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Division of Law
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FILED

MAR 03 2010

Division of Consumer Affairs

By: Nicholas Kant
Deputy Attorney General
(973) 648-4584

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

In the Matter of	:	Administrative Action
	:	
LRHC DEPTFORD N.J., L.L.C.;	:	
LRHC FAIRLAWN NJ, L.L.C.;	:	<u>CONSENT ORDER</u>
LRHC HAMILTON NJ, L.L.C.;	:	
LRHC IRVINGTON NJ, L.L.C.;	:	
LRHC JERSEY CITY NJ, L.L.C.;	:	
LRHC KEARNY N.J., L.L.C.;	:	
LRHC LINDEN N.J., L.L.C.; and	:	
130 FITNESS DELRAN, L.L.C.,	:	
	:	
	:	
Respondents.	:	

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 LRHC Deptford N.J., L.L.C.; LRHC Fairlawn NJ, L.L.C.; LRHC Hamilton NJ, L.L.C.; LRHC Irvington NJ, L.L.C. (“LRHC Irvington”); LRHC

Jersey City NJ, L.L.C.; LRHC Kearny N.J., L.L.C.; LRHC Linden N.J., L.L.C., and 130 Fitness Delran, L.L.C.; as well as their owners, officers, directors, managers, employees, representatives, agents, subsidiaries, successors and assigns (collectively, "Respondents"), (hereinafter referred to as the "Investigation");

WHEREAS the Division and Respondents (collectively, "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 3rd day of March, 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 "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 who is offered Merchandise for Sale.

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 “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.

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

2.10 “Represent” means to state or imply through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages or any other manner or means by which meaning might be conveyed. This definition applies to other forms of the word “Represent” including, without limitation, “Misrepresent.”

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

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

2.13 “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 businesses 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 use language in Health Club Services Contracts regarding cancellation that is self-contradictory or that contradicts a Consumer’s rights under the CFA, the Health Club Provisions and/or the Health Club Regulations.

3.3 Respondents shall not state in Health Club Services Contracts a “Total Membership Cost” that is less than the total amount that the Consumer will actually be charged.

3.4 Respondents shall not Misrepresent the “Total Membership Cost” in Health Club Services Contracts.

3.5 LRHC Irvington shall not Misrepresent in Health Club Services Contracts a Health Club’s Certificate of Registration number.

3.6 LRHC Irvington shall not Represent that a Health Club is registered with the Division, when such is not the case.

3.7 LRHC Irvington 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.

3.8 LRHC Irvington 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).

3.9 If LRHC Irvington obtains a bond for any Health Club, it shall file a copy of the bond as well as a certificate by surety, whereby the surety agrees to notify the Director at least ten (10) days in advance of any cancellation or material change in the bond, as required by N.J.S.A. 56:8-41(a).

3.10 In each and every Health Club Services Contract, Respondents shall Clearly and Conspicuously include on the first page of the Health Club Services Contract the Consumer's total payment obligation for Health Club Services to be provided, as required by N.J.S.A. 56:8-42(b).

3.11 Respondents shall not use language in Health Club Services Contracts regarding cancellation by personal delivery that contradicts a Consumer's rights under the Health Club Provisions, in violation of N.J.S.A. 56:8-42(e).

3.12 Respondents shall include in Health Club Services Contracts a statement that upon a Consumer's permanent disability, the Health Club Services Contract may be canceled by a notice personally delivered to the Health Club, as required by N.J.S.A. 56:8-42(f).

3.13 Respondents shall include in Health Club Services Contracts a statement that upon a Consumer's change of residence to a location more than twenty-five (25) miles from the Health Club, the Consumer may cancel the Health Club Services Contract by a notice personally delivered to the Health Club, as required by N.J.S.A. 56:8-42(g).

3.14 Respondents shall include in Health Club Services Contracts a statement that upon a Health Club's closure for more than thirty (30) days, the Consumer is entitled to extend the Health Club Services Contract or receive a prorated refund, as required by N.J.S.A. 56:8-42(h).

3.15 To the extent not otherwise specifically noted, Respondents shall comply with the requirements of N.J.S.A. 56:8-42 for each and every Health Club Services Contract.

3.16 In each and every Health Club Services Contract, Respondents shall include in the upper right-hand corner the Health Club's Certification of Registration number, as required by N.J.A.C. 13:45A-25.2(d).

4. RESTITUTION

4.1 On or before the Effective Date, LRHC Irvington shall provide to the Division Restitution for Consumer [REDACTED] which the Division shall forward to Consumer [REDACTED]. The payment to Consumer [REDACTED] shall be in the amount of Seventy-One and 38/100 Dollars (\$71.38), payable to [REDACTED]." LRHC Irvington shall make such Restitution payments by means of a certified check, attorney trust account check, or other guaranteed funds. Respondents have previously provided, and the Division acknowledges receipt of, a refund check for [REDACTED] in the amount of One-Hundred Twenty-Five and 40/100 Dollars (\$125.40).

5. SETTLEMENT PAYMENT

5.1 On or before the Effective Date, respondents LRHC Irvington shall make a payment in the amount of Fifteen Thousand One Hundred Thirty-Two and 41/100 Dollars (\$15,132.41) (the "Settlement Payment"). The Settlement Payment comprises Ten Thousand and 00/100 Dollars (\$10,000.00) in civil penalties, pursuant to N.J.S.A. 56:8-13, Two Thousand Four Hundred Seventy-Five and 50/100 Dollars (\$2,475.50) as reimbursement of the Division's attorneys' fees, pursuant to N.J.S.A. 56:8-19, and Two Thousand Six Hundred Fifty-Six and 91/100 Dollars (\$2,656.91) as reimbursement of the Division's investigative costs, pursuant to N.J.S.A. 56:8-11.

5.2 The 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:

Nicholas Kant, Deputy Attorney General
Consumer Fraud Prosecution Section
State of New Jersey
Department of Law and Public Safety
Division of Law
124 Halsey Street- 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

5.3 Upon making the Settlement Payment, LRHC Irvington 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.

6. GENERAL PROVISIONS

6.1 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.

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

6.3 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.

6.4 This Consent Order contains 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.

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

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

6.7 This Consent Order shall be binding upon 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 they may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct their business.

6.8 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.

6.9 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; and (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 8) to support a defense of

res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

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

7. REPRESENTATIONS AND WARRANTIES

7.1 The Parties Represent and warrant 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 legally bind the respective Party.

7.2 Respondents Represent and warrant the they have fully read and understand this Consent Order, that they understand the legal consequences involved in signing the Consent Order and that there are no other Representations or agreements not stated in writing herein.

7.3 Respondents Represent and warrant that they have been advised by the Division to seek legal counsel to review this Consent Order and that they have voluntarily chosen not to do so.

8. RELEASE

8.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondents making the Restitution payment and the Settlement Payment as specified in Sections 4 and 5, 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 the Health Club Regulations arising from the Investigation, as well as the matters specifically addressed in this Consent Order (the “Released Claims”).

8.2 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.

9. PENALTIES FOR FAILURE TO COMPLY

9.1 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.

10. COMPLIANCE WITH ALL LAWS

10.1 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.

11. NOTICES UNDER THIS CONSENT ORDER

11.1 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
Officer of Consumer Protection
New Jersey Division of Consumer Affairs
124 Halsey Street - 7th Floor
P.O. Box 45028
Newark, New Jersey 07101

For the Respondents:

Kirk Roberts
President
Lucille Roberts Health Clubs
4 East 80th Street
New York, New York 10075

IT IS ON THE 3^d DAY OF March, 2010 SO ORDERED.

PAULA T. DOW
~~ACTING~~ ATTORNEY GENERAL OF NEW JERSEY

By: 
SHARON M. JOYCE, ACTING 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:

PAULA T. DOW
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: Nicholas Kant
Nicholas Kant, Deputy Attorney General
Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
(973) 648-4584

Dated: March 3, 2010

FOR RESPONDENTS:

LRHC DEPTFORD N.J., L.L.C.

By: [Signature]
Kirk Roberts
The Kirk Roberts Trust
Member
LRHC Deptford NJ, L.L.C.
4 East 80th Street
New York, New York 10075

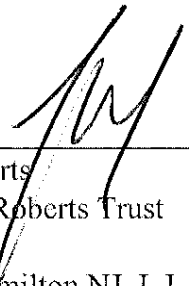
Dated: 2/27/10, 2010

LRHC FAIRLAWN NJ, L.L.C.

By: [Signature]
Kirk Roberts
The Kirk Roberts Trust
Member
LRHC Fairlawn NJ, L.L.C.
4 East 80th Street
New York, New York 10075


Dated: 2/27/10, 2010

LRHC HAMILTON NJ, L.L.C.

By: 
Kirk Roberts
The Kirk Roberts Trust
Member
LRHC Hamilton NJ, L.L.C.
4 East 80th Street
New York, New York 10075

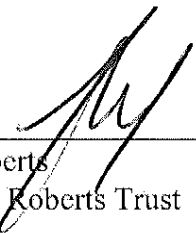
Dated: 2/27/10, 2010

LRHC IRVINGTON NJ, L.L.C.

By: 
Kirk Roberts
The Kirk Roberts Trust
Member
LRHC Irvington NJ, L.L.C.
4 East 80th Street
New York, New York 10075

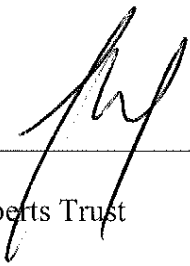
Dated: 2/27/10, 2010

LRHC JERSEY CITY NJ, L.L.C.

By: 
Kirk Roberts
The Kirk Roberts Trust
Member
LRHC Jersey City NJ, L.L.C.
4 East 80th Street
New York, New York 10075

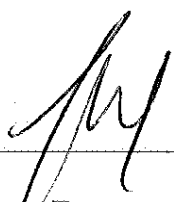
Dated: 2/27/10, 2010

LRHC KEARNY N.J., L.L.C.

By: 
Kirk Roberts
The Kirk Roberts Trust
Member
LRHC Kearny N.J., L.L.C.
4 East 80th Street
New York, New York 10075


Dated: 2/27/10, 2010

LRHC LINDEN N.J., L.L.C.

By: 
Kirk Roberts
The Kirk Roberts Trust
Member
LRHC Linden N.J., L.L.C.
4 East 80th Street
New York, New York 10075

Dated: 2/27/10, 2010

130 FITNESS DELRAN, L.L.C.

By: 
Kirk Roberts
The Kirk Roberts Trust
Member
130 Fitness Delran, L.L.C.
4 East 80th Street
New York, New York 10075

Dated: 2/27/10, 2010