

waived; that the terms of this Judgment are sufficiently detailed and specific to be enforceable by the Court in conformance with Tex.R.Civ.P. 683; that this Judgment represents a compromise and settlement of all matters arising out of facts alleged by the STATE OF TEXAS in this cause.

Pursuant to the agreement, the parties submit to jurisdiction of the Court and do not contest the entry of this Judgment.

It appearing to the Court that all parties agree to the entry of this Judgment and that they have approved its entry by their duly authorized signatures and the signatures of their respective attorneys below, the Court, upon the stipulation of the parties and after being fully advised in this matter, the Court makes these Findings of Fact as follows:

- a. That it has jurisdiction over the parties and subject matter of this lawsuit;
- b. That the settlement of this dispute is fair, reasonable and just;
- c. That it would be in the best interest of the parties if the Court approved the settlement and rendered judgment accordingly;
- d. That Defendants advertised memberships in a health spa located at 5004 Frankford Avenue, Lubbock, Texas;
- e. That Defendant made representations to consumers that they had a certificate of registration with the State of Texas to operate a health spa;
- f. That Defendants charged consumers a \$25. fee to enroll in their health spa;
- g. That Defendants required consumers to sign a membership contract;
- h. That Defendants stated that consumers could cancel the contract at any time and receive a full refund;
- i. That Defendants failed to secure a surety bond or post security with the Texas

Secretary of State;

- j. That Defendants used membership contracts for a health spa which were not in compliance with the laws of the State of Texas;
- k. That Defendants offered to consumers special offers or discounts to fewer than all prospective members;
- l. That Defendants misrepresented the availability, quality or extent of the facilities or services of Defendants' health spa;
- m. That Defendants misrepresented the period during which a special offer or discount would be available;
- n. The Defendants advertised in print and/or electronic medium without including in the advertisement the health spa operator's certificate or registration number;
- o. That Defendants cause confusion or misunderstanding to consumers as to a health spa's certification by the State of Texas;
- p. That Defendants failed to disclose that Defendants had not purchased the advertised exercise equipment and/or had the money/financing to purchase/lease the equipment, which was known at the time the consumer purchased memberships;
- q. That Defendants used membership dues and fees collected for the operation of the health spa on personal items;
- r. That Defendants represented that the membership price of \$9.95 per month was limited to the first 100 people;
- s. That consumers suffered damages, including monetary damages as a result of Defendants' misrepresentations and unlawful business practices;

Based upon these Findings of Fact, and having heard and considered the representations made by the parties, the Court is of the opinion that a permanent injunction should be issued as granted in this Judgment and the Plaintiff, STATE OF TEXAS is entitled to recover of and from Defendants, jointly and severally as set forth below.

DEFINITIONS

IT IS ORDERED that, as used in this Judgment, the following terms are defined as follows:

- a. “Consumer” means a individual, partnership, corporation, or entity of any kind, including this State, or a subdivision or agency of this State who seeks or acquired, by purchase or lease, any goods or services.
- b. “Defendants” 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 person 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.
- e. “Health spa” means a business that offers for sale, or sells, memberships that provide the members instruction in or the use of facilities for physical exercise program as

described in TEX. OCC. CODE ANN. §702.003.

f. “Health Spa Act” refers to the TEX. OCC. CODE §702.001, *et. seq.*

g. “DTPA” refers to the TEX. BUS. & COMM. CODE §17.41, *et. seq.*

INJUNCTIVE RELIEF

IT IS ORDERED that Defendants, **EXTREME FITNESS AND WELLNESS, INC., SHON ZACHARY PEREZ and DESIREE MASTERS PEREZ**, their agents, servants, employees, relatives, attorneys, and any other person acting in concert or participation with Defendants, are hereby enjoined from, restrained from, engaging in, or attempting to engage in, the following:

- a. Selling or offering for sell, a membership in a health spa before the health spa opens without a health spa operators’ certificate from the State of Texas;
- b. Failing to deposit prepayments dues and fees for a membership in a health spa into an escrow account established with a financial institution insured by the Federal Deposit Insurance Corporation;
- c. Operating an health spa without a health spa operator’s certificate;
- d. Failing to submit to the comptroller, a copy of the operator’s certificate of registration for application of a sales tax permit;
- e. Failing to secure a surety bond or posting security with the Texas Secretary of State;
- f. Using membership contract for a health spa which are not in compliance with the laws of the State of Texas;
- g. Failing to cancel the membership contracts and refunding all fees and dues when the health spa fails to open;

- h. Offering a special offer or discount to fewer than all prospective members;
- i. Misrepresenting the availability, quality, or extent of the facilities or services of Defendants' health spa;
- j. Misrepresenting the period during which a special offer or discount would be available;
- k. Advertising in print or electronic medium without including in the advertisement the health spa operator's certificate of registration number;
- l. Causing confusion or misunderstanding as to a health spa's certification by the State of Texas;
- m. Misrepresenting, by implication, that Defendants have the approval of a health spa registered by the Texas Secretary of State, when they do not;
- n. Misrepresenting, that the services of the health spa were of a particular standard, when they were of another;
- o. Misrepresenting to consumers a membership to a health spa with "NO MONEY DOWN" but requiring an "enrollment fee" of \$25;
- p. Misrepresenting to consumers there is "NO CONTRACT" but requiring consumers to sign a "membership agreement";
- q. Failing to disclose that Defendants have not purchased the exercise equipment and/or had the money/financing to purchase/lease the equipment, which was know at the time the time the consumers purchased memberships;
- r. Misrepresenting to consumers that the membership contracts could be cancelled at any time and consumers would receive full refunds, when they could not;

- s. Spending membership dues and fees on personal items;
- t. Misrepresenting that Defendant's health spa had approval, sponsorship, status, affiliation or connection, which they did not have;
- u. Misrepresenting that the membership price of \$9.95 per month was limited to the first 100 people, when it was not;

**RESTITUTION, CIVIL PENALTIES,
ATTORNEY FEES & INVESTIGATIVE COSTS**

The Court is of the opinion that the STATE OF TEXAS is entitled to recover restitution, civil penalties, reasonable attorney fees and investigative costs from **EXTREME FITNESS AND WELLNESS, INC, SHON ZACHARY PEREZ and DESIREE MASTERS PEREZ**, jointly and severally.

IT IS THEREFORE ORDERED that the STATE OF TEXAS have judgement and recover from Defendants, **EXTREME FITNESS AND WELLNESS, INC., SHON ZACHARY PEREZ and DESIREE MASTERS PEREZ**, jointly and severally, the sum of **FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00)** for civil penalties, together with post-judgement interest on the total sum at the annual rate of 10% to or for the benefit of the STATE OF TEXAS, a governmental unit, which is not compensation for any actual or pecuniary loss. Plaintiff and Defendants have entered into a separate agreement whereby a portion of the civil penalties will be reduced if Defendants successfully comply with the payment plan for attorney fees, investigative costs and expenses.

IT IS FURTHER ORDERED that the STATE OF TEXAS have judgement and recover from Defendants, **EXTREME FITNESS AND WELLNESS, INC, SHON ZACHARY PEREZ**

and DESIREE MASTERS PEREZ, jointly and severally, the sum of **FORTY THOUSAND SEVEN HUNDRED TWO DOLLARS AND 07/100 (\$40,702.07)** for payment of restitution to consumers who paid money to the Defendants for their unlawful health spa services as identified in “Attachment A” to this judgement. The STATE OF TEXAS is ordered to remit restitution to Texas consumers identified in “Attachment A”. The amount of restitution to be paid to such Texas consumers shall equal to the amount of money each consumer paid as outlined in “Attachment A”. In the event there remains undistributed restitution, which is collected by the Plaintiff, then and in that event, said undistributed restitution monies shall be placed in the State Comptroller’s Unclaimed Property Fund.

IT IS FURTHER ORDERED that the STATE OF TEXAS have judgment and recover from Defendants, **EXTREME FITNESS AND WELLNESS, INC., SHON ZACHARY PEREZ and DESIREE MASTERS PEREZ**, jointly and severally the sum of **TWENTY FIVE THOUSAND DOLLARS AND NO/100 (\$25,000.00)** for reasonable attorney fees, investigative costs and expenses.

IT IS FURTHER ORDERED, Defendants **EXTREME FITNESS AND WELLNESS, INC., SHON ZACHARY PEREZ and DESIREE MASTERS PEREZ** shall pay and deliver all portions of this judgement to the Plaintiff, STATE OF TEXAS by delivery of a cashier’s check or money order to the attention of Sharon B. Shaw, Office of the Attorney General, Consumer Protection & Public Health Division, 4630 50th Street, Suite 500, Lubbock, Texas, 79414. Such cashier check or money order shall bear the reference number **AG No. 082506429**.

IT IS FURTHER ORDERED that Plaintiff shall have all writs of execution and other process necessary to enforce this judgement. Defendants by their signatures below, hereby

acknowledge notice of this Judgment and Permanent Injunction and acceptance of same; therefore, no injunctive writ need be issued. The State of Texas may enforce the Permanent Injunction through any procedure or process available under the laws of the State of Texas.

IT IS FURTHER ORDERED that all fines, penalties, or forfeitures payable to and for the benefit of the STATE OF TEXAS are not dischargeable under bankruptcy pursuant to 11 U.S.C. §523 (a)(7).

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 personal information of consumers, as identified in TEX BUS & COM. CODE ANN §35.48 and §48.001, *et. seq.*¹

IT IS FURTHER ORDERED that cost of Court expended or incurred in this case shall be paid by the Defendants. All other relief requested in this case and not expressly granted is denied.

SIGNED this _____ day of _____, 2009.

HONORABLE RUBEN G. REYES

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

APPROVED FOR ENTRY:

By: _____ Date _____
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Shon Zachary Perez and
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By: _____ Date _____
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Attorney For Defendants
Desiree Masters Perez

Shon Zachary Perez, Individually & As Officer of Defendant Extreme Fitness and Wellness, Inc. Date

Desiree Masters Perez, Individually & As Officer of Defendant Extreme Fitness and Wellness, Inc. Date

