

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

CAROLINE VIAU, on Behalf of Herself and
All Others Similarly Situated,

Plaintiff,

vs.

QUICK WEIGHT LOSS CENTERS, INC.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Caroline Viau (“Plaintiff”), by and through her attorneys, brings this action on behalf of herself and all others similarly situated against Defendant Quick Weight Loss Centers, Inc. (“QWLC” or “Defendant”). Plaintiff hereby alleges, on information and belief, except for information based on personal knowledge, which allegations are likely to have evidentiary support after further investigation and discovery, as follows:

NATURE OF THE ACTION

1. Plaintiff brings this class action on behalf of herself and a class of persons further defined below who enrolled in the QWLC program and were then required to purchase nutritional supplements (collectively, the “Program”).
2. Defendant operates weight loss clinics throughout Florida, Georgia, and Texas.
3. The weight loss programs advertised and promoted are far different than the programs actually sold. Consumers are offered “guaranteed” weight loss and pay a fee at the outset of the program, which fee is called a “Program Price.” Later, however, they are informed that the Program will not work unless they also purchase extremely expensive supplements, the cost of which can be **four to five times** the amount of the Program Price.

4. The reasonable consumer assumes the Program Price will be the price paid for the program. However, QWLC operates a classic “bait and switch” operation. Once consumers pay the non-refundable Program Price, they soon learn this fee is just the beginning. They must also purchase nutritional supplements, the cost of which far exceeds the Program Price. Defendant’s marketing scheme preys on consumer vulnerabilities, namely, people who are desperate to lose weight, and the scheme is very likely to deceive consumers.

5. Plaintiff was damaged, in an amount to be determined at trial, because she did not get the weight loss program that was advertised and promoted, and because she never would have signed up for the Program at all had the full costs been disclosed to her at the outset.

6. Defendant’s wrongful conduct misled and deceived consumers regarding the full cost of its weight loss program, in violation of Florida law.

JURISDICTION AND VENUE

7. Original jurisdiction in this Court is proper pursuant to 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and this is a class action in which members of the Plaintiff Class are citizens of a state different from Defendant.

8. Venue is proper in this Court pursuant to 28 U.S.C. §1391, in that, many of the acts and transactions giving rise to the alleged claims occurred in this district and because Defendant is authorized to conduct business in this district and has intentionally availed itself of the laws and markets within this district through the promotion, marketing, distribution, and sale of its products in this district; does substantial business in this district; and is subject to personal jurisdiction in this district.

PARTIES

9. Plaintiff resides in Hollywood, Florida. During the Class Period, Plaintiff purchased the Program for personal use, suffered injury in fact, and lost money and property as a result of the unfair, unlawful, and fraudulent business practices described herein.

10. Defendant QWLC is a Florida corporation located in Plantation, Florida. QWLC markets and sells the Program to consumers throughout several states, including thousands of consumers in Florida.

PLAINTIFF'S ALLEGATIONS

11. Like all of the members of QWLC's target market, Plaintiff is overweight. For many years, she had seen QWLC's advertisements, which included celebrity endorsements. These advertisements claimed that weight loss could be achieved quickly, without exercise, and without giving up the foods that customers craved.

Phase One of the Bait and Switch

12. In January 2014, Plaintiff made a decision to lose weight. To that end, on January 25, 2014, she visited a QWLC location in Pembroke Pines, Florida. The QWLC office resembled a doctor's office in all material respects. It had a waiting room, a receptionist, and numerous small examination or meeting rooms. The people working in the office wore white coats, much like a medical office.

13. The look and feel of the office was a deception, designed to deceive Plaintiff (and other customers) into believing she was having a quasi-medical experience. In reality, she was about to be subjected to a high pressure sales pitch by persons with no medical training. (Indeed, the "career" tab of QWLC's website boasts that medical experience is "not required" for employment.)

14. Plaintiff met with a sales representative who gave her promotional materials and claimed the Program would be "professionally" supervised; that she would be placed on an "individual" plan specific for her weight loss needs; and that her plan was "guaranteed."

15. All of these representations were false. Plaintiff never met with, nor was her Program supervised by anyone with a professional degree.

16. Likewise, the Program was not "individualized." A friend of Plaintiff's signed up for the Program at or near the same time and received the exact same advice and counseling, namely, a sales pitch for a barrage of expensive nutritional supplements.

17. As to the guaranteed weight loss, the "guarantee" was completely illusory. In major newspaper publications throughout South Florida, QWLC advertises its results as "Results

GUARANTEED” and “Results Guaranteed in Writing.” The actual QWLC “guarantee” provides as follows:

QWLC Service Guarantee

At the time of enrollment, your QWLC Service Guarantee is calculated based upon your medical history and goal weight. Your QWLC Service Guarantee is valid as long as you visit the center at least 3 times per week, take treatment weeks consecutively, and follow all eating and counseling’s guidelines as instructed. If, abiding by these conditions, you do not reach your goal weight in the amount of time specified in your QWLC Service Guarantee, Quick Weight Loss Centers will continue your program until you have lost the amount of weight specified without any additional charge for our services. Please note that the cost of nutritional supplements and other weight loss products are not included in this guarantee.

(Emphasis added)

18. Like all customers, Plaintiff did not realize, at the time she enrolled, that this guarantee was meaningless. QWLC’s main business is to sell expensive nutritional supplements. Thus, the QWLC “guarantee” does nothing more than promise: “If our supplements don’t cause you to lose weight, you can continue to buy our supplements.” This offers very little economic benefit to the consumer.

19. Unaware of the misleading nature of the Program, and desperate to lose weight, Plaintiff agreed to enroll for her “guaranteed” weight loss of 3-7 pounds per week. On January 25, 2014, she signed an enrollment contract, attached as Exhibit A. The contract disclosed two components of her fees.

20. First, Plaintiff had to pay a “Program Price.” Given its name, Plaintiff assumed this to be the main cost of the “Program.” Deceptively, QWLC led Plaintiff to believe she was getting a bargain on the Program Price. Thus the “regular” price was listed as \$3,038, but she was being given special price of only \$1,148. On top of that, she was being given a further discount, such that her final “Program Price” was only \$574. Plaintiff believed she was getting a good deal.

21. In fine print, however, QWLC also disclosed the following regarding another element of her costs:

I understand that I am responsible for the cost of ALL required nutritional supplements at a cost of \$11.00 to \$18.00 per box dependent on the volume purchased and that supplements and weight loss aids other than those given in my starter-pack at the time of enrollment are not included in the program price.

22. This fine print did not disclose the whole truth. While it gave Plaintiff the modest per-box price, it did not advise that the total number of boxes “required” would far exceed the costs of the “Program Price.” In truth, QWLC would “require” Plaintiff to purchase \$2,399 of nutritional supplements. This information was kept from Plaintiff until after she had signed up for the Program. Had Plaintiff known the full cost of the supplements that would be “required,” she would never have signed any paperwork on January 25, 2014.

23. As a further and essential part of the “bait and switch” scheme, all amounts paid on January 25, 2014 were non-refundable. Once she signed up, therefore, Plaintiff had already invested \$574 of non-refundable money into her weight loss program.

Phase Two of the Bait and Switch

24. Five days later, on January 30, 2014, Plaintiff learned the full truth. Plaintiff attended a mandatory nutritional meeting that QWLC provides to all new enrollees. The meeting was again conducted by a person wearing a white coat and medical scrubs. In truth, the person was not a medical or nutritional professional, but rather a salesperson.

25. At the meeting, Plaintiff learned that her “individual” weight loss program would consist chiefly of purchasing a barrage of nutritional supplements from QWLC. Moreover, Plaintiff was shocked to learn that the total cost of these supplements – modestly priced at only \$11.00 to \$18.00 per box – would be \$2,399! This was more than four-and-a-half times the cost of the entire “Program Price.”

26. Plaintiff would never have signed up for the Program had she been given this information at the outset.

27. Plaintiff was caught in the middle of a classic bait and switch. She desperately wanted to lose weight, she had already invested \$574 of non-refundable money, and the Program still had an air of credibility with its so-called “professional” advisors.

28. The bait and switch scheme worked. On January 30, 2014, Plaintiff purchased \$2,399 of additional nutritional supplements required for the Program. Plaintiff could not afford to make this purchase, but, desperate to lose weight, she put the entire amount on her credit card.

The Program Does Not Work

29. Within a month’s time, Plaintiff knew the Program was not working. She had not lost weight, and she felt lethargic and ill. She was not losing weight.

30. The so-called “guarantee” offered little help. As previously stated, the guarantee did nothing for Plaintiff other than offer the opportunity to continue buying QWLC’s expensive supplements *ad infinitum*.

31. In desperation, Plaintiff visited her doctor and showed him the list of supplements she was taking. He immediately advised her to stop.

32. Plaintiff has suffered injury in fact and lost money and property as a result of Defendant’s wrongful conduct, in that, the full costs of the program were not disclosed to her. She has suffered damages in the amount she paid for the Program and the required supplements.

33. Plaintiff reasonably relied on Defendant’s representations in making her purchasing decisions.

DEFENDANT’S UNLAWFUL CONDUCT

34. Defendant’s weight loss program is heavily advertised throughout South Florida.

35. QWLC, founded in Florida, advertises supposed individualized weight loss therapy. The program boasts no exercise and yet you still get to eat the foods you love. However, after the initial enrollment fees are paid, consumers are informed they must purchase and use QWLC’s own line of diet foods and herbal and thermogenic supplements. Bricks and mortar QWLC (made to look like a typical doctor’s office) are scattered around southern Florida, Texas, and Georgia and there is an online program that you can join from anywhere in the country. This home-based program is a

six-week program in which you receive support and counseling via email and phone from QWLC's so-called specialists.

36. Once you have signed up for either program, you work individually with a QWLC "expert" in order to create your own "customized" diet plan. While all QWLC diets are supposed to be custom-designed, the core features of the vast majority of plans are applied to every participant's diet - a low-calorie and low-fat daily eating plan that is comprised of about 1,500 calories a day. Another core feature is the food rules that you must abide by while following the program - like eating green peppers but not red bell peppers; not combining two different kinds of proteins in one meal; and no alcohol, sugar, refined flours and fried foods are allowed. But in order to lose the weight as advertised, (and after you've paid the initial program enrollment fees) you must also purchase expensive QWLC proprietary foods and dietary supplements. It's a classic bait and switch marketing scheme.

CLASS ALLEGATIONS

37. Plaintiff brings this action on behalf of herself and all similarly situated consumers pursuant to Federal Rules of Civil Procedure 23(a) and 23(b). The Class of persons whom Plaintiff seeks to represent is defined as:

All persons in Florida, Georgia, and Texas who, from May 2010 to the present, purchased a weight loss program from Defendant (the "Class" or "Class members"). Excluded from the Class are anyone that purchased for resale, the Defendant, any parent, subsidiary or affiliate of the Defendant, any entity in which the Defendant has a controlling interest, and the respective officers, directors, employees, agents, legal representatives, heirs, predecessors, successors, and assigns of such excluded persons or entities.

38. Plaintiff and the members of the Class are so numerous that joinder of all members individually, in one action or otherwise, is impracticable.

39. There are questions of law and fact common to the Class.

40. Plaintiff's claims are typical of the claims of the members of the Class. The named Plaintiff is a member of the Class of victims described herein.

41. The named Plaintiff is willing and prepared to serve the Court and the proposed Class in a representative capacity with all of the obligations and duties material thereto. Plaintiff will

fairly and adequately protect the interests of the Class and has no interests adverse to or which directly and irrevocably conflicts with the interests of other members of the Class.

42. The self-interests of the named Class representative are co-extensive with, and not antagonistic to, those of the absent Class members. The proposed representative will undertake to represent and protect the interests of the absent Class members.

43. The named Plaintiff has engaged the services of counsel indicated below. Counsel are experienced in complex class-action litigation, will adequately prosecute this action, and will assert and protect the rights of, and otherwise will represent, the named Class representative and absent Class members.

44. This action is appropriate as a class action pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure.

45. This action involves questions of law and fact common to Plaintiff and all members of the Class. These common questions predominate over any issues affecting individual members of the Class and include:

- whether Defendant engaged in an unlawful, unfair, misleading or deceptive business act or practice through its advertising practices;
- whether Defendant falsely represented its Program's price;
- whether Plaintiff and Class members are entitled to injunctive relief enjoining Defendant from continuing to deceptively advertise its Program;
- whether Defendant's guarantee was deceptive;
- whether Defendant should be made to engage in a corrective advertising campaign; and
- whether Plaintiff and Class Members have been harmed and the proper measure of relief.

46. Judicial determination of the common legal and factual issues essential to this case would be far more efficient and economical as a class action than in piecemeal individual determinations.

47. There is no plain, speedy or adequate remedy other than by maintenance of this lawsuit as a class action because individual damages are relatively small, making it economically infeasible for Class members to pursue remedies individually. The prosecution of separate actions by individual members of the Class, even if theoretically possible, would create a risk of inconsistent or varying adjudications with respect to individual Class members against Defendant and would establish incompatible standards of conduct for Defendant.

48. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons:

- given the complexity of issues involved in this action and the expense of litigating the claims, few, if any, Class members could afford to seek legal redress individually for the wrongs that Defendant committed against them, and absent Class members have no substantial interest in individually controlling the prosecution of individual actions;
- when Defendant's liability has been adjudicated, claims of all Class members can be determined by the Court;
- this action will cause an orderly and expeditious administration of the Class claims and foster economies of time, effort and expense, and ensure uniformity of decisions; and
- without a class action, many Class members would continue to suffer injury, and Defendant's violations of law will continue without redress while Defendant continues to reap and retain the substantial proceeds of its wrongful conduct.

49. Plaintiff knows of no difficulty that will be encountered in the management of this litigation which would preclude its maintenance as a class action.

50. Defendant has acted on grounds applicable to the Class generally; therefore, Plaintiff seeks equitable and injunctive relief on behalf of the entire Class on grounds generally applicable to the entire Class.

COUNT I

**For Violations of Florida's Deceptive
and Unfair Trade Practices Act,
Fla. Stat. 501.201 *et seq.***

51. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 – 50, as if fully set forth herein.

52. Defendant violated and continues to violate Florida's Deceptive and Unfair Trade Practices Act by engaging in unfair methods of competition, unconscionable acts and practices, and unfair and deceptive acts and practices in the conduct of its business.

53. The material misstatements and omissions alleged herein constitute deceptive and unfair trade practices, in that they were intended to and did deceive Plaintiff and the general public regarding the cost associated with QWLC's weight loss program.

54. Plaintiff and Class members relied upon these statements in deciding to purchase the Product. Plaintiff's reliance was reasonable because of Defendant's reputation as a reliable company.

55. Had Plaintiff known that the Program would have been so expensive, she would not have enrolled in the Program.

56. As a result of Defendant's deceptive and unfair acts, Plaintiff and Class members have been damaged in the amount paid for the Program.

57. Defendant's conduct offends established public policy, and is immoral, unethical, oppressive, unscrupulous and substantially injurious to consumers.

58. Plaintiff and Class members are entitled to damages in an amount to be proven at trial, but not less than the amount paid for Defendant's Program.

59. Defendant should also be ordered to cease its deceptive advertising, and should be made to engage in a corrective advertising campaign, to inform consumers of the true cost of its Program.

COUNT II

For False and Misleading Advertising, Fla. Stat. § 817.41

60. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 – 50, as if fully set forth herein.

61. On its website, on product labels, major newspaper publications, and in other forms of advertisements, Defendant made numerous misrepresentations of material fact regarding the actual costs of its weight loss Program such as:

- Defendant touts its plan as being individualized to each member;
- Defendant advertises the Program would be professionally supervised; and
- Defendant advertises the Program as “results guaranteed” and “guaranteed in writing.”

Defendant knew that these statements were false.

62. Defendant made these statements for the purpose of selling its Program, and intended that consumers rely upon them in purchasing its weight loss Program and supplements.

63. Plaintiff and Class members did in fact rely upon these statements. Reliance was reasonable and justified because of Defendant’s reputation as a reliable company.

64. As a result of Defendant’s misrepresentations, Plaintiff and Class members suffered damages in the amount paid for the Program and supplements.

65. Plaintiff and Class members are entitled to damages and injunctive relief as set forth in above.

COUNT III

Unjust Enrichment

66. Plaintiff incorporates by reference paragraphs 1-50 as though fully set forth herein.

67. Plaintiff and Class members conferred a benefit on Defendant by purchasing the Program at a premium price.

68. Defendant received the moneys paid by Plaintiff and Class members and thus knew of the benefit conferred upon them.

69. Defendant accepted and retained the benefit in the amount of the profits it earned from sales of the Program to Plaintiff and Class members.

70. Defendant has profited from its unlawful, unfair, misleading, and deceptive practices and advertising at the expense of Plaintiff and Class members, under circumstances in which it would be unjust for Defendant to be permitted to retain the benefit.

71. Plaintiff does not have an adequate remedy at law against Defendant.

72. Plaintiff and Class members are entitled to restitution of the excess amount paid for the Product and disgorgement of the profits Defendant derived from sales of the Program.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays this Court:

- A. Certify this action as a class action;
- B. Award compensatory, statutory, and punitive damages as to all Counts where such relief is permitted by law;
- C. Enjoin Defendant's conduct and order Defendant to engage in a corrective advertising and disclosure campaign;
- D. Award equitable monetary relief, including restitution;
- E. Award pre-judgment and post-judgment interest at the legal rate;
- F. Award Plaintiff and Class members the costs of this action, including reasonable attorneys' fees and expenses; and
- G. Award such other and further legal and equitable relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

DATED: May 23, 2014

s/William C. Wright

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