

STATE OF OREGON
Marion County Circuit Courts
MAY 04 2009
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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

STATE OF OREGON, ex rel JOHN R.
KROGER, Attorney General for the State of
Oregon,

Plaintiff,

v.

LA WEIGHT LOSS FRANCHISE
COMPANY and NWM, INC., doing business
as LA WEIGHT LOSS,

Defendants.

Case No. 07C16738
DAD

**STIPULATED PARTIAL GENERAL
JUDGMENT, PERMANENT INJUNCTION**

1.

Plaintiff, STATE OF OREGON, ex rel JOHN R. KROGER, Attorney General for the State of Oregon ("Plaintiff"), appearing through Eva H. Novick, and NWM, Inc., an Oregon corporation doing business as LA Weight Loss ("Defendant NWM"), appearing through Matthew A. Levin, and Dave L. Long ("Long"), individually and as president of Defendant NWM, appearing on behalf of himself, settle all claims that were or could have been brought in the above captioned matter only as between Plaintiff, Defendant NWM and Defendant NWM's owners, officers, directors and employees. Plaintiff, Defendant NWM and Long stipulate that this Stipulated Partial General Judgment, Permanent Injunction (hereafter "Judgment") may be signed and entered by a judge. This Judgment contemplates that Plaintiff will continue to pursue litigation against the remaining defendant, LA Weight Loss Franchise Company. Nothing in this Judgment will act to prevent Plaintiff from further amending the pleadings against the remaining defendant and other related entities.

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2.

This Judgment represents a settlement of a disputed matter. It shall not be considered an admission of a violation of law for any purpose. The parties agree that no provision of this Judgment shall operate as a penalty, forfeiture, or punishment under the Constitution of the United States, under the Constitution of the State of Oregon, or under any other provision of law.

3.

The entry of this Judgment has been consented to by Defendant NWM and Long as their own free and voluntary act and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed upon them by this Judgment, and they consent to its entry without further notice, and aver that no offer, agreement, or inducements of any nature whatsoever have been made to them by the Plaintiff or their attorneys or any employee of the Attorney General's Office to procure this Judgment.

4.

The Court having considered the pleadings and the proposed Judgment executed by the parties and their attorneys and filed herewith, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Judgment may be entered in this matter as follows:

PERMANENT INJUNCTION

5.

Defendant NWM and Long agree to be permanently enjoined, barred, restrained and prohibited from, individually or in any business or corporate capacity, operating any health spa business as defined in ORS 646A.030(4), including a dietary or supplement weight loss business, in Oregon. This includes, but is not limited to, advertising or otherwise promoting to Oregon residents dietary or supplement goods or services that purport to assist or aid Oregon residents in losing weight or maintaining weight loss.

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1 **OTHER SETTLEMENT TERMS AND OBLIGATIONS**

2 6.

3 The acceptance of this Judgment by the Attorney General shall not be deemed approval
4 by the Attorney General of any of Defendant NWM or Long’s advertising or business practices.
5 Further, Defendant NWM, Long or anyone acting on their behalf shall not represent, state, or
6 imply or cause to be represented, stated, or implied that the State of Oregon, the Attorney
7 General, or any other government unit of the State of Oregon has approved, sanctioned, or
8 authorized any practice, act, advertisement or conduct of Defendant NWM or Long.

9 7.

10 If any clause, provision or section of this Judgment shall, for any reason, be held illegal,
11 invalid, or unenforceable, such illegality, invalidity or unenforceability shall not affect any other
12 unrelated clause, provision, or section of this Judgment, and this Judgment shall be construed
13 and enforced as if such illegal, invalid, or unenforceable clause, section or other provision had
14 not been contained herein.

15 8.

16 Nothing in this Judgment shall be construed as relieving Defendant NWM or Long of the
17 obligation to comply with all state and federal laws, regulations or rules, nor shall any of the
18 provisions of this Judgment be deemed to be permission to engage in any acts or practices
19 prohibited by such law, regulation, or rule.

20 9.

21 Each party agrees to bear its own costs and attorney fees incurred in connection with this
22 action. However, this provision shall not apply in the event Plaintiff initiates proceedings to
23 enforce this Judgment.

24 10.

25 On March 20, 2009, Defendant NWM submitted to Plaintiff a financial statement.
26 Plaintiff’s agreement to this Judgment is expressly premised upon the truthfulness, accuracy and

1 completeness of the financial condition of Defendant NWM, as represented in the financial
2 statement, which contains material information relied upon by Plaintiff in negotiating and
3 agreeing to the terms of this Judgment. If, upon motion by Plaintiff, this Court finds that
4 Defendant NWM failed to disclose any material asset, materially misrepresented the value of any
5 asset, or made any other material misrepresentation or omission on its financial statement that
6 concealed the existence of assets the State would have been able to attach in the above captioned
7 matter, including, but not limited to, claims involving fraudulent transfer or piercing the
8 corporate veil, Plaintiff may request that this Judgment be reopened for the sole purpose of
9 allowing Plaintiff to modify Defendant NWM's monetary liability. Proceedings instituted under
10 this provision would be in addition to and not in lieu of any other remedies as may be provided
11 by law. A finding of material misrepresentation or omission as to the financial statement shall in
12 no respect modify any other term or condition of this Judgment; in all other respects, this
13 Judgment shall remain in full force and effect unless otherwise ordered by the Court.

14 11.

15 This Judgment sets forth the entire agreement of the parties, and there are no
16 representations, agreements, or understandings, oral or written, between the parties relating to the
17 subject matter of this Judgment which are not fully expressed herein or attached hereto or set
18 forth in any stipulation filed currently herewith. In any action undertaken by the parties, no prior
19 versions of this Judgment, and no prior versions of any of its terms, that were not entered by the
20 Court in this Judgment, may be introduced for any purpose whatsoever.

21 12.

22 It is the intent of the parties that pursuant to OEC 408, this Judgment shall not be
23 admissible as evidence in any subsequent trial or proceeding other than one between the parties
24 to this Judgment. It is the intent of the parties that this Judgment, as a compromise agreement,
25 has no relevance in, nor shall be admissible as evidence in, the continuing litigation between
26 Plaintiff and Defendant LA Weight Loss Franchise Company.

STIPULATED PARTIAL GENERAL JUDGMENT, PERMANENT INJUNCTION

Page 4 of 6

EHN/1331415

1 IT IS SO STIPULATED:

2 FOR DEFENDANTS:

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Dave L. Long
Dave L. Long, President
Individually and on behalf of NWM, Inc.

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Address: 152 Zimmerman Lake Rd.
Spartanburg, SC 29306

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Date: 3-20-09

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Approved as to form:

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Matthew A. Levin
Matthew A. Levin, OSB #003054
Attorney for Respondent NWM, Inc.
Markowitz Herbold Glade & Mehlhaf PC
1211 SW Fifth Avenue, Suite 3000
Portland, OR 97204
Tel: (503) 295-3085
Fax: (503) 323-9105
Email: mattlevin@mhgm.com

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FOR PLAINTIFF:

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JOHN R. KROGER
Attorney General

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Eva H. Novick
Eva H. Novick, OSB #044294
Assistant Attorney General
Oregon Department of Justice
1162 Court Street, N.E.
Salem, OR 97301-4096
Tel: (503) 934-4400
Fax: (503) 378-5017
Email: eva.h.novick@doj.state.or.us

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STIPULATED PARTIAL GENERAL JUDGMENT, PERMANENT INJUNCTION

Page 5 of 6

EHN/1331415

1 IT IS SO ORDERED, ADJUDGED AND DECREED.

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3 DATED this 4th day of May, 2009.

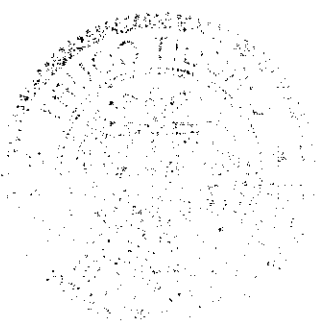
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5 BY THE COURT:

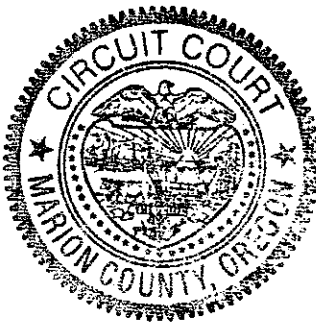


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7 Honorable Don A. Dickey
8 CIRCUIT COURT JUDGE for Marion County

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FILED
MAY 11 2009
CIRCUIT COURT
MARION COUNTY
INDIANA





STATE OF OREGON }
County of Marion } ss

The foregoing copy has been compared and is certified by me as a full, true and correct copy of the original on file in my office and in my custody.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the Court on: 5-4-09

TRIAL COURT ADMINISTRATION

By M. Martinez