

**NO. GV403314**

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	§	
SCOT T R. THEERINGER,	§	
Defendants.	§	<u>345<sup>TH</sup></u> JUDICIAL DISTRICT

**FINAL DEFAULT JUDGMENT AND PERMANENT INJUNCTION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

On this day came on to be heard the above-entitled and numbered cause wherein THE STATE OF TEXAS is Plaintiff and 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, (collectively "Gold's" or "Defendants") are Defendants. Plaintiff alleged violations of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41 *et seq.* (Vernon 2002 and Supp. 2004) ("DTPA") and the Texas Health Spa Act, TEX. OCC. CODE ANN. § 702.001 *et seq.* (Vernon 2004) ("HSA"). The Plaintiff appeared in person by its attorney of record and announced ready for trial. The Defendants, although having been duly and legally cited to appear and answer, failed to appear and answer, and wholly made default.

Citation was served according to law and return of service was made to the clerk where it remained on file for the time required by law. Specifically, Defendants waived the formal service of process in accordance with TEX. R. CIV. P. 119 (See Exhibits A-1, A-2, A-3, and A-4). The Court has read the pleadings and the papers on file, and is of the opinion that the allegations of Plaintiff's

Petition have been admitted. Defendants do not serve in the United States military (See Exhibit B).

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that the material allegations of Plaintiff's Original Petition be and the same are deemed admitted as to Defendants, their officers, agents, servants, employees, attorneys, and representatives.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants, their officers, agents, servants, employees, and attorneys, and any other person in active concert or participation with Defendants shall be permanently enjoined from engaging in the following acts or practices:

1. 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;
2. 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;
3. 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;
4. Representing to consumers that Defendants have a \$20,000.00 security on file with the Texas Secretary of State when they do not; and

5. 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.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Court has relied upon good and sufficient evidence to support its findings (See Exhibits C-1 to C-5, and D), and that judgment is hereby entered against Defendants, jointly and severally, in the amount of **TWO HUNDRED FIFTEEN THOUSAND EIGHT HUNDRED FIFTY DOLLARS AND SIXTY FOUR CENTS (\$215,854.64)**, which shall be allocated as follows:

1. **ONE HUNDRED TWENTY NINE THOUSAND DOLLARS AND NO CENTS (\$129,000.00)** paid to the State as civil penalties for violations of the DTPA;
2. **TWENTY FIVE THOUSAND DOLLARS AND NO CENTS (\$25,000.00)** paid to the State as civil penalties for violations of the HSA;
3. **FIFTY EIGHT THOUSAND EIGHT HUNDRED THIRTEEN DOLLARS AND FOURTEEN CENTS (\$58,813.14)** as restitution to the consumers identified in Exhibit D. Plaintiff shall provide Defendants with a complete list, including contact information, of all individuals identified in Exhibit D, and Defendants shall make such restitution payments by certified check or money order directly to each consumer at the address provided by Plaintiff. These payments shall be made by Defendants on or before March 1, 2005.
4. **THREE THOUSAND THIRTY SEVEN DOLLARS AND FIFTY CENTS (\$3,037.50)** to the State as Plaintiff's attorney's fees and investigative costs (See Exhibit E). If this judgment is appealed to the Court of Appeals, reasonable attorney's fees for that appeal shall be **FIVE THOUSAND DOLLARS AND NO**

CENTS (\$5,000.00); and if this judgment is appealed from the Court of Appeals to the Texas Supreme Court, reasonable attorney's fees for that appeal shall be TWO THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$2,500.00).

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants shall pay refunds to any consumer who files a complaint with the Texas Attorney General or Texas Secretary of State which includes proof of payment and proof of membership, or any consumer who provides additional or supporting information for a complaint previously on file against Defendants, on or before August 9, 2005 and who has not already received a full refund pursuant to this judgment. Defendants shall make such refunds directly to the complaining consumer within two weeks of their receiving such complaint or information via certified check or money order.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants shall make payment of all amounts due herein to the Plaintiff State of Texas by delivery of a cashier's check or money order to the Office of the Attorney General, Consumer Protection Division, 300 West 15<sup>th</sup> Street, 9<sup>th</sup> Floor, William Clements Building, Austin, Texas 78701, on or before March 1, 2005. Such check or money order shall be made payable to the Office of the Attorney General bearing the case number 041998956.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that all costs of court incurred in this case are taxed against Defendants.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants pay pre-judgment and post-judgment interest on all awards of damages, at the maximum rate provided by law.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the State of Texas

have all writs and processes as may be necessary in the enforcement and collection of this judgment.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that all relief not expressly granted herein is denied.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_ 2005.

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JUDGE PRESIDING

**CERTIFICATE OF LAST KNOWN ADDRESS**

I hereby certify that the last known mailing address of Defendants Club Systems Inc., Fitness Forever, Inc., and Fitness Forever, IV, Inc. is 504 Scenic Place, Heath, Texas 75032.

I further certify that the last known mailing address of Defendant Scott R. Theeringer is 17860 Avenida De Sonoma, Apple Valley, California 92307.

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PAUL SINGER