

CAUSE NO. \_\_\_\_\_

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
vs.	§	
	§	COLLIN COUNTY, T E X A S
LIFE TIME FITNESS, INC.,	§	
LTF CLUB MANAGEMENT	§	
COMPANY, L.L.C., and	§	
LTF CLUB OPERATIONS	§	
COMPANY, INC.,	§	
Defendants.	§	____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION AND  
APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the STATE OF TEXAS, Plaintiff, ( “PLAINTIFF”) acting by and through ATTORNEY GENERAL GREG ABBOTT, complaining of and against Defendants LIFE TIME FITNESS, INC., LTF CLUB MANAGEMENT COMPANY, L.L.C., and LTF CLUB OPERATIONS COMPANY, INC., d/b/a Life Time Fitness, LifeSpa, and LifeCafe (“DEFENDANTS”) and would respectfully show the court the following:

**1. DISCOVERY**

1.1 Discovery is intended to be conducted under Level 2 of the Texas Rules of Civil Procedure 190.

**2. AUTHORITY**

2.1 Attorney General Greg Abbott, acting within the scope of his official duties under the authority granted to him under the Constitution and the laws of the State of Texas, brings this

lawsuit in the name of the State of Texas through his Consumer Protection and Public Health Division against DEFENDANTS for violations of chapter 48<sup>1</sup> of the Texas Business and Commerce Code known as the Texas Identity Theft Enforcement and Protection Act and chapter 35 of the Texas Business and Commerce Code. TEX. BUS. & COM. CODE §§ 48.001, *et seq.*, and 35.48.

2.2 This action is also brought by the Attorney General, 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 section 17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE §§ 17.41, *et seq.* (“DTPA”), upon the ground that 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 sections 17.46 (a) and (b) of the DTPA.

2.3 This action is further brought by the Attorney General, 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 § 702.001 *et seq.* (“HSA”), upon the grounds that DEFENDANTS have engaged in actions declared to be violations of the HSA.

### 3. DEFENDANTS

3.1 DEFENDANT LIFE TIME FITNESS, INC., is a foreign for-profit corporation incorporated pursuant to the laws of Minnesota and doing business in Texas. Defendant LIFE TIME FITNESS, INC. may be served with process by serving its registered agent, National Registered Agents, Inc., at 1614 Sidney Baker Street, Kerrville, Texas 78028.

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<sup>1</sup> In 2005, the Texas Legislature enacted three chapters 48. The chapter cited above was titled “Identity Theft Enforcement and Protection Act” by the Tex. S.B. 122, 79<sup>th</sup> Leg. R.S. (2005).

3.2 DEFENDANT LTF CLUB MANAGEMENT COMPANY, L.L.C., is a foreign for-profit limited liability company incorporated pursuant to the laws of Delaware and doing business in Texas. Defendant LTF CLUB MANAGEMENT COMPANY, L.L.C. may be served with process by serving its registered agent, National Registered Agents, Inc., at 1614 Sidney Baker Street, Kerrville, Texas 78028.

3.3 DEFENDANT LTF CLUB OPERATIONS COMPANY, INC. is a foreign for-profit corporation incorporated pursuant to the laws of Delaware and doing business in Texas under the following assumed names: Life Time Fitness; LifeSpa; and LifeCafe. Defendant LTF CLUB OPERATIONS COMPANY, INC., may be served with process by serving its registered agent, National Registered Agents, Inc., at 1614 Sidney Baker Street, Kerrville, Texas 78028.

#### **4. VENUE**

4.1 Venue of this action lies in Collin County on the basis of sections 15.002(a)(1) and (3) of the Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this cause of action occurred in Collin County. TEX. CIV. PRAC. & REM. CODE §15.002(a).

4.2 Venue is proper because Defendants do business in Collin County and all or part of the actions arose in Collin County. TEX. BUS. & COM. CODE ANN §§ 17.47(b) and 48.201(c)(1), (2).

#### **5. PUBLIC INTEREST**

5.1 The State of Texas has reason to believe that DEFENDANTS are engaging in, have engaged in, or are about to engage in acts and practices which violate the State of Texas' identity theft protection laws, as set forth below; namely failing to protect and safeguard from unlawful use or disclosure consumers' personal identifying or sensitive personal information

collected and maintained by DEFENDANTS in the regular course of business. Because these unlawful acts or practices expose DEFENDANTS' customers to the risk of identity theft, these proceedings are in the public interest.

5.2 More specifically, in 2005, the Texas Legislature amended section 35.48 of the Business and Commerce Code and also enacted the Identity Theft Enforcement and Protection Act to protect citizens from identity theft. In so doing, the legislature noted that identity theft is one of the fastest growing crimes in the country, and that Texas has one of the highest rates of identity theft in the United States.<sup>2</sup> Moreover, victims of identity theft spend an average of 600 hours over a two to four year period, as well as \$1,400 or more, trying to clear their names.<sup>3</sup> Identity theft also imposes a substantial cost on businesses. In 2002, the total cost of business losses due to identity theft in the United States was estimated at almost \$50 billion.<sup>4</sup> The Legislature specifically recognized "dumpster diving" for discarded business records as a significant means through which identity theft is committed.<sup>5</sup>

5.3 In addition, the State of Texas has reason to believe that DEFENDANTS have engaged in, and will continue to engage in the unlawful practices set forth below. Thus, the State of Texas has reason to believe that this action is in the public interest because DEFENDANTS have caused and will continue to cause injury, loss and damage which affect directly or indirectly the people of this State.

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<sup>2</sup> See Tex. C.S.H.B. 698, 79<sup>th</sup> Leg. R.S. (2005) (Committee Report Substituted), and Tex. S.B. 122, 79<sup>th</sup> Leg. R.S. (2005) (Committee Report Unamended).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See Tex. C.S.H.B. 698, 79<sup>th</sup> Leg. R.S. (2005) (Committee Report Substituted).

## **6. ACTS OF AGENTS**

6.1 Wherever in this Petition it is alleged that DEFENDANTS did any act or thing, it is meant that DEFENDANTS performed or participated in such acts or thing or that such acts were performed by the officers, agents, or employees of DEFENDANTS and in each instance, the officers, agents, or employees of said DEFENDANTS were then authorized to and did in fact, act on behalf of DEFENDANTS or otherwise acted under the guidance and direction of DEFENDANTS.

## **7. NATURE OF DEFENDANTS' OPERATION**

7.1 DEFENDANTS operate approximately sixty four health spas and family recreation centers in fifteen states. In Texas, DEFENDANTS own and operate eleven separate health spas in eight different counties, and are in the process of constructing three new health spas. At their web site, DEFENDANTS describe their facilities as including "...an expansive selection of premium amenities in a resort like setting..." where they offer a "...health and fitness experience with quality and value you can feel great about..."

## **8. FACTUAL ALLEGATIONS**

8.1 In the regular course of their business operations, DEFENDANTS collect large amounts of personal identifying and sensitive personal information.

8.2 At their website ([www.lifetimefitness.com](http://www.lifetimefitness.com)), DEFENDANTS represent to consumers that they have "implemented security policies, rules and technical measures to protect the personal data" from "improper use or disclosure" and "unlawful destruction or accidental loss." DEFENDANTS' web-based "Privacy Statement" goes on to represent that all of their employees who have access to personal data are obliged to respect the confidentiality of consumers' personal information. [See [http://www.lifetimefitness.com/security\\_and\\_privacy/](http://www.lifetimefitness.com/security_and_privacy/)]

8.3 DEFENDANTS also represent that they maintain internal review procedures in order to comply with the rules and regulations of consumer protection agencies, and they believe that they “are in substantial compliance with all applicable statutes, rules and decisions.”

8.4 In truth and in fact, DEFENDANTS fail to safeguard personal data. During the months of April, May, and June of 2007, more than one hundred of DEFENDANTS’ business records containing the personal identifying information and sensitive personal information of its customers were found in publicly accessible trash dumpsters adjacent to Life Time Fitness Centers in Texas, including Plano, Allen, Flower Mound, Colleyville, Dallas and Garland.

8.5 The records which DEFENDANTS dumped included documents that contained personal identifying and sensitive personal information such as names, dates of birth, drivers license numbers, credit card numbers and social security numbers. In some instances DEFENDANTS also threw photocopies of drivers licenses and social security cards into publicly accessible trash dumpsters.

8.6 Although the dumped business records bore personal identifying information and sensitive personal information that could be used to steal the identities of customers, DEFENDANTS failed to shred, erase, or otherwise make the information unreadable or undecipherable. Instead, these business records were placed in trash dumpsters that were readily accessible to the public.

8.7 Further, DEFENDANTS failed to disclose to their customers that they would not safeguard their personal identifying information and sensitive personal information, thus putting their customers in danger of becoming victims of identity theft.

## **9. VIOLATIONS OF IDENTITY THEFT PREVENTION LAWS**

9.1 Plaintiff hereby incorporates the preceding paragraphs 1 through 8 as if fully set out

herein and alleges that DEFENDANTS have engaged in actions in violation of the Texas Business and Commerce Code, including but not limited to the following:

- A. DEFENDANTS failed to properly dispose of business records containing the personal identifying information of customers of their business and more specifically, disposed of such records without modifying them, by shredding or erasing or other means, so as to make the personal identifying information unreadable or undecipherable. TEX. BUS. & COM. CODE ANN. §35.48(d);
- B. DEFENDANTS failed to implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect and safeguard from unlawful use or disclosure any sensitive personal information collected or maintained by DEFENDANTS in the regular course of business. TEX. BUS. & COM. CODE ANN. §48.102(a); and
- C. DEFENDANTS failed to destroy or arrange for the destruction of customer records containing sensitive personal information within their custody or control that were not retained by them, by: (1) shredding; (2) erasing; or (3) otherwise modifying the sensitive personal information in the records to make the information unreadable or undecipherable through any means. TEX. BUS. & COM. CODE ANN. §48.102(b).

## **10. VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT**

10.1 Plaintiff hereby incorporates the preceding paragraphs 1 through 9 as if fully set out herein and alleges that DEFENDANTS, in the course and conduct of trade and commerce, have directly and indirectly engaged in false, misleading and deceptive acts and practices declared to be

unlawful by the DTPA Sections 17.46(a) and (b), to wit:

- A. DEFENDANTS, as alleged and detailed above, have caused confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services. TEX. BUS. & COM. CODE ANN §§ 17.46 (a), (b)(2);
- B. 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. TEX. BUS. & COM. CODE ANN. §§ 17.46 (a), (b)(5);
- C. DEFENDANTS, as alleged and detailed above, have represented that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, when they are of another. TEX. BUS. & COM. CODE ANN §§ 17.46 (a), (b)(7);
- D. 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. TEX. BUS. & COM. CODE ANN. §§ 17.46 (a), (b)(12);
- E. DEFENDANTS failed to disclose information concerning goods or services which was known at the time of the transaction when failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed. TEX. BUS. & COM. CODE ANN. §§ 17.46 (a), (b)(24); and

F. 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 Section 402.403 of the HSA. TEX. OCC. CODE ANN. § 702.403.

## **11. VIOLATIONS OF THE TEXAS HEALTH SPA ACT**

11.1 Plaintiff hereby incorporates the preceding paragraphs 1 through 10 as if fully set out herein and further alleges that on November 9, 2006, DEFENDANTS' eleven separate health spa registrations expired and that DEFENDANTS failed to submit Health Spa Renewal Applications to the Secretary of State until May 23, 2007. Subsequently, on May 25, 2007, the Secretary of State issued new health spa certificates of registration for DEFENDANTS' eleven health spas. Therefore, during the period from November 9, 2006 through May 24, 2007, DEFENDANTS operated eleven unregistered health spas in Texas.

11.2 By operating the eleven health spas without certificates of registration for each location, DEFENDANTS violated the Texas Health Spa Act, including but not limited to, operating a health spa or offering for sale, or selling, memberships in a health spa without holding a health spa operator's certificate of registration, in violation of HSA § 702.101.

## **12. APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION**

12.1 Because DEFENDANTS have engaged in the unlawful acts and practices described above, DEFENDANTS have violated and will continue to violate the laws of the State of Texas as alleged in this Petition. Unless enjoined by this Honorable Court, DEFENDANTS will continue to violate the laws of the STATE OF TEXAS and cause irreparable injury, loss and damage to the people of this State. Therefore, Plaintiff requests a Temporary and Permanent Injunction.

### 13. PRAYER

13.1 WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that DEFENDANTS be cited according to law to appear and answer herein; that after due notice and hearing, a TEMPORARY INJUNCTION be issued; and that upon final hearing a PERMANENT INJUNCTION be issued restraining and enjoining DEFENDANTS, individually and by their officers, agents, servants, subsidiaries, and any person acting in concert or participation with any DEFENDANT, from engaging in the following practices:

- A. Using false, misleading, or deceptive representations to describe their privacy policies or the security measures used to safeguard personal identifying information and sensitive personal information;
- B. Disposing of business records containing personal identifying or sensitive personal information without first shredding, erasing, or by other means to make this information unreadable or undecipherable;
- C. Violating DEFENDANTS' duty to protect and safeguard personal identifying and sensitive personal information from unlawful use or disclosure by exposing such data to the risk of identity theft, including but not limited to: disposing of un-shredded records in a waste receptacle which is accessible to the public; allowing computer hard drives or electronic storage devices upon which DEFENDANTS store their data to be recycled without first physically destroying the hard drive or bulk storage device; or transmitting such data over telephone lines or satellite communication channels without first encrypting such data;

D. 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 holds a health spa operator's certificate of registration, as required by HSA § 702.101;

13.2 As an alternative to the relief requested in Paragraph 13.1B, Plaintiff requests that DEFENDANTS be ordered to dispose of business records containing personal identifying and sensitive personal information by contracting with a business that is engaged in the disposal of confidential business records.

13.3 Plaintiff, STATE OF TEXAS, further prays that DEFENDANTS be required to adopt, implement and maintain a comprehensive information security program that is fully documented and in writing, and which includes reasonable procedures to protect and safeguard from unlawful use, disposal, or disclosure any personal identifying or sensitive personal information collected or maintained by DEFENDANTS in the regular course of business.

13.4 Plaintiff further prays that, upon final hearing, this Court order DEFENDANTS to pay a civil penalty of \$500 for each business record that it failed to properly dispose of in accordance with section 35.48 of Texas Business and Commerce Code. TEX. BUS. & COM. CODE ANN. §35.48(f).

13.5 Plaintiff further prays that, upon final hearing, this Court order DEFENDANTS to pay a civil penalty of up to \$50,000 for each violation of the Identity Theft Enforcement and Protection Act. TEX. BUS. & COM. CODE ANN. § 48.201 (a).

13.6 Plaintiff further prays that, upon final hearing, this Court order DEFENDANTS to pay civil penalties of up to \$20,000.00 per violation of the DTPA to the STATE OF TEXAS. TEX.

BUS. & COM. CODE ANN. § 17.47 (c).

13.7 Plaintiff further prays that, upon final hearing, this Court order DEFENDANTS to pay civil penalties of \$1,000.00 per violation not to exceed a total of \$25,000.00 for violations of the HSA. TEX. OCC. CODE ANN. § 702.553.

13.8 Plaintiff further prays that, upon final hearing, this Court order DEFENDANTS to restore all money or other property taken by means of unlawful acts or practices, or in the alternative, award a judgment for damages to compensate for such losses. TEX. BUS. & COM. CODE ANN. §17.47(d).

13.9 Plaintiff further prays for prejudgment interest on all awards or restitution, damages, and civil penalties as provided by law.

13.10 Plaintiff further prays for reasonable attorney fees and costs as provided by the laws of the State of Texas. TEX. GOV'T CODE ANN. §402.006(c); TEX. BUS. & COM. CODE ANN. §§35.48(f), 48.201(e); TEX. OCC. CODE ANN. §702.551(b).

13.11 Plaintiff further prays that upon final hearing this Court grant all other relief to which the Plaintiff is entitled.

Respectfully submitted,

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