

hearing can be held and a final judgment for restitution can be rendered. Such injury would be irreparable because continued violations of the DTPA may well cause more consumers to lose money through deceptive transactions. Given the likelihood of dissipation of Defendants' assets prior to rendition of a final judgment, the possibility of restitution for consumers will be remote unless an order freezing certain assets is granted.

1. **IT IS THEREFORE ORDERED** that Defendants, **EXTREME FITNESS AND WELLNESS, INC., SHON ZACHARY PEREZ and DESIREE MASTERS PEREZ**, their officers, agents, servants, employees, attorneys and any other persons in active concert or participation with them, and all financial institutions such as **Plains Capital Bank¹, Advancial Credit Union², Wells Fargo, HSBC Auto Finance, Prime West Mortgage, Navy Federal Credit Union**, holding money or assets of any kind in the name and/or for the benefit of the above-named Defendants, who receive actual notice of this order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other devise, shall be restrained from engaging in the following acts or practices:

- a Transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing, dissipating, distributing, or allowing the transfer, removal, withdrawal or encumbering from any financial institution or from any other entity or location or from the jurisdiction of this Court, any money, cash, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal or

¹ *Known* accounts at Plains Capital Bank subject to this order include, but are not limited to accounts ending in numbers: 0748; 1664; 4198; 1730; 0605.

² *Known* accounts at Advancial Credit Union subject to this order include, but are not limited to account ending in number: 432.

mixed, wherever situated, belonging to or owned by, in possession or custody of, standing in the name of, or claimed by Defendants without further order of this Court;

b. Opening or causing to be opened any safe deposit boxes or storage facilities titled in the name of Defendants or subject to access, ownership or control by Defendants, without providing Plaintiff and the Court prior notice by motion seeking such access.

2. **IT IS ALSO ORDERED** that Defendants, **EXTREME FITNESS AND WELLNESS, INC., SHON ZACHARY PEREZ and DESIREE MASTERS PEREZ**, their officers, agents, servants, employees, attorneys and any other persons in active concert or participation with them, are prohibited from transferring, spending, encumbering, withdrawing, or removing any sum of money from any accounts, assets or property referenced in paragraph 1 of this Order or from any other such account(s) and assets where monies or proceeds from **EXTREME FITNESS AND WELLNESS, INC., SHON ZACHARY PEREZ and DESIREE MASTERS PEREZ** have been used, placed, deposited, transferred, invested or commingled.

3. **IT IS ALSO ORDERED** that if any of the parties, persons, or entities referenced in this order agree in writing, through their authorized representatives or counsel, to specify that certain assets be or remain frozen and/or that certain assets be released from the asset freeze ordered herein, pending the completion of any scheduled Temporary Injunction hearing, then such parties or entities may do so. **It is ORDERED** that any bank, financial institution, person, or other entity holding funds in the name of or for the benefit of any party, person, or entity referenced in this order, shall comply with any written directive relating to the freezing or unfreezing of any bank account or asset referenced in this order, without further order of this court pending any scheduled Temporary

Injunction hearing, provided such written directive is signed by an Assistant Attorney General representing the State of Texas and an authorized representative or attorney of such Defendant, person or entity with custody or control of the bank account or asset involved.

4. **IT IS FURTHER ORDERED** that Defendants, **EXTREME FITNESS AND WELLNESS, INC., SHON ZACHARY PEREZ and DESIREE MASTERS PEREZ**, their officers, agents servants, employees, attorneys and any other persons in active concert or participation with them, who receive actual notice of this order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other devise, shall be restrained from engaging in the following acts or practices:

- a. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, or other written or computer generated materials relating to the business of Defendants currently or hereafter in Defendants' possession, custody or control except in response to further orders or subpoenas in this cause;
- b. Failing to obtain a health spa operator's certificate, as required by Health Spa Act §702.101;
- c. Failing to complete an application for a health spa operator's certification of registration with the Secretary of State in violation of §702.102 of the Health Spa Act;
- d. Failing to post a health spa operator's certificate of registration in a conspicuous place at each registered location, as required by Health Spa Act §702.105;
- e. Failing to submit to the comptroller, a copy of the operator's certificate of registration for application of a sales tax permit as required by Health Spa Act §702.107;
- f. Failing to secure a surety bond or posting security with the Texas Secretary of State, as

- required by Health Spa Act §702.151; and §702.153;
- g. Failing to comply with Health Spa Act §702.301 requirements in their membership contracts;
 - h. Failing to comply with the disclosure requirements as set forth in §702.302 of the Health Spa Act;
 - i. Failing to provide the required language in the membership contracts in violation of §702.304 of the Health Spa Act;
 - j. Failing to provide the statutory language in the membership contracts in violation of §702.305 of the Health Spa Act;
 - k. Failing to cancel the membership contracts for a full refund in violation of §702.307 of the Health Spa Act;
 - l. Selling or offering for sell, a membership in a health spa before the health spa opens without a certificate in violation §702.351 of the Health Spa Act;
 - m. Failing to deposit prepayments for a membership in an escrow account established with a financial institution insured by the Federal Deposit Insurance Corporation in violation of §702.352 of the Health Spa Act;
 - n. Failing to refund the escrowed prepayment in violation of §702.355 of the Health Spa Act;
 - o. Offering a special offer or discount to fewer than all prospective members in violation of §702.402 of the Health Spa Act;
 - p. Misrepresenting the availability, quality, or extent of the facilities or services of the health spa in violation of §702.402 of the Health Spa Act;

- q. Misrepresenting the period during which a special offer or discount will be available in violation of §702.402 of the Health Spa Act;
- r. Advertising in print or electronic medium without including in the advertisement the health spa operator's certificate of registration number in violation of §702.404 of the Health Spa Act.

5. **IT IS FURTHER ORDERED** that Defendants **EXTREME FITNESS AND WELLNESS, INC., SHON ZACHARY PEREZ and DESIREE MASTERS PEREZ**, advise any financial or brokerage institution, escrow agent, title company, storage facility, commodity trading company, business entity or person maintaining or having custody or control of any account or other asset of Defendants, to within five (5) business days of the date of service of this Order, provide to counsel for the Plaintiff and the Defendant/account holder a statement or letter setting forth:

- a. The identification of each account or asset titled in the name, individually or jointly, of Defendants, or held on behalf of, or for the benefit of, Defendants;
- b. The balance of each such account, or a description and estimated value of such assets, as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other assets was transferred or remitted; and
- c. The identification of any safe deposit box or storage facility that is in the name individually or jointly of Defendants or is otherwise subject to access or control by Defendants.

6. **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that, as used in this

Judgment, the following terms are defined as follows:

- a. "Consumer" means an individual, partnership, corporation, or entity of any kind, including this state, or a subdivision or agency of this state who seeks or acquires, by purchase or lease, any goods or services;
- b. "Defendant(s)" means **EXTREME FITNESS AND WELLNESS, INC., SHON ZACHARY PEREZ and DESIREE MASTERS PEREZ**, their successors, assigns, officers, agents, subcontractors, servants, employees, corporations and any other persons in active concert or participation with them;
- c. "Person" means an individual, sole proprietorship, firm, partnership, corporation, association, joint venture or other group, or business entity, however organized;
- d. "Representing", "selling", "marketing", "promoting", "distributing" or "advertising" means any type of contact with a person or entity for the purpose of requesting, persuading, or seeking any type of contribution, sponsorship, compensation, or anything of value from said person or entity for any reason whatsoever, including use of the Internet.

7. **IT IS FURTHER ORDERED** that Plaintiff shall be granted leave to take telephonic, video, written, and other depositions with a Request for Production of any party, person or witness prior to any scheduled temporary injunction hearing and prior to Defendants' answer date upon reasonable shortened notice to Defendants or their attorneys, if known.

8. **IT IS FURTHER ORDERED** that Defendants are to protect and safeguard from unlawful use or disclosure all records, whether electronic or hard copy, which Defendants have collected in the regular course of business or by other means, which contain personal identifying information

and sensitive personal information of consumers, as identified in TEX. BUS & COM. CODE ANN. §35.48 and §48.001, *et seq.*³

9. **IT IS FURTHER ORDERED** that Defendants in this cause be and hereby are commanded forthwith to comply with this Order from the date of entry until and to the fourteenth (14) day after entry or until further order of this Court, whichever is less.

10. The Clerk of the above-entitled Court shall forthwith issue an ex parte temporary restraining order in conformity with the law and the terms of this Order. This Order shall be effective without the execution and filing of a bond as Plaintiff, State of Texas is exempt from such bond under TEX. BUS. & COM. CODE ANN. §17.47(b).

11. Hearing on Plaintiff, State of Texas' Application for a Temporary Injunction is hereby set for the 4th day of September, 2008, at 9:00 o'clock A.M.

SIGNED this 25th day of August, 2008 at 10:20 o'clock, A m.



JUDGE PRESIDING

³ In 2005, the Texas Legislature enacted three Chapters 48. The chapter cited above was titled "Identity Theft Enforcement and Protection Act" by Tex. S.B. 122, 79th Leg. R.S. (2005).