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ATTORNEY GENERAL OF NEW JERSEY
Division of Law
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Attorney for Division of Consumer Affairs

STATE OF NEW JERSEY
JAN - 4 2010
Division of Consumer Affairs

By: Gina M. Betts
Deputy Attorney General
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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

In the Matter of

G & J FITNESS ENTERPRISES d/b/a
BALANCE FITNESS, JOHN ARBANO,
AND GLEN R. FOULKE, individually and
as owners, officers, directors, shareholders,
founders, managers, agents, servants,
employees, representatives and/or
independent contractors of G & J FITNESS
ENTERPRISES d/b/a BALANCE
FITNESS,

Respondents.

ABARNO JPA

Administrative Action

CONSENT ORDER

WHEREAS this matter having been opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection ("Division"), as an investigation to ascertain whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), the Health Club Provisions of the CFA, N.J.S.A. 56:8-39 et seq. ("Health Club Provisions"), and the Regulations Governing Sellers of Health Club Services, N.J.A.C. 13:45A-25.1 et seq. ("Health Club Regulations"), have been or are being committed by G & J Fitness Enterprises d/b/a Balance Fitness, a New Jersey corporation with its principal place of business located at ~~1233 Pleasure~~

~~Avenue, Ocean City, New Jersey 08226-3417, and John Arbaro (Co - Owner), and Glen R. Foulke~~
~~Seaville,~~

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(Co - Owner), individually and as owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of G & J Fitness Enterprises d/b/a Balance Fitness, (collectively, "Respondents"), (hereinafter referred to as the "Investigation"); and

WHEREAS the Division and Respondents (collectively, the "Parties") have reached an amicable agreement thereby resolving the issues in controversy and concluding this matter without the need for further action, and Respondents having voluntarily cooperated with the Investigation and consented to the entry of the within order ("Consent Order") and for good cause shown,

IT IS on this 4th day of January, ~~2009~~ 2010 **ORDERED AND AGREED**
as follows:

1. EFFECTIVE DATE

1.1 This Consent Order shall be effective on the date that it is filed with the Division ("Effective Date").

2. DEFINITIONS

As used in this Consent Order, the following words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Order:

2.1 "Attorney General" shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

2.2 "Consumer" shall refer to any Person who is offered Merchandise for Sale.

2.3 "Director" shall be defined in accordance with N.J.S.A. 56:8-39(a).

2.4 “Health Club” shall be defined in accordance with N.J.S.A. 56:8-39(b). For purposes of the Health Club Regulations, “Health Club” shall be defined in accordance with N.J.A.C. 13:45A-25.1(a).

2.5 “Health Club Services” shall be defined in accordance with N.J.S.A. 56:8-39(c).

2.6 “Health Club Services Contract” shall be defined in accordance with N.J.S.A. 56:8-39 (d).

2.7 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c) and includes, but is not limited to, Health Club Services and Health Club Services Contracts.

2.8 “Person” shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.9 “Sale” shall be defined in accordance with N.J.S.A. 56:8-1(e).

2.10 “State” means the State of New Jersey.

3. BUSINESS PRACTICES AND INJUNCTIVE RELIEF

3.1 Respondents shall not engage in any unfair acts or deceptive practices in the conduct of their business in the State and shall comply with all applicable State and/or Federal laws, rules and regulations, as now constituted or as may hereafter be amended, including, but not limited to, the CFA, the Health Club Provisions and the Health Club Regulations.

3.2 Respondents shall not sell or offer for Sale Health Club Services in the State without first registering with the Director, in accordance with N.J.S.A. 56:8-40.

3.3 Respondents shall not sell or offer for Sale Health Club Services in the State without first paying to the Director the registration fee required by N.J.A.C. 13:45A-25.2(b).

3.4 Respondents shall not sell or offer for Sale Health Club Services in excess of three (3) months and require or collect in excess of three (3) months’ payment in advance without

maintaining a bond, an irrevocable letter of credit or other security acceptable to the Director, as required by N.J.S.A. 56:8-41(a).

3.5 Respondents shall file a copy of the bond and a certificate by a surety that a surety will notify the Director within ten (10) days in advance of the date of any cancellation or material change in the bond, in accordance with N.J.S.A. 56:8-41(a).

3.6 Respondents shall Clearly and Conspicuously set forth on the first page of its Health Club Services Contract, the Consumer's total payment obligation for Health Club Services to be received pursuant to the contract, as required by N.J.S.A. 56:8-42(b).

3.7 If Respondents maintain a bond or other acceptable security in accordance with N.J.S.A. 56:8-41(a), they shall set forth in each and every Health Club Services Contract that a bond or other acceptable security is filed or deposited with the Director to protect a Consumer purchasing such contracts, as required by N.J.S.A. 56:8-42(c),

3.8 Respondents shall include in any Health Club Services Contract the disclosure required by N.J.S.A. 56:8-42 including, but not limited to, the "Notice to Consumer" required by N.J.S.A. 56:8-42(e).

3.9 Respondents shall include in any Health Club Services Contract the disclosure that a Consumer may cancel the contract due to the Consumer's death or disability, as required by N.J.S.A. 56:8-42(f).

3.10 Respondents shall include in any Health Club Services Contract the disclosure that if a Health Club operated by Respondents is closed for more than thirty (30) days through no fault of the Consumer who purchased the Health Club Services Contract, Respondents shall extend the Health Club Services Contract or provide a refund, in accordance with N.J.S.A. 56:8-42(h).

3.11 Respondents shall include in any Health Club Services Contract the disclosure that a Consumer may cancel the contract if the Consumer moves more than 25 miles from the Health Club, as required by N.J.S.A. 56:8-42(g).

3.12 Respondents shall include in every Health Club Services Contract offered to Consumers the provisions required by N.J.S.A. 56:8-42.

4. SETTLEMENT PAYMENT

4.1 The Parties have agreed to a Settlement of the Action in the amount of Ten Thousand and 00/100 Dollars (\$10,000.00) (the "Settlement Amount").

4.2 On or before January 1, 2010, Respondents shall pay One Thousand and 00/100 (\$1,000.00) Dollars of the Settlement Amount. Such payment comprises civil penalties, pursuant to N.J.S.A. 56:8-13.

4.3 The payment referenced in Section 4.2 shall be made by certified or cashier's check made payable to "New Jersey Division of Consumer Affairs" and shall be forwarded to the undersigned:

State of New Jersey
Department of Law and Public Safety
Division of Consumer Affairs
CMT
124 Halsey Street- 7th Floor
Newark, New Jersey 07101

4.4 Upon making the payment referenced in Section 4.2, Respondents shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Division pursuant to the terms herein.

4.5 For a period of one (1) year from the Effective Date, the Nine Thousand and 00/100 Dollars (\$9,000.00) balance of the Settlement Amount, which comprises civil penalties pursuant to N.J.S.A. 56:8-13, shall be suspended and automatically vacated at the end of that period, provided:

- (a) Respondents comply in all material respects with the restraints and conditions set forth in this Consent Order; and
- (b) Respondents make the payment as specified in Section 4.2.

4.6 In the event Respondents materially fail to comply with Sections 4.2 and 4.5, the entire suspended amount of Nine Thousand and 00/100 Dollars (\$9,000.00) shall be immediately due and payable upon notice by the Division. In any such notice, however, the Division shall provide Respondents with specific details of Respondents alleged noncompliance and Respondents shall be afforded a fifteen (15) day period within which to cure any such noncompliance. In the event of Respondents' failure to cure any such noncompliance, the Division may move on notice or by Order to Show Cause to have a Judgment entered for the suspended penalty amount. Respondents shall have the right to submit opposition to any motion or Order to Show Cause application filed by the Division and to contest same on any return date.

5. GENERAL PROVISIONS

5.1 This Consent Order is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of obligations and duties imposed by this Consent Order.

5.2 This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of the State.

5.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Order and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Order.

5.4 This Consent Order sets forth the entire agreement between the Parties. Except as otherwise provided herein, this Consent Order shall be modified only by a written instrument signed by or on behalf of the Parties.

5.5 Except as otherwise explicitly provided in this Consent Order, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

5.6 If any provision of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

5.7 This Consent Order shall be binding upon the Respondents as well as their owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, successors and assigns, and any entity or device through which it may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct their business.

5.8 This Consent Order shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Order be used to avoid compliance with this Consent Order.

5.9 This Consent Order is entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall constitute, or be construed as: (a) an approval, sanction or authorization by the Attorney General, the Division or any other governmental unit of the State of any act or practice of Respondents; or (b) an admission by

Respondents that any of their acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the CFA, the Health Club Provisions and/or the Health Club Regulations. Neither the existence of, nor the terms of this Consent Order, shall be deemed to constitute evidence or precedent of any kind except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms herein; or (b) any action or proceeding involving a Released Claim (as defined in Section 6) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

5.10 The Parties represent and warrant that an authorized representative of each has signed this Consent Order with full knowledge, understanding and acceptance of its terms and that the representative has done so with authority to act for and legally bind the respective Parties.

5.11 Unless otherwise prohibited by law, any signatures by the Parties required for filing of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same Consent Order.

6. RELEASE

6.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondents making the Settlement Payment in the manner specified in Section 4, the Division hereby agrees to release Respondents from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Division could have brought prior to the Effective Date against Respondents for violations of the CFA, the Health Club Provisions and/or the Health Club

Regulations, as well as the matters specifically addressed in this Consent Order (the “Released Claims”).

6.2 Notwithstanding any term of this Consent Order, the following do not comprise Released Claims: (a) private rights of action; (b) actions to enforce this Consent Order; and (c) any claims against Respondents by any other agency or subdivision of the State.

7. PENALTIES FOR FAILURE TO COMPLY

7.1 The Attorney General (or designated representative) shall have the authority to enforce the injunctive provisions of this Consent Order or to seek sanctions for violations hereof or both.

7.2 The Parties agree that any future violations by Respondents of the injunctive provisions of this Consent Order, the CFA, the Health Club Services Provisions and/or the Health Club Regulations shall constitute a second or succeeding violation pursuant to N.J.S.A. 56:8-13 and that Respondents may be subject to enhanced penalties, as provided therein, upon a Court’s finding that Respondents have committed a violation of the injunctive provisions of this Consent Order, the CFA, the Health Club Services Provisions and/or the Health Club Regulations.

8. COMPLIANCE WITH ALL LAWS

- 8.1 Except as provided in this Consent Order, no provision herein shall be construed as:
- (a) Relieving Respondents of their obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
 - (b) Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondents pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Respondents may otherwise

have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

9. NOTICES UNDER THIS CONSENT ORDER

9.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondents pursuant to this Consent Order shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

Bureau Chief
Office of Consumer Protection
New Jersey Division of Consumer Affairs
124 Halsey Street - 7th Floor
P.O. Box 45025
Newark, New Jersey 07101

For the Respondents:

John Arbano
G & J Fitness Enterprises d/b/a Balance Fitness
1233 Pleasure Avenue
Ocean City, New Jersey 08226-3417

IT IS ON THE 1st DAY OF January, 2009 SO ORDERED.

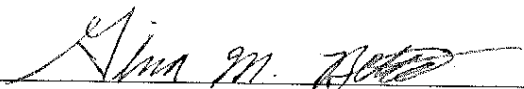
ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

By: David M. Szuchman
DAVID M. SZUCHMAN, DIRECTOR
DIVISION OF CONSUMER AFFAIRS

THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS CONSENT ORDER ON THE DATES UNDER THEIR RESPECTIVE SIGNATURES.

FOR THE DIVISION:

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

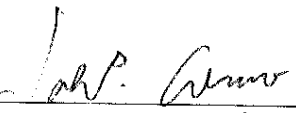
By: 

Gina M. Betts
Deputy Attorney General
Consumer Fraud Prosecution Section

124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

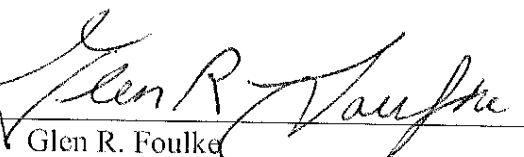
Dated: 1/4/2010, 2009

FOR THE RESPONDENTS:

By: 

~~John Arbano~~ Arbano
G & J Fitness Enterprises d/b/a Balance Fitness
1233 Pleasure Avenue
Ocean City, New Jersey 08226-3417

Dated: December 29, 2009

By: 

Glen R. Foulke
G & J Fitness Enterprises d/b/a Balance Fitness
1233 Pleasure Avenue
Ocean City, New Jersey 08226-3417

Dated: December 29, 2009