

FILED

STATE OF NORTH CAROLINA )

IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE )

2012 MAY 21 11:51 AM SUPERIOR COURT DIVISION

09 CVS 010199

STATE OF NORTH CAROLINA *ex rel.*  
ROY COOPER, Attorney General,

WAKE COUNTY, O.S.C.

Plaintiff,

CONSENT JUDGMENT

v.

JEFFREY R. STEC, INDIVIDUALLY;  
FITNESS MANAGEMENT GROUP, INC;  
PEAK FITNESS, LLC; PEAK FITNESS  
15501, LLC; PEAK FITNESS APEX, LLC;  
PEAK FITNESS CLAYTON, LLC; PEAK  
FITNESS CLEMMONS, LLC; PEAK  
FITNESS CREEDMOOR, LLC; PEAK  
FITNESS DURALEIGH, LLC; PEAK  
FITNESS FUQUAY VARINA, LLC; PEAK  
FITNESS GARNER, LLC; PEAK  
FITNESS II, LLC; PEAK FITNESS III,  
LLC; PEAK FITNESS JONESTOWN,  
LLC; PEAK FITNESS KNIGHTDALE,  
LLC; PEAK FITNESS LAKE NORMAN,  
LLC; PEAK FITNESS MAYNARD, LLC;  
PEAK FITNESS MOREHEAD, LLC;  
PEAK FITNESS PINEVILLE, LLC; PEAK  
FITNESS STATESVILLE, LLC; PEAK  
FITNESS STEELE CREEK, LLC; PEAK  
FITNESS V, LLC; PEAK FITNESS WS,  
LLC; PEAK FITNESS YADKINVILLE,  
LLC; PEAK CAPITAL HOLDINGS, LLC;  
PEAK FITNESS CEDAR RIDGE, LLC;  
PEAK MILL HOLDINGS, LLC.,

Defendants.

THIS CAUSE came on to be heard and was heard before the undersigned Wake County Superior Court Judge for entry of a Consent Judgment as to defendants Fitness Management

Group, Inc., Peak Fitness, LLC; Peak Fitness 15501, LLC; Peak Fitness Apex, LLC; Peak Fitness Clayton, LLC; Peak Fitness Clemmons, LLC; Peak Fitness Creedmoor, LLC; Peak Fitness Duraleigh, LLC; Peak Fitness Fuquay Varina, LLC; Peak Fitness Garner, LLC; Peak Fitness II, LLC; Peak Fitness III, LLC; Peak Fitness Jonestown, LLC; Peak Fitness Knightdale, LLC; Peak Fitness Lake Norman, LLC; Peak Fitness Maynard, LLC; Peak Fitness Morehead, LLC; Peak Fitness Pineville, LLC; Peak Fitness Statesville, LLC; Peak Fitness Steele Creek, LLC; Peak Fitness V, LLC; Peak Fitness WS, LLC; Peak Fitness Yadkinville, LLC; Peak Capital Holdings, LLC; Peak Fitness Cedar Ridge, LLC; and Peak Mill Holdings, LLC (collectively referred to as “Peak Defendants”); and Jeffrey R. Stec ( “defendant Stec”). The Court finds that plaintiff (“the State”) and these defendants have resolved the matters in controversy between them and have consented to the terms of this Consent Judgment. The Court, with consent of the parties, makes the following:

#### FINDINGS OF FACT

1. Plaintiff State of North Carolina is acting through its Attorney General, Roy Cooper, pursuant to authority granted in Chapters 75 and 114 of the North Carolina General Statutes to protect the consuming public from unlawful business practices.

2. Defendant Stec is a resident of North Carolina. At all times relevant to this action, defendant Stec managed the business operations of all of the Peak Defendants, including the day-to-day business operations of the Peak Fitness health clubs. Defendant Stec was the organizer, president, and manager of Fitness Management Group Inc. (“Fitness Management Group”) and Peak Capital Holdings and was the president and manager of Peak Mill Holdings.

3. Defendants Peak Mill Holdings and Peak Capital Holdings were North Carolina limited liability companies that, at all times relevant to this action, did business as Peak Fitness health clubs in North Carolina and dissolved on or about August 26, 2010.

4. The remaining Peak Defendants were North Carolina limited liability companies that, at all times relevant to this action, did business as Peak Fitness health clubs in North Carolina and merged into Fitness Management Group on or about July 1, 2009.

5. Fitness Management Group was a North Carolina for-profit corporation that dissolved on or about August 13, 2010.

6. The State alleges that defendant Stec and the Peak Defendants engaged in unfair and deceptive commercial practices in the operation of their health clubs including the following:

(a) selling prepaid entertainment contracts without having obtained a bond sufficient to cover all outstanding liabilities at each of defendants' health clubs in violation of N.C.G.S. § 66-124 (1);

(b) submitting sworn statements to plaintiff that understated the outstanding liability of defendants' health clubs by more than two million dollars (\$2,000,000) in violation of N.C.G.S. § 66-124 (2); and

(c) failing to file sworn statements of outstanding liability at two of defendants' health clubs in violation of N.C.G.S. § 66-124 (2).

7. Defendants' actions in connection to the practices set out above were in and affecting commerce in North Carolina.

8. Defendants deny all of plaintiff's allegations in paragraph 6 but desire to resolve this controversy without further proceedings and agree to the entry of this Consent judgment.

9. Defendant Stec further warrants that he is fully authorized to enter into this Consent Judgment and to legally bind himself and all other defendants to all of the terms, conditions, and injunctions of this Consent Judgment.

#### CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and the subject matter of this action.
2. Entry of this Consent Judgment is just and proper and in the public interest.
3. Plaintiff's Complaint states a cause of action against defendants upon which relief may be granted, and the Court finds good and sufficient cause to adopt this agreement of the parties and these findings of fact and conclusions of law as its determination of their respective rights and obligations and for entry of this Consent Judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. For twelve (12) years after the entry of this Consent Judgment defendant Stec, the Peak Defendants, and their principals, directors, agents, officers, employees, subsidiaries, corporate successors or assigns, or persons acting in concert with them are enjoined and restrained from engaging in the ownership, operation, management, or employment in any company in North Carolina offering health or athletic club services as described in N.C.G.S. § 66-118(c) and that after the twelve (12) year period, if defendant Stec decides to participate in any manner in the health or athletic club industry in North Carolina, he shall give written notice to the Consumer Protection Division of the North Carolina Attorney General's Office at P.O. Box 629, Raleigh, NC 27602 at least sixty (60) days prior to the time he begins his participation.
2. Defendant Stec and the Peak Defendants shall jointly and severally pay the State two million dollars (\$2,000,000) in civil penalties. However, payment of this civil penalty is

suspended as long as defendant Stec and the Peak Defendants are in full compliance with the terms of this Consent Judgment. If, at any time, defendant Stec or the Peak Defendants violate the terms of this Consent Judgment, this penalty shall be immediately due to the State without further order of this Court.

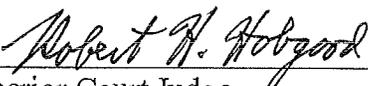
3. Nothing in this Consent Judgment shall in any way preclude any investigation or enforcement under any legal authority granted to the State for activities not subject to this action.

4. Nothing in this Consent Judgment shall be deemed approval by the State of defendant Stec and the Peak Defendants' business practices, including approval of the validity of membership contracts sold in defendants' health clubs, nor shall it in any way preclude the State from bringing any claim against the purchasers or subsequent purchasers of defendants' health club membership contracts.

5. This Consent Judgment shall not bind any other offices, boards, commissions, or agencies of the State of North Carolina.

6. The Court retains jurisdiction over this action to take any further action deemed necessary to enforce this Consent Judgment and to award the State judgement for any costs, including attorney's fees, it incurs in the event of noncompliance by any of the defendants.

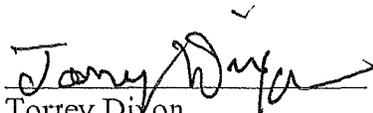
IT IS SO ORDERED this the 21<sup>st</sup> day of May, 2012.

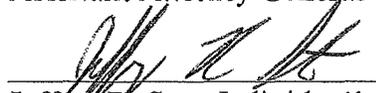
  
\_\_\_\_\_  
Superior Court Judge

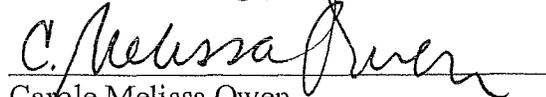
CONSENTED TO:

STATE OF NORTH CAROLINA,  
ex rel. ROY COOPER  
Attorney General

BY:

  
\_\_\_\_\_  
Torrey Dixon  
Assistant Attorney General

  
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Jeffrey R. Stec, Individually and on behalf of  
Fitness Management Group, Inc., Peak  
Fitness, LLC; Peak Fitness 15501, LLC; Peak  
Fitness Apex, LLC; Peak Fitness Clayton,  
LLC; Peak Fitness Clemmons, LLC; Peak  
Fitness Creedmoor, LLC; Peak Fitness  
Duraleigh, LLC; Peak Fitness Fuquay Varina,  
LLC; Peak Fitness Garner, LLC; Peak Fitness  
II, LLC; Peak Fitness III, LLC; Peak Fitness  
Jonestown, LLC; Peak Fitness Knightdale,  
LLC; Peak Fitness Lake Norman, LLC; Peak  
Fitness Maynard, LLC; Peak Fitness  
Morehead, LLC; Peak Fitness Pineville, LLC;  
Peak Fitness Statesville, LLC; Peak Fitness  
Steele Creek, LLC; Peak Fitness V, LLC;  
Peak Fitness WS, LLC; Peak Fitness  
Yadkinville, LLC; Peak Capital Holdings,  
LLC; Peak Fitness Cedar Ridge, LLC; and  
Peak Mill Holdings, LLC

  
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Carole Melissa Owen  
Attorney for Defendant