

NO. _____

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
V.	§	TRAVIS COUNTY, T E X A S
	§	
CLUB SYSTEMS, INC. D/B/A GOLD'S	§	
GYM,	§	
	§	
FITNESS FOREVER, INC. D/B/A	§	
GOLD'S GYM,	§	
	§	
FITNESS FOREVER IV, INC. D/B/A	§	
GOLD'S GYM, AND	§	
	§	
SCOTT R. THEERINGER,	§	
Defendants.	§	_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, Greg Abbott ("State" or "Plaintiff"), complains of CLUB SYSTEMS, INC. D/B/A GOLD'S GYM, FITNESS FOREVER, INC. D/B/A GOLD'S GYM, FITNESS FOREVER IV, INC. D/B/A GOLD'S GYM, and SCOTT R. THEERINGER ("Defendants"), and for cause of action would respectfully show as follows:

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. CIV. P. 190.2(b)(3); 190.3(a).

JURISDICTION

2. This action is brought by Attorney General Greg Abbott, through his Consumer Protection and Public Health Division, in the name of the State of Texas and in the public

interest under the authority granted him by § 17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41 *et seq.* (Vernon 2002 and Supp. 2004) (“DTPA”) upon the grounds that the Defendants have engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, §§ 17.46(a) and (b) of the DTPA.

3. This action is further brought by Attorney General Greg Abbott, through his Consumer Protection and Public Health Division, in the name of the State of Texas under the authority granted him by § 702.552 of the Texas Health Spa Act, TEX. OCC. CODE ANN. § 702.001 *et seq.* (Vernon 2004) (“HSA”) upon the grounds that Defendants have engaged in actions declared to be violations of the HSA.

DEFENDANTS

4. Defendant CLUB SYSTEMS, INC., is a Texas corporation which does business in Texas as alleged in detail below under the name “Gold’s Gym.” Defendant Club Systems, Inc., operated as Gold’s Gym in and around the Dallas, Texas area at: a) 1332 Beltline Road, Garland, Texas 75040; b) 4125 Old Denton Road, Carrollton, Texas 75007; and c) 700 N. Harwood, Dallas, Texas 75201. On or about May 15, 2004, Defendant ceased operating as a Gold’s Gym at all three locations without notice to consumers. Defendant may be served with process by serving its vice president and director, Robert Holland, at 504 Scenic Place, Heath, Texas 75032.

5. Defendant FITNESS FOREVER, INC., is a Texas corporation which suffered a tax forfeiture on July 9, 2004 and which does business in Texas as alleged in detail below under the name “Gold’s Gym.” Defendant Fitness Forever, Inc., operated as Gold’s Gym at 4001

S.W. Plaza, #103, Arlington, Texas 76016. On or about May 15, 2004, Defendant ceased operating as a Gold's Gym at that location without notice to consumers. Defendant may be served with process by serving its secretary and director, Robert Holland, at 504 Scenic Place, Heath, Texas 75032.

6. Defendant FITNESS FOREVER IV, INC., is a Texas corporation which does business in Texas as alleged in detail below under the name "Gold's Gym." Defendant Fitness Forever IV, Inc., operated as Gold's Gym at 6910 Green Oaks Road, Ft. Worth, Texas 76116. On or about May 15, 2004, Defendant ceased operating as a Gold's Gym at that location without notice to consumers. Defendant may be served with process by serving its secretary and director, Robert Holland, at 504 Scenic Place, Heath, Texas 75032.

7. Defendant SCOTT R. THEERINGER is an individual who may be served with process at his home, 3600 Smoothstone, Plano, Texas 75074. On information and belief, Mr. Theeringer may have left the State of Texas, and may be currently residing at 17860 Avenida De Sonoma, Apple Valley, California 92307. Defendant Theeringer directed and controlled the day to day operations of each of the five Dallas-Fort Worth Metroplex area health spas doing business as Gold's Gym, and directly participated in each of the acts and omissions described below.

VENUE

8. Venue of this suit lies in TRAVIS County, Texas, because venue for suits brought under HSA § 702.552 is expressly authorized in Travis County, Texas.

PUBLIC INTEREST

9. As alleged in detail below, Plaintiff has reason to believe that Defendants have caused direct harm to consumers in the State of Texas. Because Plaintiff State of Texas has reason to believe that Defendants have engaged in, and will continue to engage in, the unlawful practices set forth below, Plaintiff has reason to believe the Defendants have caused adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State, and that imminent harm exists in that Defendants will continue to cause such adverse effects.

TRADE AND COMMERCE; SELLER

10. Defendants have, at all times described below, engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by DTPA § 17.45(6).

11. Defendants have, at all times described below, engaged in conduct as “sellers” as that term is defined by HSA § 702.003(13).

ACTS OF AGENTS

12. Whenever in this Petition it is alleged that Defendants did any act, it is meant that:

- A. Defendants performed or participated in the act, or
- B. Defendants’ officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendants.

NOTICE BEFORE SUIT

13. Pursuant to DTPA § 17.47(a), the Consumer Protection and Public Health Division informed Defendants in general of the alleged unlawful conduct described below, at least seven days before filing suit.

SPECIFIC FACTUAL ALLEGATIONS

14. Defendants owned and operated franchise locations of “Gold’s Gym,” (hereinafter “Gold’s”) a health spa located at five locations in the Dallas-Ft. Worth Metroplex beginning in mid-2001.¹ On or about May 15, 2004, Defendants closed all five locations without notice to consumers. Defendants did not make arrangements with any alternative facilities to service their members, and Defendants did not provide refunds to consumers for lost membership time.

15. During the entire time the five Metroplex Gold’s locations operated under their franchise agreements as Gold’s, none were registered with the Texas Secretary of State as a health spa, nor had any location filed the statutorily required \$20,000.00 security with that office. If each location had filed a \$20,000.00 security, that amount would have been used to reimburse consumers for lost membership fees following the Defendants’ closings.

16. Defendant Theeringer directed and controlled the operations of each of the Gold’s locations in the Metroplex. Under his direction, each location sold memberships on a contract form that misrepresented to consumers that the location had in fact filed a \$20,000.00

¹ Defendant Fitness Forever IV, Inc., entered into a franchise agreement to operate the Gold’s Gym in Fort Worth on May 31, 2001. Defendant Fitness Forever, Inc., entered into a franchise agreement to operate the Gold’s Gym in Arlington on June 1, 2001. Defendant Club Systems, Inc., entered into franchise agreements to operate the Gold’s Gym in Garland on April 10, 2002, in Dallas on April 10, 2002, and in Carrollton on October 3, 2002.

security with the Texas Secretary of State. Despite Theeringer's knowledge of the registration and security requirements, Defendant Theeringer misrepresented to consumers that each of his Gold's locations was operating in accordance with the laws of the State of Texas.

VIOLATIONS OF THE HEALTH SPA ACT

17. The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this Petition.

18. Defendants, as alleged and detailed above, have operated a health spa or offered for sale, or sold, memberships in a health spa without holding a health spa operator's certificate of registration, in violation of HSA § 702.101.

19. Defendants, as alleged and detailed above, have each failed to maintain a surety bond with the Texas Secretary of State, or other security as prescribed by the Secretary, in the amount of \$20,000.00, in violation of HSA § 702.151.

VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT

20. The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this Petition.

21. Defendants, as alleged and detailed above, have engaged in false, misleading, or deceptive acts or practices in the conduct of trade or commerce, in violation of DTPA §17.46(a).

22. Defendants, as alleged and detailed above, have caused confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of DTPA § 17.46(b)(2).

23. Defendants, as alleged and detailed above, have represented that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities

which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not, in violation of DTPA § 17.46(b)(5).

24. Defendants, as alleged and detailed above, have represented that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, in violation of DTPA § 17.46(b)(12).

25. Defendants, as alleged and detailed above, have violated the HSA, and such violations are specifically made false, misleading, or deceptive acts or practices in violation of the DTPA, pursuant to HSA § 702.403.

PRAYER

26. Because Defendants have engaged in the unlawful acts and practices described above, the Defendants have violated the law as alleged in this Petition.

27. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon final hearing a permanent injunction be issued, restraining and enjoining Defendants, their officers, agents, servants, employees, attorneys, and any other person in active concert or participation with Defendants, from engaging in the following acts or practices:

- A. Operating a health spa, or offering for sale, or selling, a membership in a health spa unless, for each location of the health spa in the State of Texas, Defendants hold a health spa operator's certificate of registration, as required by HSA § 702.101;
- B. Operating a health spa, or offering for sale, or selling, a membership in a health spa unless, for each location of the health spa in the State of Texas, Defendants file a surety bond with the Texas Secretary of State, or post

other security as prescribed by the Secretary, in the amount of \$20,000.00, as required by HSA § 702.151, unless they have obtained an exemption under the HSA;

- C. Operating a health spa, or offering for sale, or selling, a membership in a health spa unless, for each location of the health spa in the State of Texas, Defendants post the health spa operator's certificate of registration or certificate of exemption in a conspicuous place at each registered location as required by HSA § 702.105;
- D. Representing to consumers that Defendants have a \$20,000.00 security on file with the Texas Secretary of State when they do not; and
- E. Representing to consumers that Defendants have a valid health spa operator's certificate of registration issued by the Texas Secretary of State when they do not.

28. Plaintiff further requests that upon final hearing this Court award such relief as the Court finds necessary to redress injury to consumers including, but not limited to, restitution of monies paid by consumers; and further order each Defendant to pay to the State of Texas:

- A. Civil penalties of up to \$20,000.00 per violation of the DTPA;
- B. Civil penalties of \$1,000.00 per violation not to exceed a total of \$25,000.00 for violations of the HSA;
- C. Pre-judgment and post-judgment interest on all awards of restitution, damages, or civil penalties, as provided by law; and

D. All costs of Court, costs of investigation, and reasonable attorney's fees pursuant to TEX. GOVT. CODE ANN. § 402.006(c).

29. Plaintiff further prays for such other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

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