

NO. _____

STATE OF TEXAS,

Plaintiff,

v.

CORNERSTONE FITNESS -
TEXAS LLC,

Defendant.

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IN THE DISTRICT COURT

HIDALGO COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION
AND APPLICATION FOR INJUNCTION**

COMES NOW THE STATE OF TEXAS, hereinafter referred to as plaintiff, acting by and through Attorney General of Texas GREG ABBOTT, complaining of CORNERSTONE FITNESS - TEXAS LLC, hereinafter referred to as defendant, and for cause of action would respectfully show:

DISCOVERY CONTROL PLAN

1. Discovery in this case should be conducted under Level 2 pursuant to TEX. R. CIV. P. 190.3.

JURISDICTION

2. The Attorney General, 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 defendant for violations of the Texas Identify Theft Enforcement and Protection Act, Chapter 48¹ of the TEX. BUS. & COM. CODE ANN. § 48.001, *et seq.* (hereinafter "ITEPA").

¹ 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).

DEFENDANT

3. Defendant CORNERSTONE FITNESS - TEXAS LLC is a Domestic Limited Liability Company that is registered with the Texas Secretary of State pursuant to the laws of Texas, is doing business in Texas as alleged specifically below, and may be served with process by serving its registered agent, CT Corporation System, at 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201.

VENUE

4. Venue of this suit lies in Hidalgo County, Texas, for the following reasons:
- a. Under TEX. BUS. & COM. CODE ANN. § 48.201(c)(1), venue is proper in Hidalgo County because it is the county in which the violations occurred;
 - b. Under TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(a)(1), venue is proper in Hidalgo County because it is the county in which a substantial part of the events or omissions occurred giving rise to the claim.

PUBLIC INTEREST

5. Plaintiff, STATE OF TEXAS, has reason to believe that defendant is engaging in, has engaged in, or is about to engage in acts and practices, which violate Texas identity theft prevention laws, as set forth below, namely failing to protect and safeguard from unlawful use or disclosure personal identifying information and/or sensitive personal information collected or maintained by defendant in the regular course of business. Because these unlawful practices expose defendant's clients to the risk of identity theft, the Consumer Protection and Public Health Division of the Office of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

6. The Texas Legislature in 2005 amended Section 35.48 and enacted the Identity Theft Enforcement and Protection Act to protect this public interest, noting that identity theft is one of the fastest growing crimes in the country, and Texas has one of the highest rates of identity theft in the United States.² 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.³ Identity theft also imposes a substantial cost on businesses - in 2002 the total cost to businesses in the United States was estimated at almost \$50 billion.⁴ The Legislature specifically recognized “dumpster diving” for discarded business records as a significant means through which identity theft is committed.⁵

ACTS OF AGENTS

7. Whenever in this petition it is alleged that defendant did any act, it is meant that defendant performed or participated in the act, or that the officers, agents or employees of defendant performed or participated in the act on behalf of and under the authority of defendant.

STATEMENT OF FACTS

8. Defendant, Cornerstone Fitness - Texas LLC, owns and operates fitness facilities in Hidalgo County, Texas, including one that formerly did business as Cornerstone Fitness Center for Women, located at 5423 South McColl, Edinburg, Texas 78539. In the regular course of its business, defendant provided fitness sessions to clients who purchased its personal training services for a fee

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

³*Id.*

⁴*Id.*

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

pursuant to a "Personal Training Service Contract."

9. The Personal Training Service Contract ("Contract") is a legally binding instrument and contains the terms and conditions of the Contract, including the client's promise to pay the fee, the payment schedule, and the method of payment. The Contract contains blank spaces for the client to supply his/her full name, address, social security number, and date of birth. The Contract also contains an "EFT [Electronic Fund Transfer] Request Form" by which the client authorizes his/her financial institution or credit card company to make monthly payments directly to defendant and to debit the indicated accounts for each such automatic payment. On the EFT Request Form, the client may indicate a checking account from which s/he authorizes automatic payment by providing the checking account number and attaching a void check. The client may also indicate a credit card account from which s/he authorizes automatic payment by providing the VISA or MasterCard account number along with the expiration date.

10. Defendant maintains completed Contracts, signed by clients, in its possession, custody, and control and has kept all of them, as part of its business records, since the inception of its business. In a large number of these Contracts, defendant has collected the sensitive personal information (i.e., the individual's first and last name in combination with: i. social security number; or ii. account number or credit card number together with expiration date) of its clients.

11. Although the Contracts contain sensitive personal information that could be used to steal the identities of individuals or to permit access to an individual's financial account, defendant failed to implement and maintain reasonable procedures to protect and safeguard from unlawful use or disclosure any sensitive personal information collected or maintained by defendant in the regular

course of business. As a consequence of defendant's failure to protect and safeguard such information, approximately twenty-eight of its Contracts, containing sensitive personal information and pertaining to its Fitness Center for Women in Edinburg, were found in a trash dumpster that was readily accessible to the public.

BUSINESS & COMMERCE CODE VIOLATIONS

12. Defendant, as alleged above, failed to implement and maintain reasonable procedures to protect and safeguard from unlawful use or disclosure any sensitive personal information that it collected or maintained in the regular course of business, in violation of TEX. BUS. & COM. CODE ANN. § 48.102(a).

PRAYER

13. WHEREFORE, plaintiff prays that defendant be cited according to law to appear and answer herein; and upon trial of this cause a PERMANENT INJUNCTION be issued, commanding and ordering defendant to adopt, implement, and maintain a comprehensive information security program that is fully documented and in writing and that protects and safeguards from unlawful use, disposal, or disclosure any personal identifying information and the sensitive personal information collected, maintained, or accessible by defendant and its employees in the regular course of business.

14. WHEREFORE, the STATE OF TEXAS, respectfully prays that this Court will:

- a. Adjudge civil penalties in favor of plaintiff STATE OF TEXAS of at least \$2,000 but not more than \$50,000 for each violation of the Texas Identity Theft Enforcement and Protection Act, pursuant to TEX. BUS. & COM. CODE ANN. § 48.201(a); and
- b. Adjudge reasonable attorney's fees, court costs, and investigatory costs pursuant to

TEX. BUS. & COM. CODE ANN. § 48.201(e) and TEX. GOV'T CODE ANN. § 402.006(c).

15. Further, plaintiff, STATE OF TEXAS, respectfully prays for all other relief to which plaintiff, STATE OF TEXAS, may be justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

JEFF L. ROSE
Deputy First Assistant Attorney General

PAUL D. CARMONA
Chief, Consumer Protection and
Public Health Division



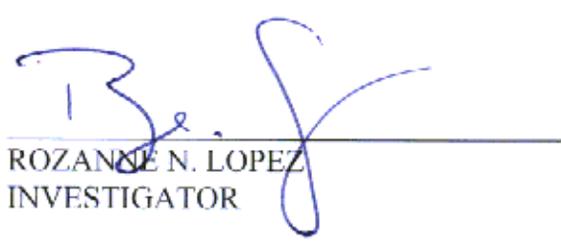
RIC MADRIGAL
Assistant Attorney General
State Bar No. 12802200
Office of the Attorney General
Consumer Protection and
Public Health Division
3201 N. McColl, Suite B
McAllen, TX 78501
(956) 682-4547; Fax (956) 682-1957
Attorney for Plaintiff

VERIFICATION

STATE OF TEXAS §

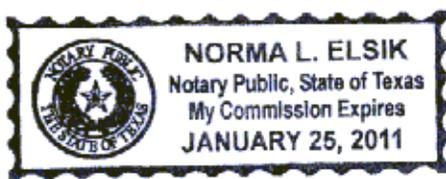
COUNTY OF HIDALGO §

BEFORE ME, the undersigned authority, on this day personally appeared affiant Rozanne N. Lopez, who proved to me through current Texas Driver License to be the person whose name is subscribed to this Verification and who acknowledged to me that she executed the same, and after she was duly sworn, upon her oath, she deposed and said that the affiant is an investigator for the Office of Attorney General, and is authorized to make this affidavit, that the affiant has carefully read the Statement of Facts in the foregoing PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR INJUNCTION, and has reason to believe, based on information and belief, that each and all said factual allegations are true and correct; and affiant signs this Verification, pursuant to Rule 682 of the TEXAS RULES OF CIVIL PROCEDURE.


ROZANNE N. LOPEZ
INVESTIGATOR

SUBSCRIBED AND SWORN TO before me on the 18th day of February, 2009.


NOTARY PUBLIC IN AND
FOR THE STATE OF TEXAS



Notary without Bond