

UNITED STATES DISTRICT COURT

IN AND FOR THE WESTERN DISTRICT OF WASHINGTON

DAWN AND RYDEL BROOKS, a married
couple, RONALD O'BRIAN, an individual,
and DNB SERVICES, LLC, a limited liability
corporation,

Plaintiffs,

vs.

CURVES INTERNATIONAL, Inc., a Texas
Corporation;

Defendant

Case No.:

COMPLAINT FOR VIOLATION OF
WASHINGTON FRANCHISE
INVESTMENT PROTECTION ACT,
VIOLATION OF THE TEXAS DECEPTIVE
TRADE PRACTICES ACT AND FRAUD

Plaintiffs, by their attorneys, for their complaint against Defendant allege as follows:

I. Nature of Action

1. The Plaintiff Plaintiffs Dawn Brooks, Rydel Brooks, Ronald O'Brien, and DNB Services, LLC (collectively "Franchisee") bring this action against Curves International, Inc. ("Curves" or the "Franchisor") for rescission and for damages suffered as a result of Curves' fraud, fraud by omission, violation of the Washington Franchise Investment Protection Act (WFIPA) and violation of the Texas Deceptive Trade Practices Act ("Texas Act"). In brief,

1 Curves induced Franchisee to purchase a franchise by making false representations about the
2 ownership of the Franchisor and the system that Franchisee would operate under, and without
3 making the material disclosure that, on the day Franchisee was to take over its franchise,
4 Curves was planning to sign an agreement with North Castle Partners (“North Castle”), a
5 private equity firm, for the purchase of Curves, which would lead to system-wide changes.
6 As a result of the Franchisor’s actions, the Franchisee has suffered damages, and is entitled to
7 rescission of the Franchise Agreement, and damages in the amount of \$92,900.

8 **II. Jurisdiction and Venue**

9 2. This Court has subject matter jurisdiction of this action under 28 U.S.C. § 1332
10 because all of the parties are of diverse citizenship and the amount in controversy is in excess
11 of \$75,000.

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15 **III. Parties**

16 4. Dawn Brooks and Rydel Brooks, a married couple, are citizens and residents of the
17 State of Washington.

18 5. Ronald O’Brien is a citizen and resident of the State of Washington.

19 6. DNB Services, LLC is a Washington limited liability company that is wholly
20 owned by Dawn Brooks, Rydel Brooks, and Ronald O’Brien, with its principal place of
21 business in the State of Washington.

22 7. Curves International, Inc. is a Texas corporation that sells franchises for thirty
23 minute fitness and weight loss centers.

IV. Facts

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2 8. In April of 2012, Dawn and Rydel Brooks expressed interest in purchasing an
3 existing Curves franchise in Stanwood/Camano Island, WA (the “Franchise” or the “Club”).
4 Dawn Brooks first became interested in purchasing this Club because of the community of
5 women that belonged and the welcoming nature of the all-female, all-fitness-levels workout
6 program that Curves espoused to offer. The clientele of the Club was made up of primarily
7 women over the age of 65, and the Club served as a social gathering space for the women, and
8 included additional features such as games and a book exchange. For many of the Club’s
9 members, these additional perks were the main draw of membership.

10 9. From April through June of 2012, Dawn and Rydel Brooks worked with multiple
11 employees in various departments at Curves in order to purchase the Franchise. In April 2012,
12 Curves provided them with a Franchise Disclosure Document (“FDD”) containing
13 information about the Franchisor and Curves franchises, and asked that they review the
14 document and sign and return the receipt page indicating that they had done so. In May of
15 2012, Dawn and Rydel Brooks brought on a partner, Ronald O’Brien, in order to have a more
16 robust financial profile that would be acceptable to Curves, and on May 15, 2012, Curves
17 affirmed that Franchisee could move forward with the purchase of the Club.

18 10. Throughout June of 2012, Dawn and Rydel Brooks completed various training
19 sessions with a Curves representative, in which they watched videos, read handouts, and sat
20 through conference call sessions on topics such as club setup, staffing, and leadership. These
21 sessions confirmed that the Franchisee was purchasing a franchise based upon the model that
22 Dawn Brooks had seen at the club in Stanwood/Camano Island. During these training
23 sessions, Curves never mentioned that North Castle was about to purchase it.

24 11. On June 28, 2012, Franchisee and Curves executed the final Franchise Agreement,
25 and Franchisee’s takeover of the Club was scheduled to take effect on July 1, 2012.

1 12. Also on July 1, 2012, on information and belief, the owners of Curves executed an
2 agreement in which they sold Curves to North Castle. This sale was not disclosed to
3 Franchisee at the time of purchase or in the Franchise Disclosure Document (FDD) provided
4 to Franchisee prior to purchase.

5 13. From July to November of 2012, Franchisee worked with a club developer from
6 Curves, who personally visited the Club in July. During this training period, the club
7 developer stressed to Franchisee the importance of using the Curves scripts and adherence to
8 the Curves system. At this time, Franchisee was told that Curves Complete, a new diet and
9 club transformation program, was a suggestion for clubs to adopt, but not a requirement.
10 Franchisee chose not to implement this program, as its primary client base did not express
11 interest in adding a diet plan to their fitness membership. Throughout this training period,
12 Franchisee was never told that Curves Complete would become a requirement or that Curves
13 was under the new ownership of North Castle.

14 14. In the fall of 2012, Franchisee's club developer began to demand weekly phone or
15 webinar meetings to review profitability sheets and club standards. Dawn and Rydel Brooks
16 also went to Curves Camp in Idaho in September of 2012 for an intensive course in the
17 Curves system. Despite these additional requirements and training sessions, Franchisee still
18 was not told of the sale of Curves to North Castle.

19 15. In October 2012, in a phone call with their club developer, Franchisee learned for
20 the first time about the sale of Curves to North Castle. Just three months after the purchase of
21 their franchise, they were told by the club developer, "everything you know about Curves is
22 about to change."

23 16. In November 2012, at Curves' Franchisee Action Meeting, a formal announcement
24 was made to attendees about the sale of Curves to North Castle. In connection with this sale,
25

1 Franchisee was told that it would now be required to comply fully with the new “Curves
2 Clean Standards” and implement the “Curves Complete” program in the Club.

3 17. As part of the Curves Complete program, all employees at Curves clubs were
4 required to pass a new test to ensure compliance with the standards. Although Franchisee had
5 just begun operating the Club in July, it was required in November to retrain all employees on
6 the new standards by the end of December. Curves Complete also mandated that Franchisee
7 offer a diet plan at the Club, which was not a part of the Curves system when Franchisee
8 purchased. Additionally, as part of the new Clean Standards, Franchisee was required to
9 discontinue the activities of the Club that had inspired the purchase of the Club to begin with,
10 such as the book exchange and games that no longer complied with the Curves standards.

11 18. After the announcement of the sale of Curves to North Castle, Franchisee’s club
12 developer became even more aggressive in the implementation of the new standards, telling
13 Ms. Brooks, in the wake of a motorcycle accident her husband had had, that her family
14 needed to understand that she was a Curves owner and that the family came second now.

15 19. Although disheartened and disillusioned with the major changes being imposed by
16 Curves, Franchisee nevertheless attempted to comply with the new standards.

17 20. Curves represented to Franchisee, at the November 2012 Action Meeting, that
18 compliance with the new requirements would increase profitability by 70%, with new clients
19 running in to join clubs. This dramatic increase, however, never occurred for Franchisee, and
20 Curves in fact admitted at the November 2013 Action Meeting that Curves franchisees did not
21 see this dramatic increase in profitability.

22 21. Between November 2012 and November 2013, Franchisee found no positive
23 changes in their Club as a result of the new requirements, and in fact found that the
24 requirements fundamentally changed the spirit of the club that they had purchased.
25

22. Then, in November 2013, Curves announced that it would be partnering with Jillian Michaels, who would be designing special 30-minute workout routines specifically for Curves clubs. Rather than boosting business, this new requirement again was problematic for Franchisee, because the Jillian Michaels routine was not appealing to Franchisee's base clientele—namely, women over 65. Furthermore, the Jillian Michaels workouts are very difficult for the majority of Franchisee's clients, who are not able to complete twenty pushups, for example.

23. As a result of the sale of Curves to North Castle and the implementation of new requirements on Curves clubs' appearance and programming, Franchisee has suffered damages in the amount of \$92,900, including the purchase price of the franchise, royalty fees paid to Curves, and lost earnings, plus attorney's fees and costs.

24. The Plaintiff restates and realleges each and every allegation set forth above as though set forth here in full.

V. Causes of Action

COUNT ONE

VIOLATION OF THE WASHINGTON FRANCHISE INVESTMENT PROTECTION ACT

25. Plaintiffs repeat and reallege all of the allegations set forth in the preceding paragraphs as though fully set forth herein.

26. Although the Franchise Agreement designates Texas law as governing law, the Franchisee nevertheless is entitled to protection under the WFIPA, which applies to franchise relationships where a Franchisee is located in Washington, despite any conflicting choice of law provision in the contract. See *Rutter v. BX of Tri-Cities, Inc.*, 60 Wash. App. 743, 806 P.2d 1266 (1991).

27. Under the WFIPA, it is unlawful for a franchisor to engage in fraudulent or deceptive conduct in connection with "the offer, sale, or purchase of any franchise or

1 subfranchise in this state directly or indirectly,” or for a franchisor, in connection with the sale
 2 of a franchise, to make any written or oral communication which includes an untrue statement
 3 of a material fact or omits to state a material fact necessary in order to make the statements
 4 made, in light of the circumstances under which they were made, not misleading.

5 28. By approving of the sale of a Curves franchise to Franchisee without disclosing to
 6 Franchisee that Curves would be purchased by an investment group only three days after the
 7 signing of the Franchise Agreement, Curves failed to provide Franchisee with information
 8 necessary to make the information provided to Franchisee in the FDD and training materials,
 9 not misleading. Wash. Rev. Code § 19.100.170(2).

10 29. Franchisor provided the FDD for the purpose of informing Franchisee about the
 11 system under which they would operate, including its ownership. The fact that ownership
 12 changed on the very day that Franchisee took over their Club shows that the Franchisor failed
 13 to provide necessary information that would have conflicted starkly with the information in
 14 the FDD.

15 30. Franchisee would not have purchased the Club had it known of the impending sale
 16 of Curves to North Castle.

17 31. Due to these violations, Franchisee is entitled to rescission of the Franchise
 18 Agreement, actual damages in the amount of \$92,900, as well as treble damages. Wash. Rev.
 19 Code §§ 19.100.190(2), 19.100.190(3).

20 **COUNT TWO**
VIOLATION OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT

21 32. Plaintiffs repeat and reallege all of the allegations set forth in the preceding
 22 paragraphs as though fully set forth herein.

23 33. Under the Texas Act, a consumer who suffers economic damages as a result of his
 24 or her detrimental reliance upon “a false, misleading, or deceptive act or practice” may bring
 25

1 an action to recover damages. In addition, if such act was committed intentionally, the
2 injured party may be entitled to treble damages. Tex. Bus. & Com. Code Ann. § 17.50.

3 34. Curves misled Franchisee by failing to disclose that Curves would be purchased by
4 an investment group only three days after the signing of the Franchise Agreement, and by
5 failing to provide Franchisee with information necessary to make the information provided to
6 Franchisee in the FDD and training materials, not misleading.

7 35. Franchisee would not have purchased the Club had it known of the impending sale
8 of Curves to North Castle, and had suffered economic damages as a result of Curves'
9 deceptive actions.

10 36. Franchisee is entitled to rescission of the Franchise Agreement, actual damages in
11 the amount of \$92,900, as well as treble damages. Tex. Bus. & Com. Code Ann. § 17.50.

12 **COUNT III**
FRAUD

13 37. Plaintiffs repeat and reallege all of the allegations set forth in the preceding
14 paragraphs as though fully set forth herein.

15 38. The Franchisor made various representations to Franchisee about the Curves
16 system, programming, and requirements prior to Franchisee's purchase of the Club. Among
17 these representations was the information provided to Franchisee in the FDD regarding the
18 ownership and parent and affiliate organizations of the Franchisor.

19 39. Curves affirmatively took it upon itself to provide this information to Franchisee,
20 knowing that the owners at the time would be selling Curves to North Castle just three days
21 after Franchisee signed the Franchise Agreement, and on the same day that Franchisees began
22 operation of their club. Franchisor knew, at the time of signing, that the information provided
23 to Franchisee in the FDD would not, in fact, apply to their operation of the Club for even one
24 day.

1 40. Franchisee justifiably relied on this information, because they trusted in the FDD
2 to include accurate information as required by Washington State law and the FTC Franchise
3 Rule, and because they did not have any independent means of discovering the impending
4 sale of Curves or the changes that North Castle would make to the Curves system.

5 41. Due to the actions of the Franchisor, Franchisee has incurred losses amounting to
6 \$92,900.

7 **COUNT IV**
FRAUD BY OMISSION

8 42. Plaintiffs repeat and reallege all of the allegations set forth in the preceding
9 paragraphs as though fully set forth herein.

10 43. Franchisor approved of the sale of a Curves franchise to Franchisee without
11 disclosing to Franchisee that Curves would be purchased by an investment group only three
12 days after the signing of the Franchise Agreement.

13 44. Curves had superior knowledge of this impending sale, and had a duty to disclose
14 such to Franchisee in light of the conflicting information provided in its FDD. Where Curves
15 undertook to provide Franchisee with apparently comprehensive about the system that
16 Franchisee would be operating in its FDD, it had the responsibility to provide complete
17 information, including the fact that this information would not be applicable to Franchisee's
18 Club.

19 45. Curves failed to provide Franchisee with information regarding the impending sale
20 and system changes, and because the sale was not made public until at least September 2012,
21 Franchisee had no opportunity to discover this information independently.

22 46. Franchisor induced Franchisee to purchase the Club through the concealment of
23 the sale, and Franchisee would not have purchased the Club had it known of the impending
24 sale of Curves to North Castle.

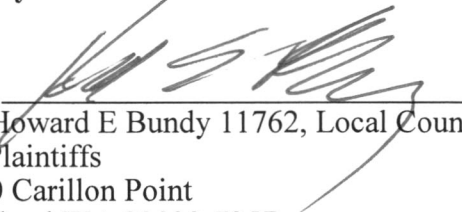
47. Due to the actions of the Franchisor, Franchisee has incurred losses amounting to \$92,900, representing their initial franchise fee, royalties paid to the Franchisor, lost earnings, attorneys' fees, and related costs.

PRAYER FOR RELIEF

1. WHEREFORE, Plaintiffs respectfully request the following relief:
2. Rescission of the Franchise Agreement;
3. Actual damages in an amount to be determined by the trier of fact, but in no event less than \$92,900;
4. Attorneys' fees, costs and expenses of the action as allowed by law
5. Interest; and
6. Such other relief as the Court deems just and proper.

Dated this 31th day of March 2014

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