

No. \_\_\_\_\_

**IN THE MATTER OF:**

STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
AND	§	TRAVIS COUNTY, T E X A S
	§	
ULTRA FITNESS, L.L.C. D/B/A	§	
GOLD'S GYM	§	_____ 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 ULTRA FITNESS, L.L.C. D/B/A GOLD’S GYM (“Respondent”), by and through its authorized representative and 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 Respondent 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 Respondent agree to and do not contest the entry of the AVC by this Court;
2. The signatory hereto is a member of Respondent; he is authorized to sign this AVC on behalf of Respondent; and, he has read this AVC and agrees to entry of same on behalf of Respondent;
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**

Respondent hereby voluntarily agrees and assures the State that from the date of the signing of this AVC that Respondent, its officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with Respondent 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, Respondent:
  - a. Holds a health spa operator's certificate of registration;

- b. Files 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. Posts 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 Respondent serves 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.

### **CONSUMER REDRESS**

Ultra Fitness LLC is under no obligation to recognize health club member contracts executed by companies other than itself, however, as a pre-opening business strategy, Ultra Fitness LLC voluntarily assures the State that it will continue to maintain its offer of honoring valid contracts held by former members of Club Systems, Inc., at 4125 Old Denton Road Carrollton, Texas, through

August 31, 2005.

Respondent further voluntarily agrees and assures the State that they will allow any consumer who entered into a contract with Respondent 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 his or her membership at any time for a prorated refund of the remaining time on the consumer's contract. Respondent shall make such refunds within ten (10) days of the consumer's cancellation.

#### **CIVIL PENALTIES AND ATTORNEYS' FEES**

Respondent further agrees that it will pay to the State the sum of ONE THOUSAND DOLLARS AND NO CENTS (\$1,000.00), which shall be allocated as follows:

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

Respondent shall make this payment via certified check or money order, which shall be delivered to the Office of the Attorney General, Consumer Protection Division, 300 West 15<sup>th</sup> Street, William P. Clements Building, 9<sup>th</sup> Floor, Austin, Texas 78701. Receipt of this amount at the time this Assurance is entered by the Court is hereby acknowledged by the State.

#### **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 Respondent 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.

AGREED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

GREG ABBOTT  
Attorney General of Texas

BARRY R. McBEE  
First Assistant Attorney General

EDWARD D. BURBACH  
Deputy Attorney General for Litigation

PAUL D. CARMONA, Chief  
Consumer Protection and Public Health Division

ULTRA FITNESS, L.L.C.

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ROBERT KECSEG, Member

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