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STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

In the Matter of

LA WEIGHT LOSS CENTERS,
INC., a Delaware corporation

No.

ASSURANCE OF
DISCONTINUANCE

1. GENERAL

1.1 This Assurance of Discontinuance (the "Assurance") is between the Attorney General of the State of Washington ("Attorney General") and L A Weight Loss Centers, Inc., ("LAWL"), a Delaware corporation with its principal office located at 747 Dresher Road, Suite 100, Horsham, Pennsylvania 19044 (collectively, the "Parties"), and shall be effective as of the date it is filed with the Thurston County Superior Court.

1.2 This Assurance shall be binding on, and apply to, LAWL and its owners, directors, successors, assigns, transferees, officers, agents, partners, servants, employees, representatives, and all other persons or entities acting in concert or participating with LAWL in the context of conducting LAWL's weight loss program business.

1.3 Pursuant to the Washington Consumer Protection Act, RCW Ch. 19.86, the Attorney General has investigated some of LAWL's business practices.

1.4 LAWL has voluntarily cooperated in the Attorney General's inquiry.

1 **1.5** At this time, the Attorney General has determined to conclude his inquiry and
2 LAWL has agreed to a set of practices regarding certain aspects of its business.

3 **1.6** Washington and LAWL agree this Assurance does not constitute evidence or an
4 admission by any party regarding the existence or non-existence of any issue, fact, or violation of
5 any law alleged by Washington; and

6 **1.7** LAWL recognizes and states that this Assurance is entered into voluntarily and
7 that no promises, representations or threats have been made by the Attorney General's Office or
8 any member, officer, agent or representative thereof to induce them to enter into this Assurance,
9 except for the promises and representations provided herein; and

10 **1.8** LAWL further agrees its payments made or due pursuant to this Assurance are not
11 amenable to discharge in bankruptcy and it shall not seek or support their discharge in bankruptcy,
12 nor oppose their being determined not amenable to discharge in bankruptcy; and

13 **1.9** LAWL further agrees its payments made or due pursuant to this Assurance are not
14 preferential transfers of assets and it shall not make nor support arguments to the contrary in
15 bankruptcy court or elsewhere.

16 **2. BASIS OF THE ATTORNEY GENERAL'S INQUIRY/STATEMENT BY LAWL**

17 **2.1** The Attorney General commenced an investigation into LAWL's marketing and
18 sales practices.

19 **2.2** The Attorney General asserted that LAWL (1) failed to sufficiently disclose the
20 cost of recommended but optional products to consumers before consumers signed contracts for
21 LAWL's weight loss program and (2) LAWL represented to consumers, after they had signed
22 contracts for LAWL's weight loss program, that products that LAWL had previously told
23 consumers before they signed contracts were recommended but optional were necessary,
24 essential, or mandatory.

1 **2.3** The Attorney General also asserted that LAWL did not have competent and
2 reliable scientific evidence upon which to base its claims that it made for certain of its nutritional
3 supplements.

4 **2.4** LAWL stated that it had given consumers proper disclosures as to the costs of
5 recommended but optional products; that it had been consistent in its representations to
6 consumers before and after they sign contracts for weight loss services as to whether products
7 are, on the one hand, recommended but optional or, on the other hand, necessary, essential or
8 mandatory; and that it had a reasonable basis substantiating claims made concerning its
9 nutritional supplements.

10 **2.5** LAWL and the Attorney General entered into an Assurance of Discontinuance
11 (the "2005 AOD") filed December 22, 2005 in *In the Matter of L A Weight Loss Centers, Inc.*,
12 Thurston County Superior Court Cause No. 05-2-02490-6.

13 **2.6** The Attorney General has investigated LAWL's compliance with the 2005 AOD,
14 and has informed LAWL of what the Attorney General believes are failures to comply with the
15 2005 AOD. LAWL states that it believes that it has complied with the 2005 AOD but is
16 nonetheless willing to enter into the terms of this Assurance.

17 **2.7** This Assurance supersedes the 2005 AOD, and the 2005 AOD shall have no
18 further force or effect upon the effective date of this Assurance.

19 **3. SALES PRACTICES**

20 **3.1** The provisions of this Section 3 of this Assurance shall apply to LAWL and to its
21 owners, directors, successors, assigns, transferees, officers, agents, partners, servants, employees
22 and representatives, and all other persons or entities that acted in concert or participated with
23 LAWL.

24 **3.2** LAWL shall within one week of the effective date of this Assurance provide to
25 its managers having responsibility for operations within the State of Washington a copy of a
26 memorandum setting out the pertinent provisions of this Assurance.

1 **3.3** The following definitions shall apply to this Assurance:

2 **a.** “Advertise” or “Advertisement” shall refer to any direct or indirect
3 representation or promotional device used to promote the sale of products or services and/or to
4 educate, inform or attract customers, including but not limited to those that are telephonic,
5 electronic, digital, oral, visual, aural, written, video or printed.

6 **b.** “Product” shall in addition to its ordinary meaning also refer to the LA
7 Lites and any dietary supplements sold by LAWL at any relevant time.

8 **c.** “Consumer” shall in addition to its ordinary meaning also refer to any
9 person who, as represented at any time to LAWL, has or had a telephone number having the
10 prefix 425, 360, 206, 509 or 253, or an address in Washington.

11 **d.** “Competent and Reliable Scientific Evidence” shall mean tests,
12 analyses, research, studies, or other evidence based on the expertise of professionals in the
13 relevant area, that have been conducted and evaluated in an objective manner by persons
14 qualified to do so, using procedures generally accepted in the profession to yield accurate and
15 reliable results.

16 **3.4** LAWL and its owners, directors, successors, assigns, transferees, officers,
17 agents, partners, servants, employees, representatives, and all other persons or entities acting in
18 concert or participating with LAWL in the context of conducting LAWL’s weight loss
19 program business, shall not directly or indirectly engage in the following acts or practices in
20 the State of Washington:

21 **a.** representing, in any manner, expressly or by implication, to Consumers
22 in the first instance that a particular product or service, including but not limited to LA
23 Lites and LA Supplements, is not an important, key, necessary, required, vital or
24 substantial component of LAWL’s weight loss program and then later representing, in
25 any manner, expressly or by implication, to those Consumers that the particular product
26

1 or service is an important, key, necessary, required, vital or substantial component of
2 LAWL's weight loss program;

3 b. representing, in any manner, expressly or by implication, to Consumers
4 in the first instance that they do not need a particular product or service, including but
5 not limited to LA Lites and LA Supplements, to succeed with LAWL's weight loss
6 program and then later representing, in any manner, expressly or by implication, to
7 those Consumers that they need that particular product or service to be successful with
8 LAWL's weight loss program;

9 c. failing to clearly and conspicuously disclose all material terms and
10 conditions of LAWL's weight loss program in writing before Consumers enter into a
11 contract, including full and complete disclosure of those program and product costs
12 attributable to services and products that constitute a key, necessary, vital or
13 substantial component of the program; guarantees; rebates; cancellation policies,
14 and/or refund policies LAWL may offer to Consumers;

15 d. representing, in any manner, expressly or by implication, any health or
16 weight loss benefit, effect, performance, safety or efficacy of any dietary supplement
17 unless at the time the representation is made LAWL possesses and relies upon
18 Competent and Reliable Scientific Evidence that substantiates the representation;

19 e. making any nutrient content claim or health claim regarding any food
20 product except in accordance with the applicable regulations of the U.S. Food and
21 Drug Administration;

22 f. misrepresenting, in any manner, directly or by implication, any offers,
23 guarantees, rebates or the costs involved with successfully participating in LAWL's
24 weight loss program, including the costs of any goods or services which are
25 represented to be an important, key, necessary, vital or substantial component of the
26 weight loss program;

1 g. failing to clearly and conspicuously disclose material limitations of
2 any offer, guarantee or cost of a program or product in reasonable proximity to the
3 language it modifies.

4 **3.5** LAWL shall provide to each Consumer who visits a LAWL owned and
5 operated weight loss center in Washington with the purpose of considering enrollment in a
6 LAWL weight loss program a written description, in contract form or otherwise, of all
7 material terms and conditions of LAWL's weight loss program, including a full and complete
8 explanation of those program and product costs attributable to services and products that
9 constitute a key, necessary, vital or substantial component of the program; guarantees;
10 rebates; cancellation policies and/or refund policies. LAWL shall maintain for five years after
11 execution of this Assurance copies of all such confirmations that will demonstrate compliance
12 with the requirements of this paragraph and, upon written request, make them available within
13 thirty business days to the Washington State Attorney General.

14 **3.6** LAWL and its owners, directors, successors, assigns, transferees, officers,
15 agents, servants, employees, representatives, and all other persons or entities acting in concert
16 or participating with LAWL shall in good faith respond to Consumers' requests for refunds,
17 requests to cancel, complaints or inquiries concerning the operation of LAWL's weight loss
18 program business, or the products and services related to that program. LAWL shall not be
19 required to disclose to Consumers information about its products or operations that LAWL in
20 good faith considers to be privileged, proprietary or otherwise confidential.

21 **4. RESTITUTION**

22 **4.1** Pursuant to RCW 19.86.080, LAWL shall make restitution as follows:

23 **a.** LAWL shall refund up to a total amount not to exceed \$50,000 the costs
24 (including any applicable taxes) of enrollment (including "Personal Enhancement
25 Package" or any "non-refundable set up fee" costs, but not including the costs of food
26 products or dietary supplements) to all Consumers who:

1 (i) enrolled with an LAWL owned and operated weight loss
2 center in Washington at any time during the period from December 23, 2005,
3 through August 31, 2006, and

4 (ii) have submitted a written request for a refund to LAWL's
5 Customer Service Department addressed to LAWL's corporate offices at 747
6 Dresher Road, Suite 100, Horsham, PA 19044, or to the Attorney General's
7 Office within 30 days of the effective date of this Assurance alleging and
8 providing reasonable support for the claim that they were misled about the
9 terms of enrolling in the program, service guarantee or rebate; and

10 (iii) have not previously received a full refund of the costs of
11 enrollment.

12 b. With respect to any refund otherwise payable under paragraph 4.1.a.,
13 LAWL may condition the refund on termination of the Consumer's enrollment with the
14 program; may credit any partial refund of enrollment costs the Consumer previously
15 received from LAWL against the required cost refund, except that no repayment amount
16 that resulted from any of LAWL's rebate offers may be credited against the restitution
17 amount owed pursuant to this paragraph 4.1. In addition, whether Consumers' claims that
18 they were misled are reasonably supported shall be the sole determination of the Attorney
19 General and the Attorney General's determination on this issue shall be a final
20 determination without appeal.

21 c. The total amount that LAWL is required to pay as refunds to Consumers
22 pursuant to paragraph 4.1.a. shall not exceed \$50,000. If, after the 30-day period
23 provided by 4.1.a.(ii) has elapsed, the total amount of claims satisfying the criteria of
24 paragraph 4.1.a. ("Total Claim Amount") is determined to be less than the \$50,000
25 limit, then LAWL shall have no obligation to pay restitution beyond the Total Claim
26 Amount. If, after the 30-day period provided by 4.1.a.(ii) has elapsed, the Total Claim

1 Amount is determined to exceed the \$50,000 limit, then LAWL shall pay Consumers
2 their refunds on a pro rata basis within 90 days of the effective date of this Assurance.
3 To determine the amount of a refund payable on a pro rata basis, LAWL shall calculate
4 a fraction in which the numerator is \$50,000 and the denominator is the Total Claim
5 Amount, and shall then multiply that fraction by the amount of each claim satisfying
6 the criteria of paragraph 4.1.a, and pay the resulting amount.

7 **4.2** LAWL shall make payment to each Consumer who is entitled to it pursuant to
8 paragraph 4.1 of this Assurance within 90 days of the effective date of this Assurance. Payment to
9 Consumers shall be made by mailing via first class postage to the current home address, and if
10 unknown to the last known address, a check payable to the Consumer for the amounts due
11 pursuant to this Assurance. LAWL shall submit to Washington, no later than 120 days after the
12 effective date of this Assurance, a list of the name, last known address, and amount of refund for
13 each Consumer whose refund check mailing was returned to LAWL as undeliverable and the
14 refund checks that were to be delivered to the listed Consumers, and LAWL shall have no further
15 obligation to deliver refund checks to the listed Consumers. Washington may then attempt to
16 locate the listed Consumers and deliver the refund checks to them for an additional 60 day period,
17 after which 60-day period Washington shall return any remaining undeliverable checks to LAWL.

18 **4.3** LAWL shall submit to Washington, no later than 120 days after the effective date
19 of this Assurance, a certification under penalty of perjury by an officer of LAWL certifying that
20 LAWL complied with the provisions of this Assurance, setting forth the manner and extent of
21 their compliance and having attached to the statement exhibits and supporting documentation,
22 except that LAWL need not disclose in the certification or attachments thereto the identities of the
23 Consumers to whom refunds were made.

24 **4.4** LAWL shall be responsible for any and all costs associated with providing refunds
25 to Consumers pursuant to this Assurance.

26 **5. ATTORNEY'S FEES AND COSTS**

1 **5.1** Pursuant to RCW 19.86.080, Washington shall recover and LAWL shall pay costs
2 and reasonable attorneys' fees incurred by Washington in pursuing this matter in the amount of
3 \$50,000 pursuant to Section 6 of this Assurance. This payment includes costs and reasonable
4 attorneys' fees to date, plus an additional amount for future monitoring. LAWL's payment of
5 attorneys' fees and costs pursuant to this Assurance shall in no way prevent, prohibit or otherwise
6 prejudice Washington's ability to seek payment of any remaining unpaid fees and costs incurred
7 in this matter from any other person.

8 **5.2** Interest will accrue on any unpaid balance of attorneys' fees and costs at the rate of
9 twelve percent (12%) per annum.

10 **5.3** In any successful action to enforce this Assurance against LAWL, LAWL shall
11 bear Washington's reasonable costs, including reasonable attorneys' fees.

12 **6. TERMS OF PAYMENT**

13 **6.1** LAWL shall pay Washington a total of \$50,000 as of the effective date of this
14 Assurance, or at such other time as agreed to by Washington in writing.

15 **6.2** LAWL shall make all payments to Washington by one or more checks payable to
16 the Attorney General - State of Washington, and shall be mailed or delivered to the Office of the
17 Attorney General, Consumer Protection Division, 800 5th Avenue, Suite 2000, Seattle,
18 Washington, 98164-1012, Attention: Cynthia Lockridge, unless otherwise agreed to in writing by
19 Washington.

20 **6.3** LAWL's failure to timely make a payment, without written agreement by
21 Washington, shall be a material breach of this Assurance.

22 **7. ENFORCEMENT**

23 **7.1** Under no circumstances shall this Assurance, or the name of the State of
24 Washington, the Office of the Attorney General, the Consumer Protection Division or any of their
25 employees or representatives be used by LAWL or any of its owners, directors, successors,
26 assigns, transferees, officers, agents, servants, employees, representatives, and all other persons

1 or entities in active concert or participation with LAWL, in connection with any selling,
2 advertising, or promotion of products or services, or as an endorsement or approval of LAWL's
3 acts, practices or conduct of business.

4 **7.2** Washington shall be permitted, upon thirty (30) days' advance notice to LAWL,
5 to access, inspect and/or copy, pursuant to RCW 19.86.110, all relevant and non-privileged
6 business records or documents in possession, custody or under control of LAWL to monitor
7 compliance with this Assurance, provided that the inspection and copying shall be done in such
8 a way as to avoid unreasonable disruption of LAWL's business activities.

9 **7.3** Washington shall be permitted to question LAWL, or any officer, director,
10 agent or employee of LAWL by deposition, pursuant to the provisions of RCW Ch. 19.86, to
11 monitor compliance with this Assurance.

12 **7.4** LAWL shall fully cooperate with Washington and other civil regulatory
13 agencies in any investigation of any other person who in any way manufactured, marketed or
14 sold, or substantially assisted in the manufacture, marketing or sale of any of LAWL's
15 products or services. LAWL also shall fully cooperate with Washington and other civil
16 regulatory agencies in any investigation of any other agent, employee, independent contractor
17 or representative of LAWL. LAWL's failure to fully cooperate as required by this paragraph
18 7.4 shall be a material breach of this Assurance.

19 **7.5** Nothing in this Assurance shall be construed to limit or bar any other
20 governmental entity or person from pursuing other available remedies against LAWL or any
21 other person.

22 **7.6** Jurisdiction is retained by this court for the purpose of enabling any party to this
23 Assurance to apply to the court for enforcement of or compliance with this Assurance, to
24 punish violations thereof or clarify the terms of this Assurance.

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