice to consumers of their right to cancel their contracts. Pursuant to R.C. 1345.48, the violations described herein constitute deceptive practices in violation of R.C. 1345.02 of the CSPA.

28. Defendants committed unfair and deceptive acts and practices in violation of R.C.

1345.02(A) and O.A.C. 109:4-3-09 by accepting money from consumers and then closing their facility before delivering all services paid for by consumers. Defendants have not issued refunds to consumers.

29. Defendants committed unfair and deceptive acts and practices in violation of R.C.

1345.02(A) by making withdrawals from consumers' bank accounts after their facility had closed. Defendants have not issued refunds to consumers.

### **ORDER**

In its Motion, Plaintiff requested that consumer damages be awarded and that civil penalties be assessed against Defendants. After being duly advised on the matter, the Court finds Plaintiff's requests to be well-taken and hereby GRANTS same. Therefore, it is hereby ORDERED, ADJUDGED, and DECREED that:

30. The Plaintiff's request for a Declaratory Judgment that the types of acts and practices set forth above in the Conclusions of Law and Findings of Fact violate the CSPA, the O.A.C., and the PECA is hereby GRANTED.

31. Defendants 1871 Developers, LLC and David Barna, doing business as Red Fitness 24/7, or any other names, their officers, partners, agents, servants, representatives, salespersons, employees, successors or assigns, and all persons acting in concert and participation with them directly or indirectly through any corporate device, partnership, or association in connection with any consumer transactions are PERMANENTLY ENJOINED from engaging in any unfair or deceptive acts or practices that violate the CSPA, R.C. 1345.01 et seq., and the PECA, R.C. 1345.41, et seq., including, without limitation, the conduct described in the Conclusions of Law paragraphs 24 – 29.

32. Pursuant to R.C. 1345.07(B), Defendants 1871 Developers, LLC and David Barna are ordered, jointly and severally, to pay consumer damages in the total amount of Four Thousand, Two Hundred, Twenty-Three Dollars and Seventeen Cents (\$4,223.17). Such payment shall be made to the Attorney General via a certified check or money order payable to the "Ohio Attorney General," and delivered to:

Compliance Officer  
Consumer Protection Services  
Office of the Ohio Attorney General  
30 East Broad Street, 14th Floor  
Columbus, Ohio 43215

The consumer damages will be distributed by the Attorney General to the following thirty consumers in the amounts set forth below:

1. Ernest Barnhart	\$69.14	16. Clarence Henderson	\$60.43
2. Karen Brandeberry McClain	\$78.35	17. Kevin Jagielski	\$62.29
3. Louise Brescol	\$154.35	18. Betsy Kenniston	\$72.22
4. Brownell David	\$142.23	19. Greg Kramp	\$73.69
5. Pedro Campos	\$115.61	20. Dallas Lawson	\$156.10
6. Robert Corron	\$276.66	21. Vicki McGrath	\$124.85
7. Mari Delauter	\$65.76	22. Tim O'Leary	\$112.49
8. Aaron Fall	\$144.93	23. Evangelina Padron	\$383.76
9. Patrick Fischer	\$125.34	24. Mary Rebstock	\$334.58
10. Donald Frazier	\$33.69	25. Charles Rice	\$94.14
11. Pam Gilbert	\$68.80	26. Cheryl Schwartz	\$61.05
12. Christopher Giwa	\$148.02	27. Ken Schwartz	\$76.05
13. Frank Glyda	\$372.29	28. Robert Shreves	\$147.87
14. Dwight Haney	\$314.55	29. Michael Weaver	\$53.03
15. Cheryl Haupricht	\$14.20	30. Jeff Winfrey	\$286.70

33. Based on the above findings that Defendants committed unfair and deceptive acts and practices in violation of the CSPA and the PECA, Defendants 1871 Developers, LLC and David Barna are ordered, jointly and severally, to pay civil penalties in the amount of Twenty-Five Thousand Dollars (\$25,000.00), pursuant to R.C. 1345.07(D). Such payment shall be made to the Attorney General via a certified check or money order payable to the "Ohio Attorney General," and delivered to:

Compliance Officer  
Consumer Protection Services  
Office of the Ohio Attorney General  
30 E. Broad Street, 14th Floor  
Columbus, Ohio 43215

34. Defendants 1871 Developers, LLC and David Barna are ordered, jointly and severally, to pay all court costs.

35. Defendants 1871 Developers, LLC and David Barna are enjoined from engaging in business as suppliers in any consumer transaction in the State of Ohio until such time as they have satisfied all monetary obligations due hereunder.

2.22.17  
Date

  
Linda J. Jennings, Judge