

No. _____

IN THE MATTER OF:

STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
AND	§	TRAVIS COUNTY, T E X A S
	§	
FITNESS EVOLUTION, L.P. AND	§	
FITNESS EVOLUTION I, L.P.	§	_____ JUDICIAL DISTRICT

ASSURANCE OF VOLUNTARY COMPLIANCE

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW the STATE OF TEXAS (“State”) acting by and through the Attorney General of Texas, Greg Abbott, and FITNESS EVOLUTION, L.P. AND FITNESS EVOLUTION I, L.P. (“Respondents”), by and through their attorney of record, and respectfully submit the following Assurance of Voluntary Compliance (“AVC”) for the Court’s approval and filing in accordance with the Deceptive Trade Practices - Consumer Protection Act (“DTPA”), TEX. BUS. & COM. CODE ANN. § 17.58 (Vernon 2002 and Supp. 2004).

NATURE OF ALLEGED VIOLATIONS

The Office of the Attorney General has investigated certain potential claims under the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §§17.41 *et seq.* (Vernon 2002 and Supp. 2004) (“DTPA”), and the Texas Health Spa Act, TEX. OCC. CODE ANN. § 702.001 *et seq.* (Vernon Supp. 2004) (“HSA”) including that Respondents may have owned or operated a health spa in Texas without:

1. Holding a health spa operator’s certificate of registration, as required by HSA § 702.101;
2. Filing a surety bond with the Texas Secretary of State, or posting other security as

prescribed by the Secretary, in the amount of \$20,000.00, as required by HSA § 702.151; and

3. Posting the health spa operator's certificate of registration or certificate of exemption in a conspicuous place at each registered location as required by HSA § 702.105.

STIPULATIONS

The parties hereby agree and stipulate that:

1. The State and Respondents agree to and do not contest the entry of the AVC by this Court;
2. The signatories hereto are partners of Respondents; they are authorized to sign this AVC on behalf of Respondents; and, they have read the AVC and agree to entry of same on behalf of Respondents;
3. The Office of the Attorney General has jurisdiction in this matter under section 17.47 of the DTPA; and
4. The venue of this cause is proper in Travis County.

TERMS OF COMPLIANCE

Respondents hereby voluntarily agree and assure the State that from the date of the signing of this AVC that Respondents, their officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with Respondents who receive actual notice of this assurance shall not engage in the following conduct:

1. Operating a health spa, or offering for sale, or selling, a membership in a health spa unless, for each location of the health spa in the State of Texas, Respondents:
 - a. Hold a health spa operator's certificate of registration;

- b. File a surety bond with the Texas Secretary of State, or posts other security as prescribed by the Secretary, in the amount of \$20,000.00, unless it is subject to an exemption under the HSA; and
 - c. Post the health spa operator's certificate of registration or certificate of exemption in a conspicuous place at each registered location;
 2. Closing a health spa, or allowing a health spa to close, for which Respondents serve as an operator or owner, without either:
 - a. Making arrangements with a comparable health spa not more than ten (10) miles from the closed health spa to allow members to have their contracts honored by the comparable health spa immediately upon the prior health spa's closing without any additional cost to the members; or
 - b. Providing a prorated refund to members of the closed health spa for the remaining time on the members' contracts within ten (10) days of the health spa's closing.
 3. Entering into, forming, organizing, or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, for the purposes of avoiding compliance with the terms of this Assurance of Voluntary Compliance.

CERTIFICATE OF REGISTRATION

Respondents further voluntarily agree and assure the State that within ten (10) days from the date this AVC is signed by the Court, they shall obtain a health spa operator's certificate of registration for all health spa locations they own or operate in the State of Texas.

CONSUMER REDRESS

Respondents further voluntarily agree and assure the State that they will provide any person who had signed a prepaid contract for membership with any health spa operating at 4125 Old Denton Road, Carrollton, Texas, which had remaining prepaid time on the contract on May 15, 2004, and that was not cancelled by the person, the opportunity to have such remaining time honored at Respondents' health spas. At a minimum, the opportunity to have this remaining time honored shall include Respondents allowing any member who identifies himself or herself as a former prepaid member of a health spa which operated at 4125 Old Denton Road, Carrollton, Texas, to have a contract for membership entered into with Respondents extended, at no additional cost, by the amount of time that remained on that consumer's contract on May 15, 2004.

Respondents further voluntarily agree and assure the State that they will allow any consumer who entered into a contract with Respondents for use of its health spa facilities during a time when it did not possess a health spa operator's certificate of registration, to cancel their membership at any time for a prorated refund of the remaining time on the consumer's contract. Respondents shall make such refunds within ten (10) days of the consumer's cancellation.

CIVIL PENALTIES AND ATTORNEYS' FEES

Respondents further agree that they will pay to the State the sum of THREE THOUSAND DOLLARS, jointly and severally, which shall be allocated as follows:

- A. ONE THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$1,500.00)
shall be paid to the State as civil penalties.
- B. ONE THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$1,500.00)
shall be paid to the State as reimbursement for the State's reasonable attorneys' fees

and investigative costs.

Respondents shall make these payments via certified checks or money orders, which shall be delivered to the Office of the Attorney General, Consumer Protection Division, 300 West 15th Street, William P. Clements Building, 9th Floor, Austin, Texas 78701. Respondents shall pay one thousand five hundred dollars and no cents (\$1,500.00) towards civil penalties at the time this Assurance is signed by the Court, receipt of which is hereby acknowledged. Respondents shall pay the remaining one thousand five hundred dollars and no cents (\$1,500.00) towards the State's attorneys' fees and investigative costs on or before September 15, 2004.

GENERAL PROVISIONS

Nothing in this AVC shall be construed as a waiver of any private rights, causes of action, or remedies of any person against Respondents with respect to their practices alleged herein.

This AVC shall be governed by DTPA § 17.58, and shall remain in effect until rescinded by agreement of the parties or voided by a Court of competent jurisdiction for good cause.

The parties to this AVC expressly understand that the subsequent failure to comply with any term of this AVC is prima facie evidence of a violation of the DTPA.

All relief not expressly granted herein is denied.

GREG ABBOTT
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