

IN THE COURT OF COMMON PLEAS  
DELAWARE COUNTY, OHIO

STATE OF OHIO, ex rel. )  
ATTORNEY GENERAL )  
MICHAEL DEWINE )  
30 E. Broad St., 14<sup>th</sup> Floor )  
Columbus, Ohio 43215 )

PLAINTIFF, )

V. )

WELLNESS LASER AND MED )  
SPA, LLC DBA WELLNESS LASER )  
CENTER AND MED SPA )  
470 Olde Worthington Road, Suite 200 )  
Westerville, Ohio 43082 )

AND )

MARTINA FLEMINGS AKA )  
MARTINA ROBINSON )  
317 N. Wright Ave. )  
Dayton, Ohio 45403 )

DEFENDANTS. )

CASE NO. 14-CVH-08-0602  
JUDGE W. Duncan Whitney

COMPLAINT FOR  
DECLARATORY JUDGMENT,  
INJUNCTIVE RELIEF, RESTITUTION,  
AND CIVIL PENALTIES

JAN ANTONOPLOS  
CLERK  
2014 AUG 13 AM 8:44  
COMMON PLEAS COURT  
DELAWARE COUNTY, OHIO  
FILED

JURISDICTION

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, pursuant to the authority vested in him by the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq.
2. The actions of the Defendants, hereinafter described, have occurred in the State of Ohio, Delaware County and various other counties, as set forth below, and are in violation of the CSPA, R.C. 1345.01 et seq., and its Substantive Rules, O.A.C. 109:4-3-01 et seq.

3. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04.
4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3), in that some of the transactions complained of herein, and out of which this action arose, occurred in Delaware County, Ohio.

#### DEFENDANTS

5. Defendant Wellness Laser and Med Spa, LLC, doing business as Wellness Laser Center and Med Spa (“Wellness Laser”), is an Ohio limited liability company with its principal place of business located at 470 Olde Worthington Road, Suite 200, Westerville Ohio 43082.
6. Wellness Laser also does business at 3401 Enterprise Parkway, Suite 340, Beachwood, Ohio 44122.
7. Wellness Laser is registered to do business in Ohio with the Ohio Secretary of State.
8. Defendant Martina Robinson, aka Martina Flemings (“Flemings”), is a resident of the State of Ohio and is the owner, officer, and operator of Wellness Laser.
9. Defendants, as described below, are “suppliers” as that term is defined in R.C. 1345.01(C), as Defendants were, at all times relevant herein, engaged in the business of effecting consumer transactions by soliciting and selling LipoLaser and other health, dietary, and weight loss goods and services to “individuals” in the State of Ohio, Delaware County and various other counties, for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).

## STATEMENT OF FACTS

10. Defendants were, and have been at all times relevant to this action, engaged in the business of advertising, soliciting, offering for sale and selling LipoLaser and other health, dietary, and weight loss goods and services in the State of Ohio, Delaware County and various other counties.
11. Defendants advertise their LipoLaser and other health, dietary, and weight loss goods and services via their website [www.columbuslipolaser.com](http://www.columbuslipolaser.com).
12. Defendants' website includes claims that they cannot substantiate.
13. Defendants' website states that consumers can expect to lose "3 to 7 inches in just 3 weeks!"
14. Defendants' website states that consumers can "receive a no-obligation consultation for just \$25 (a \$95 value)."
15. Defendants' website states that "Patients can walk out of our treatment center right after they finish a 30-minute procedure without feeling any pain. In fact, you might even experience temporary relief of previously existing pain such as arthritis or muscle aches. LipoLaser has been approved as a temporary reliever for minor health issues such as these."
16. Defendants' website includes numerous testimonials that they cannot substantiate.
17. Defendants' website contains a testimonial from Grammy Winner Roberta Flack: "Like everyone else, I was interested in losing inches, but was not interested in trying invasive procedures. Even with diet and exercise those stubborn areas were difficult to reduce. Although somewhat skeptical, I was excited to try out this new laser that was designed

for body contouring and fat reduction. The LipoLaser treatments are not only pain-free and non-invasive, they are relaxing and most importantly, they work!”

18. Defendants’ website contains a testimonial from “Dave” who says, “I lost (4) four inches in my stomach on my first Lipo Laser session! I have gone down (2) two pant sizes since starting.”
19. Defendants’ website states that it employs “licensed laser technicians.”
20. Despite website representations, Defendants did not have any employees. The office staff was included in the price of the property lease.
21. Defendants advertise and sell goods and services through various discount websites such as Groupon, Giviton, GroupSavings, and Living Social.
22. Defendants contracted with these discount websites to offer specific numbers of various products and services vouchers at a particular discount price for a set period of time.
23. Defendants’ voucher advertisements include claims that they cannot substantiate.
24. Defendants advertise that the vouchers for three LipoLaser or Cellulite Treatments sold for \$139 on Groupon have a value of \$794.
25. Defendants advertise that their “LipoLaser treatments use a hand piece that emits a cold, low-level laser designed to target fat cells.”
26. Defendants advertise that “The whole-body vibration sessions are designed to help patrons burn fat, increase strength, and decrease cellulite, while reducing chronic aches and fatigue. Clients step onto a vibration machine for three or five low-impact, 10 minutes sessions, which are considered a full workout and can help to noninvasively tone the body.”

27. Defendants advertise that “the vibration platform causes the body to experience hundreds of muscular contracts each minute in order to produce similar effects to a workout.”
28. Defendants advertise that “certified techs help break down fat cells during non invasive, FDA-approved procedures.”
29. Defendants advertise that “technicians bring to bear the LipoLaser’s light energy for 40 minutes...”
30. Despite voucher representations, Defendants do not employ certified technicians.
31. On January 9, 2014, the Attorney General issued a Request for Substantiation pursuant to O.A.C. 109:4-3-10 to Defendants regarding their advertising claims and Defendants failed to provide substantiating information.
32. Based upon the representations on the Wellness Laser website and on the discount websites, consumers purchased vouchers for LipoLaser and other health, dietary, and weight loss goods and services from Wellness Laser from these discount websites.
33. Prices for the LipoLaser and other services ranged from \$19 to several hundred dollars.
34. Pursuant to their contracts, Wellness Laser and the discount websites split the proceeds from the consumer voucher purchases.
35. Defendants made tens of thousands of dollars from sales on discount websites.
36. When consumers attempted to schedule appointments for the LipoLaser and other services they purchased, Defendants were often unresponsive. Consumers would call and leave messages, but received no response.
37. When Defendants answered consumers calls to schedule appointments for the LipoLaser and other services they purchased, Defendants would indicate that they did not have available appointments for several months.

38. Some consumers were never able to reach Wellness Laser or to schedule appointments to redeem the vouchers for the LipoLaser or other services they purchased prior to the expiration of the voucher.
39. Many consumers that were never able to schedule appointments to redeem the vouchers they purchased were unable to get a refund for the purchase.
40. For those consumers who were able to schedule their first appointment, Defendants often upsold the consumers to purchase additional sessions beyond those already purchased through the discount website.
41. Defendants convinced consumers that they could not get the desired results with the limited sessions already purchased. At this point, many consumers had not even used the goods or services that they had initially purchased via the discount websites.
42. Defendants also represented that they would have to consult with the “doctor” regarding questions a consumer would have or when a consumer questioned the fact that he or she was not seeing results.
43. Defendants did not employ a doctor.
44. Consumers who were able to use the products and services purchased from Defendants allege that they never saw any effect in weight loss or reduction of inches on their waistlines as promised.
45. Contrary to their representations on the website, Defendants did not actually use the LipoLaser machine.
46. Consumers that did not see results in weight loss or inches requested, but did not receive, refunds.

47. Defendant Flemings, at all relevant times, authorized, directed, ratified, and personally committed or participated in the acts and practices described in Paragraphs Ten through Forty-six (10-46) of this Complaint.
48. All facts alleged above have routinely occurred in the two years prior to this lawsuit.

**PLAINTIFF'S CAUSE OF ACTION:**

**VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT**

**COUNT I**

**UNFAIR AND DECEPTIVE ACTS OR PRACTICES**

49. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Forty-eight (1-48) of this Complaint.
50. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.02(B)(1), by representing that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits that it does not have.
51. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.02(B)(8), by representing that a specific price advantage exists, when it did not.
52. 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 service.
53. 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

### UNCONSCIONABLE CONSUMER SALES PRACTICES

54. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Fifty-three (1-53) of this Complaint.
55. Defendants have committed unconscionable acts or practices in violation of the CSPA, R.C. 1345.03(A), as set forth in R.C. 1345.03(B)(3), by entering into a consumer transaction when the supplier knew, at the time the consumer transaction was entered into, of the inability of the consumer to receive a substantial benefit from the subject of the consumer transaction.
56. Defendants have committed unconscionable acts or practices in violation of the CSPA, R.C. 1345.03(A), as set forth in R.C. 1345.03(B)(6), by entering into a consumer transaction when the supplier knowingly made a misleading statement of opinion on which the consumer was likely to rely to the consumers detriment.
57. 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 DELIVER GOODS AND/OR SERVICES OR PROVIDE REFUNDS

58. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Fifty-seven (1-57) of this Complaint.
59. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and O.A.C.109:4-3-09(A), by accepting payments from consumers for LipoLaser and other health, dietary, and weight loss goods and services and failing to



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

60. 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 IV**

##### **SUBSTANTIATION OF CLAIMS IN ADVERTISING**

61. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Sixty (1-60) of this Complaint.
62. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and O.A.C. 109:4-3-10(A), by making representations, claims, and assertions of fact, which would cause a reasonable consumer to believe such statements were true, without possessing or relying upon a reasonable basis in fact.
63. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and O.A.C. 109:4-3-10(B), by failing, upon the written request of the Attorney General or his representative, to produce within a reasonable time period specified, written substantiating documentation, tests, studies, reports, or other data in the possession of the supplier at or prior to the time that representation, claims, or asserts are made about the supplier or the supplier's goods or services..
64. 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 Ten through Forty-eight (10-48) 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 Wellness Laser and Med Spa, LLC, dba Wellness Laser Center and Med Spa, and Martina Flemings, aka Martina Robinson, 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 Wellness Laser and Med Spa, LLC, dba Wellness Laser Center and Med Spa, and Martina Flemings, aka Martina Robinson, 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.
- E. ORDER Defendants Wellness Laser and Med Spa, LLC, dba Wellness Laser Center and Med Spa, and Martina Flemings, aka Martina Robinson, jointly and severally liable, pursuant to R.C. 1345.07(B), for reimbursement to all consumers found to have been damaged by Defendants' unfair, deceptive and unconscionable acts and practices, including, but not limited to, making restitution to consumers who paid money to Defendants but never fully received the goods or services for which they paid.

- F. ASSESS, FINE AND IMPOSE upon Defendants Wellness Laser and Med Spa, LLC, dba Wellness Laser Center and Med Spa, and Martina Flemings, aka Martina Robinson, 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).
- G. ORDER Defendants Wellness Laser and Med Spa, LLC, dba Wellness Laser Center and Med Spa, and Martina Flemings, aka Martina Robinson, 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 LipoLaser and other health, dietary, and weight loss goods and services in the State of Ohio.
- H. ORDER Defendants Wellness Laser and Med Spa, LLC, dba Wellness Laser Center and Med Spa, and Martina Flemings, aka Martina Robinson, 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.
- I. ORDER Defendants Wellness Laser and Med Spa, LLC, dba Wellness Laser Center and Med Spa, and Martina Flemings, aka Martina Robinson, jointly and severally, to reimburse the Ohio Attorney General for all costs incurred in bringing this action.

- J. ORDER Defendants Wellness Laser and Med Spa, LLC, dba Wellness Laser Center and Med Spa, and Martina Flemings, aka Martina Robinson, jointly and severally, to pay all court costs associated with this action.
- K. GRANT such other relief as the Court deems to be just, equitable and appropriate.

Respectfully submitted,

MICHAEL DEWINE  
Attorney General



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