COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

Mitchell D. Potterf IV
371 Maier Road, Bay 5
Columbus Ohio 43215

and

Ohio Fit Club LLC
371 Maier Road, Bay 5
Columbus Ohio 43215

Plaintiffs

v.

Steven T. Devor
Department of Health
and Exercise Science
A50 PAES Building
305 West 17th Avenue
Columbus Ohio 43210-1224

and

Michael M. Smith
3002 Woodruff Road
Spokane, Washington 99206-4357

and

National Strength and
Conditioning Association
1885 Bob Johnson Drive
Colorado Springs, CO 80906

Case No.

and :

John Does 1-4. :

Defendants :

VERIFIED COMPLAINT

Now come Plaintiffs, Mitchell D. Potterf IV, and Ohio Fit Club LLC, by and through counsel, and for their Verified Complaint, plead as follows:

Parties, Jurisdiction and Venue

1. Mitchell D. Potterf IV is an individual residing in Franklin County, Ohio. Mr. Potterf is the sole member of Ohio Fit Club LLC.

2. Ohio Fit Club LLC ("Fit Club") is a company organized and duly operating under the laws of the State of Ohio. Fit Club is an affiliate of CrossFit, Inc, using the affiliate name of "614Crossfit." Fit Club trains athletes in the sport of CrossFit.

3. Defendant Devors is a researcher in the fields of health and sports science. His principal place of business in Franklin County, Ohio.

4. Defendant Smith is a researcher in the fields of health and sports science. At all times relevant to this Complaint, he conducted his business in Franklin County, Ohio.

5. Defendant National Strength and Conditioning Association ("NSCA") is a national organization that published the study that is the subject of this lawsuit. At all times relevant herein, Defendant NSCA had substantial business contacts in and conducted business in Franklin County, Ohio, particularly with Defendants Devors and Smith.

6. Venue is proper in Franklin County, Ohio.

Facts

7. The Court has subject matter jurisdiction over the claims set forth herein, as all of the actions alleged in this Complaint took place in Franklin County, Ohio.

8. In January 2012, Plaintiffs decided to hold a fitness challenge (the "challenge") for its members. Fit Club announced a 10 week challenge that involved CrossFit workouts and dietary restrictions that were recorded daily on hand-written sheets by each participant. Approximately 50 athletes signed up for the challenge.

9. Shortly after the challenge was announced, Defendants approached Plaintiffs and asked them to participate in a study to determine the effectiveness of the

workout regimen known as "CrossFit." Defendants proposed that the study would use the challenge as its underlying testing, and the Defendants would provide additional physiological testing and bloodwork testing before and after the challenge at The Ohio State University ("OSU").

10. Plaintiffs agreed to participate in the study. The Defendants set up the study so that the handwritten sheets filled out by the athletes would form the basis of the data collection, which would be collected and collated by the Plaintiffs. The additional physiological and bloodwork testing would be performed by the Defendants.

11. Thus, prior to the start date of the challenge, each athlete went to OSU in order to "test in" by undergoing a health assessment, including body fat measurements, VOx measurements and bloodwork. Defendants recorded the results of these tests.

12. Likewise, at the conclusion of the challenge, each athlete had to "test out" by returning to OSU and undergoing the identical health assessment as the "test in." Again, Defendants recorded the results of these tests.

13. The challenge was conducted at Fit Club, and all of the data from the challenge was collected solely by Fit Club. The Defendants had no involvement or participation in gathering data from the challenge.

14. The Defendants received the data from the challenge in a blind format. In other words as each athlete signed up for the challenge, the athlete was assigned a random number for the study. A Fit Club member named Chelsea Rankin was the only person who knew the identity of each athlete who was assigned a number. Rankin never revealed the names or identities of the athletes to OSU or to the Defendants.

15. Thus, all of the athletes participating in the study were de-identified to the Defendants. When the athletes underwent the "test in" and "test out" procedures at OSU, the Defendants identified them solely by the number assigned by Rankin and did not collect any information related to the individual athlete's name or identity.

16. As of the date of this pleading, the Defendants have not been given any information related to name or identity of the athletes who participated in the study.

17. The challenge was wholly run by Fit Club. The Defendants did not supervise the athletes' diet, the workout regimen, and never observed, conversed with or interacted with the athletes during the course of the challenge.

18. 11 athletes who started the challenge did not test out.

19. None of the athletes who failed to test out were injured, rather, they failed to test out due to reasons related to scheduling and other factors unrelated to Fit Club, the challenge or the study.

20. Defendants never spoke to the athletes who failed to test out.

21. Defendants never identified the athletes who failed the test out.

22. A year after the conclusion of the challenge, Defendants contacted Plaintiff Potterf and told him that an abstract of the study was available for purchase.

23. Plaintiff found the abstract online, paid for it and read it. But the Defendants never provided Plaintiffs with a copy of the abstract or a draft of the study.

24. The final study was published under the name "Crossfit-based High Intensity Power Training Improves Maximal Aerobic Fitness and Body Composition" (the "Article"). The Article was published without Plaintiffs' knowledge, input or prior review. The Defendants did not tell the Plaintiffs that the study was published. Rather, Plaintiff located the study on the Internet and obtained a copy. A copy of the Article is attached as Exhibit A.

25. The study contained allegations that 11 athletes who competed in the challenge failed to test out. Of the 11, the study concluded that 9 of those athletes suffered from "injuries or overuse injuries" and therefore could not test out.

26. The study did not define the term "overuse injuries." Specifically, the study alleged that the 9 athletes were injured during a CrossFit workout.

27. In fact, none of the 11 athletes who failed to test out were injured.

28. The study's conclusion that 9 of the 11 athletes were injured is false.

29. Upon reading the study, Plaintiff Potterf contacted the Defendants, but Defendants ignored Plaintiff's attempt to contact them for several months.

30. When the Defendants finally did return an email to Plaintiff, Plaintiff specifically advised Defendants that the 9 athletes were not injured during the challenge but had failed to test out for other reasons unrelated to injury.

31. Plaintiff offered proof to the Defendants that no athlete had suffered from an injury during the challenge.

32. But the Defendants ignored the Plaintiff's offer of proof and did not verify their factual conclusions and never spoke to any of the 9 athletes who failed to test out due to alleged overuse injuries.

33. Rather, Defendant Devor alleged that he had spoken to the athletes and verified their injuries.

34. In fact, Defendant Devor could not have spoken to the 9 athletes who failed to test out, because the study was a blind study and none of the Defendants knew the names or possessed the contact information for the 9 athletes who failed to test out.

35. To this date, Defendants have never followed up on the information provided by the Plaintiffs or conducted a follow-up interview with the allegedly injured athletes or verified their data in any way.

36. To this date, none of the 9 athletes who failed to test out have ever been contacted by or spoken to the Defendants.

37. Upon information and belief, Defendants used the false data of overuse injuries during the peer review process and failed to inform the editors of the Article that Plaintiff had advised them that the data was incorrect and false.

38. As the Article became widely circulated, Plaintiff again demanded that the Article be corrected to reflect that none of the 9 athletes were injured during the challenge.

39. Defendants have steadfastly refused to retract the Article or to correct the false factual allegation that 9 athletes were injured during the challenge. After the initial emails referred to above, Defendants stopped communicating with Plaintiffs altogether.

40. As of the date of this Complaint, the Article has been widely viewed and discussed throughout the country. A simple Google search of the title of the Article results in over 8000 hits.

41. Shortly after the Article was published, CrossFit, Inc attempted to verify the factual information set forth in the Article regarding the factual conclusion that 9 athletes suffered overuse injuries.

42. As part of its investigation, Russell Berger, one of CrossFit's in-house counsel, interviewed Defendant Devor. During this interview Mr. Berger asked Devor how he acquired the information that 9 athletes allegedly suffered overuse injuries. Devor initially responded that the athletes themselves told him that they were injured during the challenge. When pressed for details, Devor later changed his story two different times. The following colloquy took place during the recorded interview between attorney Berger and Defendant Devor regarding the people who did not complete the study:

> B: That there were 11 people, two of them cited time constraints, and then the other nine were the people that you said were - - dropped out for some type of injury or overuse injury.
>
> D: Right
>
> B: So was this - - was this a blind study? Would they be identified in this study?

D: Well, we - we don't know who the ones are that - well, no. we do. We - well, we were blinded – I'm trying remember back now, Russell, because it's been awhile. We were blinded to their names, but we obviously saw them in the lab. I mean, they came to the lab.

B: Right

D: We tested them several times. And the ones that dropped, you know, when we then – when they said , okay, we are not coming back, we would query them, well, okay, well, why? You got to give us well why in the hell are you not coming kind of thing? And they all said - you know, a couple of them were like, no, I don't have time, I'm not going to do it, which is just -

B: So you collected the data on those reasons for why in the lab?

D: Absolutely.

B: Okay

D: We queried them on why they weren't coming back. . . .

B: So, do - are you - do you know Chelsea Rankin as well?

D: I - - I know the name. I don't know her well, but I know the name.

B: So Chelsea Rankin was the study coordinator for all of this. She actually - -

D: Okay.

B: And she did this professionally at a hospital for five years before she did this study. So she's actually - she knows her stuff. And what's interesting is I talked to her and she said that there were two

times only that participants came in the lab. The first one was for the original test.

D: Yep.

B: And then the second one was for the retest.

D: Exactly

B: And she said that the participants . . . the people who dropped out or didn't complete the retest, were only in the lab for the first test. So then the people who dropped out and didn't complete the test, would not have ever been in the lab again to supply you with data on why they didn't complete the test.

D: Yeah. We - - yeah, and you're right. You're exactly right, Russell. We - - they did not come back, so then when we would get ahold of them or query as to why they didn't complete, that's what we were told. That they never - -

. . .

B: So I guess my question is then she - - she said they were identified to you and you only recognized them as a number, so you wouldn't have had any contact information to be able to get that from them.

D: No, that's not true. No, we - - we were able to get ahold of them because that's how we knew that they - - that's how we were able to get in touch with them because we did know their names. Because you're right, it wasn't blinded, because they were in the lab and we were collecting - - I mean, they were - - they were there getting VO2 max test, getting body comp, we were talking to them.

B: Right.

D: So we knew who they were.

B: But - - that was only for the firs ttest that they were there to be able to talk to you and you heard who they were by their, you know, first name. Chelsea says that - - I'll quote her here. She says, I'm the only one that knew who did or didn't show up. The participants were de-identified and were only known to the OSU researchers by number. So that means that - -

D: Well - -

B: - - you knew them as a number, and if they has been there - - she actually said that. Let me read the second quote here.

D: yeah

B: She said, they, referring to you guys, the OSU researchers. . . may have spoken to people while they were doing the post test, but they never had contact with the people who didn't show up, and I have no idea how they could have.

43. Defendant Devor has never met Plaintiff Potterf face-to-face.

44. Defendant Devor has never met Chelsea Rankin face-to-face or had any conversation with her related to the identity or names of the de-identified and allegedly injured athletes.

45. The study has become widely known throughout the fitness world. Yet, the Defendants have not retracted or corrected and the false data relating to the alleged injuries.

COUNT ONE
FRAUD

46. Paragraphs 1-43 are hereby incorporated as if specifically set forth herein.

47. On or about January 1, 2012, Defendants asked Plaintiffs to participate in a study, as set forth in the preceding paragraphs.

48. Defendants indicated that the study would be based upon the data collected during the challenge, as well as data collected during the test in and test out procedures.

49. Defendants told Plaintiffs that no other data would be used in the study.

50. Defendants indicated that the study would be based upon the scientific method.

51. Plaintiffs justifiably relied upon the Defendants representations as set forth above.

52. On or about November 1, 2013 the Defendants published the Article.

53. The Article stated a factual conclusion that 9 of the athletes who participated in the challenge suffered from overuse injuries.

54. The factual conclusion that 9 of the athletes who participated in the challenge suffered from overuse injuries is false.

55. None of the 9 athletes who failed to test out did so because they suffered from overuse injuries.

56. Defendants were aware that the factual conclusion regarding the 9 athletes is false at the time the Article was published.

57. Nonetheless, the Defendants published the Article, all the while knowing that the factual conclusion that 9 athletes suffered from overuse injuries and thus did not test out is false.

58. Plaintiff has demanded that Plaintiff retract or correct the Article.

59. Defendants have refused to retract or correct the Article.

60. The Article continues to appear on the NCSA website and on over 8000 other websites.

61. The actions of the Defendants as set forth herein were at all times willful, wanton and malicious, and they were taken intentionally and knowingly.

62. As a direct and proximate result of the Defendants' conduct as set forth herein, the Plaintiffs have suffered harm, in an amount to be proved at trial.

WHEREFORE, the Plaintiffs now pray this Honorable Court for an award of compensatory and punitive damages, attorney fees, costs and interest, along with any such equitable relief that this Court my deem just.

COUNT TWO
MISREPRESENTATION

63. Paragraphs 1-60 are hereby incorporated as if fully rewritten herein.

64. Defendants made specific representations that they had experience in conducting research and would only use the data gathered by the Plaintiffs and gathered during the test in and test out as the basis for their study.

65. Defendants also specifically represented to the Plaintiffs that the Plaintiffs would be given an opportunity to review the study before it was published.

66. Based upon those representations, Plaintiffs participated in the study by allowing the Defendants to use the data gathered during the challenge and making the Plaintiffs' athletes available for the test in and test out procedures.

67. After the study was published, Plaintiffs discovered that Defendant had, not, in fact, used the data gathered by the Plaintiffs or the data gathered during the test in and test out procedures as the basis for the study. Rather, the Defendants had used false and manufactured evidence to conclude that 9 athletes suffered overuse injuries.

68. When the false and manufactured data was questioned, Defendants made further misrepresentations several times, by stating: (1) the injured athletes reported the injuries during the test out procedures, (2) some of the injured

athletes reported the injuries when queried by Defendant Devors, and (3) the injured athletes reported the injuries to Defendant Smith.

69. Defendants' misrepresentations regarding the alleged injuries have been published to the public, resulting in international attention and over 8000 Google hits.

70. At all times, the actions of the Defendants as set forth in this Count were wanton, willful, intentional and purposeful.

71. As a direct and proximate result of Defendants' purposeful misrepresentations, Plaintiffs have been damaged and suffered an injury in excess of $25,000.00, the exact amount of which will be proven at trial.

WHEREFORE, the Plaintiffs now pray this Honorable Court for an award of compensatory and punitive damages, attorney fees, costs and interest, along with any such equitable relief that this Court my deem just.

COUNT THREE
FALSE LIGHT INVASION OF PRIVACY

72. Paragraphs 1 through 69 are hereby incorporated as if fully rewritten herein.

73. At all times, Plaintiffs and Defendants agreed that Plaintiffs would supervise the CrossFit workouts performed by the athletes during the challenge.

74. Specifically, Defendants knew that Plaintiff Potterf would provide the programming for the workouts and would supervise the coaching of the athletes as they performed the workouts.

75. At all times herein, Defendants knew or should have known that publishing an Article containing alleged facts showing that athletes were injured during the challenge would damage Plaintiffs' personal and professional reputation.

76. Nevertheless, the Defendants published the Article containing the false factual conclusion that 9 athletes suffered from overuse injuries during the challenge.

77. At the time of publication, Defendants knew that the allegation of injuries was false.

78. Further, at the time of the publication, Defendants acted with reckless disregard as to the falsity of the allegations that 9 athletes were injured during the challenge.

79. A reasonable person would find that publishing the false factual information of athlete injury is offensive.

80. Defendant published the false facts in an internet publication, thereby publishing the false facts to the whole world.

81. As a direct and proximate result of the Defendant's actions, as set forth herein, the Plaintiffs have suffered harm in an amount exceeding $25,000.00, the exact amount of which will be proven at trial.

WHEREFORE, the Plaintiffs now pray this Honorable Court for an award of compensatory and punitive damages, attorney fees, costs and interest, along with any such equitable relief that this Court my deem just.

COUNT FOUR
DEFAMATION

82. Paragraphs 1 through 79 are hereby incorporated as if fully realleged herein.

83. As set forth above, Defendants allegation that 9 athletes were injured during the challenge is false.

84. The Article specifically alleged that the 9 athletes suffered overuse injuries during a challenge programmed and supervised by the Plaintiffs.

85. A reasonable person who reads the Article would understand that the alleged injuries occurred during a challenge that was programmed and supervised by the Plaintiffs.

86. Nevertheless, and with full knowledge of the falsity of facts alleging that 9 athletes were injured during the challenge, the Defendants published the false factual information.

87. The publication was made to the whole world, by publishing the Article on the internet.

88. As a direct and proximate cause of the actions of the Defendants as set forth herein, Plaintiffs suffered harm to their reputation.

89. As a direct and proximate cause of the action of the Defendants set forth herein, the Plaintiffs suffered harm in an amount exceeding $25,000.00, the exact amount of which will be proven at trial.

WHEREFORE, the Plaintiffs now pray this Honorable Court for an award of compensatory and punitive damages, attorney fees, costs and interest, along with any such equitable relief that this Court my deem just.

Prayer for Relief

Plaintiffs now pray this Honorable Court for following relief:

1. An Order requiring the Defendants to retract the Article and publish a specific statement on the NCSA website stating that no athletes suffered overuse injuries during the challenge.

2. Compensatory damages on Counts One through Four in an amount to be proven at trial.

3. Punitive damages on Counts One through Four in an amount that recognizes the intentional, willful and reckless nature of the Defendants' actions.

4. Attorney fees.

5. Costs and such other relief as the Court deems appropriate.

Respectfully submitted,

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