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Division of Consumer Affairs

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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

In the Matter of	:	Administrative Action
LGK FITNESS, L.L.C. D/B/A	:	
IN-STEP FITNESS	:	<u>ASSURANCE OF VOLUNTARY</u>
LAURIE G. KIRWIN	:	<u>COMPLIANCE</u>

WHEREAS this matter having been opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection (“Division”), as an investigation in order 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 LGK FITNESS, L.L.C. D/B/A IN-STEP FITNESS, with a business location at 819 Van Houten Avenue, Clifton, NJ 07013, LAURIE G. KIRWIN, as well as the owners, officers, directors, managers, employees, representatives, agents, subsidiaries, successors and assigns of LGK FITNESS, L.L.C. D/B/A IN-STEP FITNESS (collectively, “Respondents”) (hereinafter referred to as the “Investigation”); and

WHEREAS the Division and Respondents (collectively referred to as 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 this Assurance of Voluntary Compliance (“Assurance”) without having admitted any violation of law or finding of fact, the Parties hereby agree as follows:

1. EFFECTIVE DATE

1.1 This Assurance is effective on the date that it is filed with the Division (“Effective Date”).

2. DEFINITIONS

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

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 “Clearly and Conspicuously” shall mean a statement that, regardless of the medium in which it is made, is presented in such type, size, color, contrast, duration, location and audibility, compared to the other information with which it is presented, that it is readily apparent and understandable and in language and terms used in accordance with their common or ordinary usage and meaning. If such statement modifies, explains or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, explains or clarifies and in a manner that is readily apparent and understandable.

2.3 “Consumer” shall refer to any Person, defined in accordance with N.J.S.A. 56:8-1(d), who is offered Merchandise, defined in accordance with N.J.S.A. 56:8-1(c), for Sale, defined in accordance with N.J.S.A. 56:8-1(e) including, but not limited to, Health Club Services and Health Club Services Contracts.

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

2.5 “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).

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

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

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

2.9 “State” means the State of New Jersey.

2.10 “IN-STEP FITNESS” shall refer to the Health Club Facility owned and/or operated by Respondents, located at 819 Van Houten Avenue, Clifton, NJ 07013.

2.11 “ADR Unit” refers to the Alternative Dispute Resolution Unit of the Division.

2.12 “CALA” 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.

2.13 “Restitution” shall refer to all methods undertaken by Respondent to resolve Consumer complaints including, but not limited to, the issuance of refunds or the reversal of credit card or debit card charges.

3. AGREED UPON BUSINESS PRACTICES

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

3.2 Respondents shall not sell or offer to sell any Health Club Services membership without being registered with the Division, 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 If Respondents obtain a bond for any Health Club, they shall file a copy of the bond, as well as a certificate by the surety, that the surety will notify the Director at least ten (10) days in advance of the date of any cancellation or material change in the bond, as required by N.J.S.A. 56:8-41(a).

3.6 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).

4. SETTLEMENT PAYMENT

4.1 Contemporaneously with the execution of this Assurance, IN-STEP FITNESS shall pay the amount of Ten Thousand One Hundred Thirty-three and 15/100 Dollars (\$10,133.15) (the "Settlement Payment"). The amount comprises Ten Thousand and 00/100 Dollars (\$10,000.00) in civil penalties, pursuant to N.J.S.A. 56:8-13 and One Hundred Thirty-three and 15/100 Dollars (\$133.15) for reimbursement of investigative costs pursuant to N.J.S.A. 56:8-11. Of this amount \$10,000.00 shall be suspended for a period of twelve (12) months from the date of this order, shall, at the expiration of said period, automatically be vacated provided Respondents:

- a. obey the restraints and conditions set forth in this Assurance; and
- b. do not violate the CFA, the Health Club Provisions, the Health Club Regulations and/or any other consumer protection statute.

An initial payment of \$133.15 shall be sent together with this Assurance of Voluntary Compliance fully executed by the Respondent ("Settlement Payment"). However, in the event the Respondent fails to comply with the foregoing provisions, the entire suspended amount of \$10,000.00 shall be due and immediately payable upon notice by the Division.

4.2 All payments in satisfaction of the Settlement Amount or Settlement Payment 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
124 Halsey Street- 7th Floor
Newark, New Jersey 07101
Attention: Case Management Tracking

5. ADDITIONAL CONSUMER COMPLAINTS

5.1 For a period of one (1) year from the Effective Date, the Division shall forward to Respondent copies of any Additional Consumer complaints. The Division shall forward to Respondent the Additional Consumer complaint within thirty (30) days of the Division's receipt thereof.

5.2 The Division shall notify the Additional Consumers, in writing, of the following: (a) that the Additional Consumer complaint has been forwarded to Respondent; (b) that he/she should expect a response from Respondents within thirty (30) days; and (c) the right to refer the Additional Consumer complaint to the ADR Unit for binding arbitration if Respondent disputes the Additional Consumer complaint and/or requested relief.

5.3 Within thirty (30) days of receiving the Additional Consumer complaint from the Division, Respondent shall send a written response to each Additional Consumer, with a copy to the following: The New Jersey Division of Consumer Affairs, Office of Consumer Protection, Attention: Case Management Tracking Supervisor, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 07101.

5.4 If Respondent does not dispute the Additional Consumer's complaint and requested relief, Respondent's written response shall so inform the Additional Consumer. Respondent shall contemporaneously forward to such Additional Consumer the appropriate Restitution. Where Restitution concerns the reversal of credit or debit card charges, Respondent shall include documents evidencing that such adjustments have been made. Where Restitution concerns a refund or other payment, such shall be made by certified check, money order or other guaranteed funds made payable to the Additional Consumer.

5.5 If Respondent disputes the Additional Consumer's complaint and/or requested relief, Respondent's written response shall include copies of all documents concerning Respondent's dispute of the complaint.

5.6 Within forty-five (45) days of Respondent's receipt of the Additional Consumer complaint, Respondent shall notify the Division as to whether such Additional Consumer complaint has been resolved. Such notification shall include the following:

- a. The name and address of the Additional Consumer;
- b. Whether or not the Additional Consumer complaint has been resolved;
- c. An identification of any Restitution provided to the Additional Consumer;
- d. Copies of all documents evidencing any Restitution;
- e. In the event Respondent's written response was returned as undeliverable, the efforts Respondent had undertaken to locate the Additional Consumer; and
- f. Confirmation that Respondent sent all mailings to the Additional Consumer as required by this Section.

Following the Division's receipt and verification that an Additional Consumer complaint has been resolved, the Additional Consumer Complaint shall be deemed closed for purposes of this Assurance.

5.7 If within sixty (60) days of Respondent's receipt of the Additional Consumer complaint: (a) Respondent has not notified the Division that an Additional Consumer's complaint has been resolved; (b) Respondent has notified the Division that the Additional Consumer complaint has not been resolved; or (c) Respondent has notified the Division that the

Additional Consumer refuses Respondent's offer of Restitution, the Division shall forward such Additional Consumer complaint to the ADR Unit to reach a resolution of the complaint through binding arbitration. Respondent agrees herein to consent to this arbitration process and to be bound by the arbitrator's decision. Respondent further agrees to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14, and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. The Division shall notify in writing the Additional Consumer of the referral of the complaint to the ADR Unit. Thereafter, the arbitration shall proceed in accordance with the ADR Guidelines (a copy of which is attached as Exhibit A).

5.8 If Respondent refuses to participate in the ADR program, the arbitrator may enter a default against Respondent. Unless otherwise specified in the arbitration award, Respondent shall pay all arbitration awards within thirty (30) days of the arbitrator's decision. Respondent's failure or refusal to participate in the arbitration process or to pay an arbitration award timely shall constitute a violation of this Assurance.

5.9 If an Additional Consumer refuses to participate in the ADR program, that Additional Consumer's complaint shall be deemed closed for the purposes of this Assurance.

5.10 The complaint resolution process described in this Section may be extended for additional one (1) year periods upon written notice by Respondent provided thirty (30) days prior to the expiration of the initial or subsequent one (1) year period.

5.11 The Parties may agree in writing to alter any time periods or deadlines set forth in this Section.

6. GENERAL PROVISIONS

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

6.2 This Assurance shall be governed by, and construed and enforced in accordance with, the laws of the State.

6.3 Except as otherwise explicitly provided in this Assurance, 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.

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

6.5 This Assurance sets forth the entire agreement among the Parties. Except as otherwise provided herein, this Assurance shall be modified only by a written instrument signed by or on behalf of the Division and Respondent.

6.6 If any portion of this Assurance is held invalid or unenforceable by operation of law, the remaining terms of this Assurance shall not be affected.

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

6.8 This Assurance is agreed to by the Parties and entered by the Division for settlement purposes only. Neither the fact of, nor any provision contained in, this Assurance nor

any action taken hereunder 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 the Respondent; and (b) an admission by Respondent that any of its acts or practices described in or prohibited by this Assurance are unfair or deceptive or violate any of the consumer protection laws of the State. This Assurance is not intended, and shall not 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 of this Assurance; or (b) any action or proceeding involving a Released Claim (as defined in Section 5) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

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

6.10 The Parties represent and warrant that their signatories to this Assurance have authority to act for and bind the respective Parties.

7. RELEASE

7.1 In consideration of the undertakings, mutual promises and obligations provided for in this Assurance and conditioned on Respondent providing Restitution as required pursuant to Section 3, the Division hereby agrees to release Respondent 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 Respondent for violations of the CFA and/or the CFA Regulations arising from the Investigation (the "Released Claims").

7.2 Notwithstanding any term of this Assurance, the following do not comprise Released Claims: (a) Private rights of action provided, however, that nothing herein shall prevent Respondent from raising the defense of set-off against a Consumer who has received Restitution; and (b) any claims against Respondent by any other agency or subdivision of the State.

8. PENALTIES FOR FAILURE TO COMPLY

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

8.2 The Parties agree that any future violations of the injunctive provisions of this 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 respondent(s) may be liable for enhanced civil penalties.

9. COMPLIANCE WITH ALL LAWS

9.1 Except as provided in this Assurance no provision herein shall be construed as:

- (a) Relieving Respondent of its 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 such laws, regulations or rules; or
- (b) Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondent 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 Respondent 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.

10. NOTICES UNDER THIS ASSURANCE

10.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondent pursuant to this Assurance 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:

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

For the Respondent(s):

LAURIE G. KIRWIN ,
LGK FITNESS, L.L.C.
D/B/A IN-STEP FITNESS
819 Van Houten Avenue
Clifton, NJ 07013

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

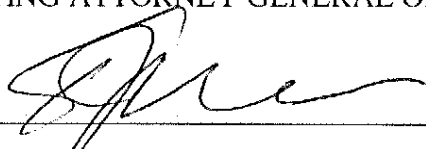
PAULA T. DOW
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 
SHARON M. JOYCE, ACTING DIRECTOR
DIVISION OF CONSUMER AFFAIRS

Dated: 2/19, 2010

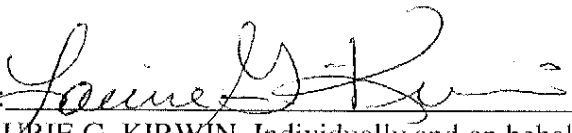
FOR THE DIVISION:

PAULA T. DOW
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 
Frank J. Marasco
Deputy Attorney General
124 halsey Street - 5th Floor
P.O. Box 45029
Newark, NJ07101

Dated: 2/19, 2010

FOR THE RESPONDENT(S):

By: 
LAURIE G. KIRWIN, Individually and on behalf of
LGK FITNESS, L.L.C.

Dated: 2/4, 2010