

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

STATE OF NEW HAMPSHIRE  
Office of the Attorney General  
One Granite Place South  
Concord, New Hampshire 03301

217-2025-CV-00402

v.

GRANITE PERSONAL TRAINING, INC  
D/B/A REDWOOD PERSONAL TRAINING  
270 Loudon Road  
Concord, New Hampshire 03301

COMPLAINT FOR VIOLATIONS OF RSA 358-A AND RSA 358-I

NOW COMES the State of New Hampshire, by and through its attorneys, the Department of Justice's Consumer Protection and Antitrust Bureau (the "Bureau" or "State"), and complains against Granite Personal Training, Inc, doing business as Redwood Personal Training ("Redwood") for violations of the New Hampshire Consumer Protection Act RSA 358-A ("CPA") and the Health Club statute RSA 358-I. In support thereof, the Bureau states as follows:

**INTRODUCTION**

1. Health Clubs are required to register annually with the Attorney General. The Attorney General, through the Bureau, is responsible for ensuring health clubs comply with RSA 358-I.
2. Health clubs operating in New Hampshire must comply with RSA 358-I. This statute includes numerous consumer protections, including mandatory disclosures, cancellation rights, and required refunds under certain circumstances.
3. Redwood routinely and systematically violates consumer's rights in various ways.

4. Redwood's business model is to lock consumers into annual contracts with large monthly payments.

5. Redwood makes it extremely difficult for a customer to cancel a health club contract and discourages consumers from cancelling contracts with an expensive early termination fee.

6. Redwood delays cancelling contracts, through their own lack of responsiveness and adequate staff. Redwood keeps customers in their contracts until they agree to pay the expensive termination fee. By delaying the cancellation of contracts, Redwood continues to charge monthly fees that it is not entitled to.

7. New Hampshire consumers have the statutory right to cancel these contracts, be relieved of further obligations under the contracts, and can receive refunds for unused services in New Hampshire. Redwood is actively violating these rights under RSA 358-I.

8. A violation of RSA 358-I is an unfair or deceptive act or practice under the CPA.

9. The State seeks injunctive relief, restitution, payment of civil penalties, and an award of all legal costs and expenses incurred in the investigation and prosecution of this action.

10. On August 6, 2024, the Bureau mailed notice to Redwood of its intent to seek an enforcement action pursuant to RSA 358-A:5.

#### **PARTIES**

11. John M. Formella is the Attorney General for the State of New Hampshire.

12. The Attorney General, through the Bureau is responsible for registering health clubs in this state pursuant to RSA 358-I and for enforcing the CPA.

13. A violation of RSA 358-I is an unfair or deceptive act or practice within the meaning of RSA 358-A:2, the CPA. In accordance with RSA 358-A:4, I, the provisions of RSA 358-A are administered and enforced by the Bureau.

14. The Bureau is authorized under RSA 358-A:4, III(a) and (b) to seek injunctive relief, restitution, attorney's fees, and civil penalties against any person who it has reason to believe has engaged in or is about to engage in unfair or deceptive acts or practices in the conduct of trade or commerce in violation of the CPA.

15. Granite Personal Training, Inc ("Granite Personal Training") is a foreign corporation incorporated under the laws of the State of Georgia and has its principal place of business at 2295 Towne Lake Pkwy, Ste 116-269, Woodstock, GA, 30189.

16. Granite Personal Training is registered to do business in New Hampshire and provides services at multiple locations throughout the state. Its principal place of business in New Hampshire is located at 270 Loudon Road, Concord, NH 03301.

17. Granite Personal Training conducts business under the trade name Redwood Personal Training.

#### **JURISDICTION AND VENUE**

18. The Merrimack County Superior Court has jurisdiction over the subject matter of this action and the parties to it pursuant to RSA 358-A:4, III(a) and under the general equitable powers of the Superior Court pursuant to RSA 498:1.

19. Venue properly lies in this Court under RSA 358-A:4, III(a) because Redwood's principal place of business is located in Merrimack County, New Hampshire.

#### **RELEVANT LAW**

20. Health clubs are required to register annually with the Attorney General. The Attorney General, through the Bureau, is responsible for ensuring health clubs comply with RSA 358-I.

21. The legislature enacted RSA 358-I to provide consumers with protections when entering into contracts with health clubs. For example, these protections include cancellation rights and refunds under certain circumstances. For various reasons, consumers may often seek to cancel health club contracts, such as a change in health, relocation, or simply a change in life circumstances. RSA 358-I provides disclosure requirements of these statutory rights to consumers in the contracts.

22. RSA 358-I provides consumers certain protections for prepaid contracts. These protections are commonly referred to as the Buyer's Rights under RSA 358-I:6.

23. Health clubs that offer prepaid contracts are required to comply with the Buyer's Rights.

24. A prepayment under a contract is defined as, "any payment for services or the use of facilities made before the services or facilities are made available by the health club. It is not a prepayment if a payment for services or the use of facilities is made on the same day the services or use of the facilities is provided." RSA 358-I:1, VI.

25. The Buyer's Rights permit a consumer to cancel a prepaid contract if the aggregate value of the contract exceeds \$1,000. See RSA 358-I:6.

26. The Buyer's Rights also requires refunds, upon request, under certain circumstances when a health club offers a prepaid contract. For example, a refund of the pro rata cost of unused services is required if the consumer is unable to receive services due to death or disability, or if the health club closes or moves the facility more than 8 miles from the present location. See RSA 358-I:6, I(a).

27. The relevant section of the Buyer's Rights in this case, requires a refund, upon request, of the pro rata cost of unused prepaid services when a consumer cancels for any other reason. The relevant section states:

Every seller of a prepaid health club services contract shall refund to the buyer the pro rata cost of any unused services under all contracts between the parties, within 15 days after request thereof, if the aggregate price of all contracts in force between the parties exceeds \$1,000. Provided, however, if the contract so provides, the seller may retain a cancellation fee of not more than 25 percent of the pro rata cost of unused services on all contracts, not to exceed \$250. RSA 358-I:6, I(b).

28. This critical consumer protection entitles consumers to receive a refund of the pro rata cost of prepaid unused services upon cancelling a prepaid contract with a health club if the aggregate value of the contract exceeds \$1,000.

29. If a consumer cancels a prepaid contract pursuant to RSA 358-I:6, I(b) above, the health club may retain a cancellation fee from a customer's refund of not more than 25 percent of the pro rata cost of unused services, not to exceed \$250.

30. The Buyer's Rights also require that upon cancellation, a consumer is relieved of any further obligation for payment under the contract not then due and owing. RSA 358-I:6, I.

31. A violation of a provision under RSA 358-I is an unfair or deceptive act or practice within the meaning of RSA 358-A:2, the CPA.

#### **FACTUAL ALLEGATIONS**

32. Redwood is a health club pursuant to RSA 358-I because Redwood provides services which purport to improve or maintain the user's physical condition or appearance through weight

control, exercise, dieting, or a combination of these, to consumers in the State of New Hampshire.

33. At all times relevant to this complaint, Redwood engaged in trade or commerce in the State of New Hampshire as a health club which provides personal training services.

34. Redwood has registered as a health club with the Bureau since 2022.

35. Redwood operates out of multiple existing health clubs in New Hampshire offering separately contracted for personal training services. Redwood operates out of numerous locations at “The Zoo Health Clubs” in New Hampshire.

36. Redwood operates out of the following locations in New Hampshire: Concord, Derry, Epping, Manchester, Nashua, and Hooksett.

37. Redwood employs a manager and trainers for each location in New Hampshire.

38. Walter Watson manages all customer service questions for Redwood. He is physically located in Georgia.

39. Mr. Watson is responsible for handling all cancellations for all customers in New Hampshire and customers at locations in numerous other states.

40. Redwood estimates they sign up approximately 50 new customers in New Hampshire each month.

41. Redwood estimates that 80% of customers sign up for a 12-month contract.

42. Redwood offers two types of prepaid contracts for personal training services. A customer can pay in monthly installments or on a longer term basis, such as the full annual contract up front.

43. A customer has flexibility in the number of personal training sessions purchased. For example, a customer can purchase one session per week or four sessions per week. The most

commonly purchased plan is one session per week for 12 months, which totals 48 sessions in a year.

44. Customers are often unaware they are signing an annual contract, and only believe it is a monthly commitment.

45. The average value of each Redwood contract cancelled in New Hampshire from January 1, 2022 through March 2024, was over \$2,500. Of the 135 cancelled contracts, only ten were under \$1,000. The highest contract was for \$8,400.

46. Upon signing a contract, Redwood requires customers to pay an initial processing fee of \$49.

47. Redwood also charges the first and last month of monthly dues required under the contract to be paid upfront.

48. Redwood has customers sign their contracts on a tablet or computer.

49. Once Redwood customers pay the monthly dues, they can schedule sessions for that month.

50. Redwood customers get access to an online scheduling system to find an available trainer during set periods of time to schedule a personal training session.

51. Redwood personal training sessions must be scheduled in advance.

52. Redwood personal training sessions may be cancelled up to 24 hours in advance of a session.

53. Redwood personal training sessions are carried over to the next month if unused.

54. Redwood personal training sessions expire after sixteen months.

55. Redwood's standard contracts allow a customer to cancel their contract and receive refunds for prepaid services.

56. Redwood's contracts require a customer to provide written notice of cancellation thirty days prior to the cancellation date.

57. Redwood also includes the Buyer's Rights in their standard contracts, although slightly modified. It is labeled as "Cancellation Rights," which informs customers of their rights to receive refunds of prepaid unused services upon cancellation.

58. Redwood's standard contracts also include a separate section labeled "Termination Rights," that states refunds will be provided for "prepaid sums."

59. Redwood's standard contracts include a summary of contract terms on the first page of the contract. It states that no refunds will be provided.

60. Redwood's standard contracts provide that notice of cancellation can be provided in two ways: delivered in person to the customer's home club or certified mail to 2295 Towne Lake Pkwy Suite #116-269, Woodstock, Georgia 30189.

61. Even though it's not provided in the contract, Redwood will accept a cancellation notice through its website.

62. A customer will send notice of their intent to cancel the contract to Redwood via certified mail or through Redwood's website.

63. There is no email address or phone number provided to customers.

64. Redwood requires a customer to pay an early termination fee prior to cancelling a prepaid contract.

65. After receipt of a cancellation request, Mr. Watson, emails the customer to advise about the early termination fee and then awaits approval to charge the fee.

66. On most contracts, the early termination is 18% of the total contract price or \$299, whichever is greater.



67. The early termination fees are often much greater than \$299, with some over \$1,000.
68. There are often questions from customers about the early termination fee and days may go by without a response from Mr. Watson.
69. Redwood continues to charge monthly dues after a customer has provided their written notice of cancellation to Redwood.
70. Redwood does not track when a cancellation notice is received.
71. Redwood only tracks when it emails the customer for permission to charge the early termination fee.
72. After payment of the early termination fee, Redwood waits an additional thirty days before cancelling the contract.
73. Redwood does not disclose in its contract that the thirty-day notice does not start until payment of the early termination fee.
74. Depending on the timing of the early termination fee payment and the regular monthly due date on the contract, Redwood will charge additional monthly dues even after the early termination fee is paid.
75. Redwood does not issue refunds for unused personal training sessions upon cancellation in contrast to the Buyer's Rights and their own contracts.
76. Since Redwood does not track when a cancellation notice is received, it is unclear how many customers requested cancellation but whose contract continued, either by being deterred by the expensive termination fee or Redwood's mismanagement.
77. For example, Liam Arteaga, signed a contract with Redwood on April 8, 2023, for one personal training session a week. The monthly payments were \$200. He paid \$449 upon

signing the contract. This amount was the first and last month of payments and a processing fee of \$49.

78. Mr. Arteaga notified Redwood of his intent to cancel his contract on November 1, 2023 via the Redwood website. Redwood required payment of the early termination fee of \$432 prior to starting the thirty-day notice period. After numerous delays and correspondence, Mr. Arteaga was charged \$400 for two additional months under the contract while trying to cancel.

79. During this process, Mr. Arteaga directly asks Mr. Watson where in the contract it states that a customer must pay the early termination fee before canceling the contract and starting the notice period.

80. In response to Mr. Arteaga, Mr. Watson responded via email:

We have clearly advised the processes available- notice is irrelevant if the member does not/cannot/chooses not to pay an E[arly] T[ermination] fee. That is what makes notice actual notice, not consideration. An intent to cancel for early termination is not proven until E[arly] T[ermination] fee is paid- this is the process which applies and has been explained to you repeatedly. We will not be engaging furth[er] aside from moving forward with the cancellation process or coordination you with scheduling assistance.

81. Due to Redwood's failure to cancel the contract, Mr. Arteaga eventually cancelled the credit card used for payment and disputed the charges from the prior two months. Redwood sent his account to debt collectors. Mr. Arteaga did not receive a refund for any unused sessions, including the last month of sessions he paid when signing up.

82. Another customer, Jennifer Campinell signed a contract with Redwood on May 5, 2023, for one personal training session a week. The monthly payments were \$200. She paid \$449

93. Ms. Campinell did not receive a refund for any unused sessions, including the last month of sessions he paid when signing the contract.

94. Another customer, Alfred DiPrima, signed a contract with Redwood in May 2022 for five personal training sessions a week. The monthly payments were \$700. Mr. DiPrima paid \$1,449 upon signing the contract. This amount was the first and last month of payments and a processing fee of \$49.

95. Mr. DiPrima sent an inquiry through Redwood's website to cancel on October 16, 2022.

96. After significant correspondence, Mr. DiPrima agreed to pay the early termination fee of \$1,512 to cancel the contract.

97. Redwood continued to delay processing the early termination fee. In doing so, Redwood made the account past due for November 2022 and required another \$700 to be paid before processing the early termination fee and cancelling the contract.

98. Mr. DiPrima never received a refund for any unused prepaid services.

99. Redwood identified 135 customers in New Hampshire that effectively cancelled their contract, but only because they paid the early termination fee.

100. It is unclear how many customers were illegally told they were unable to cancel their contract without payment of the early termination fee.

101. Of those 135 customers who cancelled their contract, only four were issued a refund for an undisclosed amount and reason.

102. It is unclear how many customers were charged additional monthly fees after the customer notified Redwood of cancellation.

## **CAUSES OF ACTION**

### **COUNT I:**

#### **Unfair or Deceptive Acts or Practices in the Conduct of Trade or Commerce- Failing to cancel prepaid health club contracts whose aggregate price exceeds \$1,000 in violation of RSA 358-I:6.**

103. The allegations contained in the preceding paragraphs are incorporated herein.

104. Redwood is a "health club" under RSA 358-I because it provides services which purport to improve or maintain the user's physical condition or appearance through weight control, exercise, dieting, or a combination of these.

105. Redwood provides "services" to health club members because it offers personal training sessions, through trainers who provide guidance and instruction to customers.

106. Redwood's contracts are "prepaid" contracts because a customer pays in advance of personal training services being provided by the health club. A customer is not paying each day for a personal training session. A customer is often paying monthly for personal training sessions that will be scheduled and provided at a future date.

107. Redwood's contracts are also "prepaid" contracts because Redwood charges the first and last month of payments under an annual contract upon signing the contract. A customer is paying in advance for services the first month and the last month prior to receiving any personal training sessions.

108. Accordingly, customers prepay for personal training sessions prior to using the sessions under the contract and are subject to the Buyer's Rights.

109. Pursuant to the Buyer's Rights, Redwood must permit a customer to cancel a prepaid contract when the aggregate contract value exceeds \$1,000.

110. Upon cancellation of a prepaid contract, a customer must be relieved of any further obligation under the contract. RSA 358-I:6, II.

111. Redwood intentionally and impermissibly causes delays in cancelling customer contracts by waiting for customers to agree to be charged an early termination fee.

112. Redwood does not track when a customer submits the original notice of cancellation to Redwood and causes additional correspondence and time to lapse before cancelling a contract while seeking to charge an early termination fee.

113. Redwood's attempts to seek additional money from customers and the lack of adequate record keeping results in improper delays in cancelling the contract.

114. Redwood continues to charge monthly dues under the prepaid contract until the early termination fee is paid.

115. Redwood violates RSA 358-I:6 by failing to cancel prepaid contracts after receiving written notice and continues to charge monthly dues after receiving a cancellation notice.

116. By violating RSA 358-I:6, Redwood has committed unfair or deceptive acts or practices, in violation of RSA 358-A:2.

## **COUNT II:**

**Unfair or Deceptive Acts or Practices in the Conduct of Trade or Commerce-  
Failing to provide refunds for prepaid unused services upon cancellation of prepaid  
contracts whose aggregate price exceeds \$1,000 in violation of RSA 358-I:6, I(b).**

117. The allegations contained in the preceding paragraphs are incorporated herein.

118. Redwood is a "health club" under RSA 358-I because it provides services which purport to improve or maintain the user's physical condition or appearance through weight control, exercise, dieting, or a combination of these.

119. Redwood provides “services” to health club members because it offers personal training sessions, through trainers who provide guidance and instruction to customers.

120. Redwood’s contracts are “prepaid” contracts because a customer pays in advance of personal training services being provided by the health club. A customer must pay monthly dues before scheduling a personal training session. A customer does not pay each day for a personal training session. Most often, a customer is paying monthly dues for personal training sessions that will be scheduled and provided at a future date.

121. Redwood’s contracts are also “prepaid” contracts because Redwood charges the first and last month of payments under an annual contract immediately upon signing the contract. A customer is paying in advance for services the first month and the last month prior to receiving any personal training sessions.

122. Accordingly, customers prepay for personal training session prior to using the session under the contract and are subject to the Buyer’s Rights.

123. The Buyer’s Rights provide that if the aggregate contract for a prepaid health club exceeds \$1,000, a customer may request a refund of the pro rata cost of any unused services under the contract and it must be provided within fifteen days after the request.

124. Many of Redwood’s customers have prepaid contracts that exceed \$1,000 in value. However, Redwood does not provide refunds within fifteen days of receiving a request for a refund of prepaid unused services upon a customer cancelling a prepaid contract.

125. Redwood’s standard contracts include a modified Buyer’s Rights.

126. Redwood’s standard contracts also include a separate section on refunds, which says that refunds will be provided for “prepaid sums.”

127. Contrary to their own contracts and the Buyer's Rights, Redwood does not provide refunds.

128. Redwood only permits customers to continue to use personal training sessions after the contract is terminated.

129. Redwood violates the Buyer's Rights under RSA 358-I:6, I(b) because upon cancellation of a prepaid contract that exceeds \$1,000 in aggregate value, Redwood fails to provide a refund for the pro rata cost of unused prepaid personal training sessions.

130. By violating RSA 358-I:6, I(b) Redwood has committed unfair or deceptive acts or practices, in violation of RSA 358-A:2.

### **COUNT III:**

#### **Deceptive Acts or Practices in the Conduct of Trade or Commerce-**

#### **Inconsistent Contract Terms Regarding Refunds in violation of RSA 358-A:2.**

131. The allegations contained in the preceding paragraphs are incorporated herein.

132. RSA 358-A:2 states that it shall be unlawful for any person to use any unfair method of competition or any unfair or deceptive act or practice in the conduct of any trade or commerce in this state.

133. Redwood is a "person" within the meaning of RSA 358-A:1, I because it is corporation registered to do business within this state.

134. At all times relevant to this complaint, Redwood has been engaged in "trade or commerce" in this state within the meaning of RSA 358-A:1, II, because it operates as a health club offering personal training services in various locations in New Hampshire.

135. New Hampshire courts apply the "rascality test" to determine if a particular act falls under the RSA 358-A:2 general prohibition of unfair or deceptive acts or practices.

136. Under the rascality test, “[t]he objectionable conduct must attain a level of rascality that would raise an eyebrow of someone inured to the rough and tumble of the world of commerce.” Milford Lumber Co. v. RCB Realty, 147 N.H. 15, 17 (2001) (quotations omitted).

137. New Hampshire courts also look to the federal courts’ interpretation of the Federal Trade Commission Act for Guidance. See RSA 358-A:13. The Federal Trade Commission determines if actions are unfair or deceptive by inquiring:

- (a) Whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise - whether, in other words, it is within at least the penumbra of some common-law, statutory or other established concept of unfairness;
- (b) whether it is immoral, unethical, oppressive, or unscrupulous; or
- (c) whether it causes substantial injury to consumers (or competitors or other businessmen). State v. Moran, 151 N.H. 450, 452-53 (2004) (quoting Milford Lumber Co., 147 N.H. at 19).

138. The CPA makes it unlawful for any person to use any deceptive act or practice in the conduct of trade and commerce in this state.

139. Redwood engaged in deceptive acts or practices affecting New Hampshire consumers, including by making or causing to be made to consumers, directly or indirectly, explicitly or by implication, misrepresentations as to material facts which had a tendency to mislead consumers and by omitting material facts that are likely to confuse and/or mislead consumers regarding the ability for a Redwood customer to receive a refund of unused personal training sessions, in violation of RSA 358-A:2.



140. The deceptive statements are made directly in Redwood's contracts entered into with New Hampshire consumers by including inconsistent contract terms regarding refunds.

141. Redwood includes a modified Buyer's Rights in its contracts. Upon cancellation, the Buyer's Rights require refunds of the pro rata cost of unused services if the aggregate value of the contract exceeds \$1,000.

142. In a separate section of their contracts, Redwood has another provision that states refunds will be provided for unused sums.

143. On the first page of Redwood's contracts, it states refunds will not be provided.

144. Despite the two distinct contract terms that might induce a customer to believe Redwood provides refunds, Redwood does not provide refunds.

145. Redwood does not honor its own contracts because it does not provide refunds of unused personal training sessions despite informing consumers of their right to receive refunds.

146. Redwood's contracts are deceptive by including inconsistent terms regarding refunds because a potential customer could easily be induced to enter the expensive contract knowing that they could receive a refund for any unused prepaid services.

147. Redwood's inconsistent contract terms on refunds and Redwood's failure to provide refunds attains the level of deceptiveness under the rascality standard anticipated by the court in Milford Lumber Co.

148. Redwood's conduct was also immoral, unethical, unscrupulous and amounted to deceptive acts or practices in violation of RSA 358-A:2.

149. Thus, Redwood committed a deceptive act or practice in trade or commerce in violation of RSA 358-A:2, by having inconsistent contract terms on refunds and failing to provide refunds to customers.

#### **COUNT IV:**

##### **Unfair Acts or Practices in the Conduct of Trade or Commerce-**

##### **Unfair Early Termination Fee in violation of RSA 358-A:2.**

150. The allegations contained in the preceding paragraphs are incorporated herein.

151. RSA 358-A:2 states that it shall be unlawful for any person to use any unfair method of competition or any unfair or deceptive act or practice in the conduct of any trade or commerce in this state.

152. Redwood is a “person” within the meaning of RSA 358-A:1, I because it is corporation registered to do business within this state.

153. At all times relevant to this complaint, Redwood has been engaged in “trade or commerce” in this state within the meaning of RSA 358-A:1, II, because it operates as a health club offering personal training services in various locations in New Hampshire.

154. New Hampshire courts apply the “rascality test” to determine if a particular act falls under the RSA 358-A:2 general prohibition of unfair or deceptive acts or practices.

155. Under the rascality test, “[t]he objectionable conduct must attain a level of rascality that would raise an eyebrow of someone inured to the rough and tumble of the world of commerce.” Milford Lumber Co. v. RCB Realty, 147 N.H. 15, 17 (2001) (quotations omitted).

156. New Hampshire courts also look to the federal courts’ interpretation of the Federal Trade Commission Act for Guidance. See RSA 358-A:13. The Federal Trade Commission determines if actions are unfair or deceptive by inquiring:

- (d) Whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common

law, or otherwise - whether, in other words, it is within at least the penumbra of some common-law, statutory or other established concept of unfairness;

(e) whether it is immoral, unethical, oppressive, or unscrupulous; or

(f) whether it causes substantial injury to consumers (or competitors or other businessmen). State v. Moran, 151 N.H. 450, 452-53 (2004) (quoting Milford Lumber Co., 147 N.H. at 19).

157. Redwood committed unfair acts or practices by charging early termination fees for health club contracts significantly in excess of established public policy.

158. RSA 358-I:6, I(b) permits a health club to retain a portion of a customer's required refund as a cancellation fee. This applies to prepaid health club contracts whose aggregate value exceeds \$1,000. The withheld cancellation fee may not be "more than 25 percent of the pro rata cost of unused services on all contracts, not to exceed \$250."

159. Consumers are entitled to cancel prepaid health club contracts and receive a refund for unused prepaid services. In doing so, the legislature provided a remedy for the health club to retain funds to compensate for any contract loss associated with the cancellation.

160. Redwood's early termination fee is a cancellation fee. Redwood's minimum charge for its cancellation fee is \$299. The maximum cancellation fee is 18% of the *total* contract price, not just the remaining balance of the contract.

161. The established public policy for a cancellation fee of a prepaid health club contract is a maximum of \$250 under RSA 358-I:6, I(b). All of the cancellation fees Redwood charges exceed the established policy. Many of the cancellation fees paid by New Hampshire customers exceeded \$500, and some paid over \$1,000 to cancel.

162. In order for a health club to even retain the maximum allowed cancellation fee of \$250, a health club would have to owe a customer a refund of \$1,000 in unused prepaid services.

163. Redwood's separately charged cancellation fee exceeds established public policy and attains the level of unfairness under the rascality standard anticipated by the court in Milford Lumber Co.

164. Redwood's conduct was also immoral, unethical, unscrupulous and amounted to unfair and deceptive acts or practices in violation of RSA 358-A:2.

165. Thus, Redwood committed an unfair act or practice in trade or commerce in violation of RSA 358-A:2, by charging a cancellation fee exceeding established public policy.

#### **COUNT V:**

##### **Unfair or Deceptive Acts or Practices in the Conduct of Trade or Commerce**

**Redwood's entire course of conduct when a customer attempts to cancel a prepaid health club contract in violation of RSA 358-A:2.**

166. The allegations contained in the preceding paragraphs are incorporated herein.

167. RSA 358-A:2 states that it shall be unlawful for any person to use any unfair method of competition or any unfair or deceptive act or practice in the conduct of any trade or commerce in this state.

168. Redwood is a "person" within the meaning of RSA 358-A:1, I because it is corporation registered to do business within this state.

169. At all times relevant to this complaint, Redwood has been engaged in "trade or commerce" in this state within the meaning of RSA 358-A:1, II, because it operates as a health club offering personal training services in various locations in New Hampshire.

170. New Hampshire courts apply the “rascality test” to determine if a particular act falls under the RSA 358-A:2 general prohibition of unfair or deceptive acts or practices.

171. Under the rascality test, “[t]he objectionable conduct must attain a level of rascality that would raise an eyebrow of someone inured to the rough and tumble of the world of commerce.” Milford Lumber Co. v. RCB Realty, 147 N.H. 15, 17 (2001) (quotations omitted).

172. New Hampshire courts also look to the federal courts’ interpretation of the Federal Trade Commission Act for Guidance. See RSA 358-A:13. The Federal Trade Commission determines if actions are unfair or deceptive by inquiring:

- (g) Whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise - whether, in other words, it is within at least the penumbra of some common-law, statutory or other established concept of unfairness;
- (h) whether it is immoral, unethical, oppressive, or unscrupulous; or
- (i) whether it causes substantial injury to consumers (or competitors or other businessmen). State v. Moran, 151 N.H. 450, 452-53 (2004) (quoting Milford Lumber Co., 147 N.H. at 19).

173. Redwood’s business is intentionally deceptive and structured to make it extremely difficult to cancel a prepaid contract, receive a refund for unused prepaid services, or even contact an employee for assistance.

174. The prepaid contracts are signed on a tablet or computer, reducing the ability for a customer to thoroughly read and understand the terms.

175. When signing up for a membership, customers are often unaware they are signing an annual contract, and only believe it is a monthly commitment.

176. A single person, located outside New Hampshire, is responsible for managing any cancellation of customer contracts.

177. Redwood does not provide a phone number for customers. It does not provide an email address.

178. At least two Redwood customers sent a cancellation notice by certified mail to the correct address. Those contracts were not cancelled.

179. Redwood's contracts have two terms in their contracts that say refunds will be provided. Redwood does not provide refunds.

180. Redwood does not trust its trainers to handle customer service on the contracts and refers customers to Redwood's website, which is inconsistent with Redwood's contracts. The contract provides only two forms of notice: to hand deliver notice to the club or send a certified letter to Georgia.

181. There is a simple contact form on the Redwood website that a customer can submit a request to cancel the contract to Redwood.

182. Since Mr. Watson is the only person managing this process across the country, numerous delays often occur before a customer receives a response.

183. Once a customer receives a response from Mr. Watson, Redwood attempts to squeeze additional money out of each customer, through the expensive early termination fee and continuing to charge monthly dues.

184. Redwood's entire course of conduct for a customer trying to cancel a prepaid contract attains the level of unfairness or deception under the rascality standard anticipated by the court in Milford Lumber Co.

185. Redwood's conduct was also immoral, unethical, unscrupulous and amounted to unfair and deceptive acts or practices in violation of RSA 358-A:2.

186. Thus, Redwood committed an unfair or deceptive act or practice in trade or commerce in violation of RSA 358-A:2, by engaging in unfair and deceptive conduct if a customer attempts to cancel a prepaid contract.

### **REQUESTED RELIEF**

WHEREFORE, the State of New Hampshire respectfully requests that this Honorable Court:

- (A) Schedule an expedited hearing, and pending a ruling on the merits, preliminarily enjoin Redwood from:
  - a. Further violating the CPA and RSA 358-I; and
  - b. Operating a health club in New Hampshire.
- (B) Issue a permanent injunction under RSA 358-A:4, III(a) to:
  - a. Enjoin Redwood and its owner, Stephen Dow, from owning or having any ownership interest in a health club in New Hampshire.
  - b. Enjoin Redwood and its owner, Stephen Dow, from operating a health club in New Hampshire.
  - c. Enjoin Redwood and its owner, Stephen Dow, from being employed by a health club in New Hampshire.
- (C) Issue a permanent injunction under RSA 358-A:4, III(a) that prohibits Redwood and its owner, from engaging in unfair and deceptive acts or practices in New Hampshire.
- (D) Issue a permanent injunction under RSA 358-A:4, III(a) that requires Redwood and its owners, to comply with RSA 358-I.

- (E) Order restitution for each harmed consumer.
- (F) Order a civil penalty of \$10,000 under RSA 358-A:4, III(b) for each violation of the CPA.
- (G) Order legal costs and expenses be paid to the State under RSA 358-A:6, IV.
- (H) Grant such other relief as this Court deems equitable and just.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorney,

JOHN M. FORMELLA  
ATTORNEY GENERAL



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