

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07102
Attorney for Plaintiffs

FILE

AUG 05 2005

Joseph C. Harbo

By: Joshua T. Rabinowitz
Deputy Attorneys General
(973) 648-2893

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MORRIS COUNTY
DOCKET NO.: C-183-03

PETER C. HARVEY, Attorney General
of The State of New Jersey, and
RENI ERDOS, Director, New Jersey
Division of Consumer Affairs,

Civil Action

Plaintiffs,

vs.

**CONSENT ORDER AND
SETTLEMENT AGREEMENT**

GOEN TECHNOLOGIES CORPORATION (a New:
Jersey corporation, d.b.a. "Trim Spa
Corporation/TrimSpa", "Weight-loss
Labs" and "Health Sciences Direct"),
NUTRAMERICA CORPORATION (a Delaware
Corporation), A. GOEN SEMINARS INSTITUTE,
INC. (a Delaware corporation, d.b.a.
"Goen Media Group" and "Advanced Health
Sciences"), ALEX SZYNALSKI, a.k.a. ALEX
GOEN, (individually and as officer or
agent of Goen Technologies, Inc., Goen
Seminars, and NutramERICA), ALBERT
FLEISCHNER, Ph.D., (individually and as
officer or agent of Goen Technologies,
Inc., Goen Seminars, and NutramERICA) and
DOES 1 through 20,

Defendants.

Plaintiffs, Peter C. Harvey, the Attorney General of the State of New Jersey, and the Director of the New Jersey Division of Consumer Affairs (collectively, "Plaintiffs") filed a complaint (the "Complaint") against Goen Technologies Corporation, Nutramerica Corporation, A. Goen Seminars Institute, Alex Szynalski, and Albert Fleischner (collectively the "Defendants"). The Complaint seeks penalties, a permanent injunction and other equitable relief against the Defendants. Defendants deny the allegations, except those pertaining to jurisdictional facts, in the Complaint. Defendants do, however, agree to the terms of this consent order (the "Consent Order") solely to avoid the uncertainty and costs of litigation.

Plaintiffs and Defendants have stipulated to the entry of the Consent Order in settlement of the allegations in the Complaint against Defendants. The Court, being advised of this settlement, finds:

DEFINITIONS

For purposes of this Consent Order, the following definitions shall apply:

1. "Defendants" shall mean Goen Technologies Corporation, Nutramerica Corporation, A. Goen Seminars Institute, Alex Szynalski, and Albert Fleischner, Ph.D.
2. "Plaintiffs" shall mean the Attorney General of the State of New Jersey and the Director of the New Jersey Division of Consumer Affairs.
3. "Division" shall mean the New Jersey Division of Consumer Affairs.
4. "New Jersey Consumer Fraud Act" shall mean the New Jersey Consumer Fraud Act of 1960, as amended, N.J.S.A. 56:8-1 et seq.
5. "Date of this Consent Order" shall mean the date the Consent Order is filed with the New Jersey Superior Court, Chancery Division, Morris County.

6. "Competent and Reliable Scientific Evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the professions to yield accurate and reliable results.

7. "Clearly and Conspicuously" shall mean as follows:

- a. In an advertisement communicated through an electronic medium (such as television, video, radio and interactive media such as the Internet, online services and software), the disclosure shall be presented in either the audio or the visual portion of the advertisement. An audio disclosure shall be in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. A visual disclosure shall be of a size and shade, with a sufficient degree of contrast with the background against which it appears, to make it clearly legible, and shall appear on the screen for a duration and in a location, sufficiently noticeable for an ordinary consumer to read and comprehend it; and
- b. In a print advertisement, promotional material or instructional manual, the disclosure shall be in print that contrasts with the background against which it appears and in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it.

8. "Endorsement" shall mean as defined in 16 C.F.R. § 255-O(b).

9. "Substantial Weight-loss" shall mean weight-loss of two (2) or more pounds per week.

10. "Substantiate" when used in the context of "substantiate a statement or representation" shall mean to provide Competent and Reliable Scientific Evidence that constitutes proof of the statement or representation.

11. "Support" when used in the context of "support a statement or representation" shall mean to provide Competent and Reliable Scientific Evidence that increases the probability that the statement or representation is true but may not substantiate it.

12. "Goen Supplements" shall mean the supplements referred to in the Complaint as aids to weight-loss or fat loss, i.e., TrimSpa, TrimSpa EF, Lipo Spa and CarbSpa.

13. "Goen Smoking Cessation Seminars" shall mean the seminars that Defendants promoted to aid people who wanted to stop smoking.

14. "Goen Weight-loss Seminar" shall mean the seminars that Defendants promoted to aid people who wanted to lose weight.

15. "Substantially Similar Product" shall mean:

- a. With respect to TrimSpa EF: TrimSpa Completely Ephedra Free Formula X-32 or other non-ephedra based dietary supplements that are advertised as assisting consumers with appetite suppression and/or weight loss and are promoted by any Defendant;
- b. With respect to Lipo Spa: Fat Blocker or other non-ephedra based dietary supplements that are advertised as assisting consumers with weight loss through the use of chitosan to block the absorption of fat and are promoted by any Defendant; and
- c. With respect to CarbSpa.: Carb Blocker or other non-ephedra based dietary supplements that are advertised as promoting weight-loss by assisting consumers to curbing their appetite for carbohydrates and are promoted by any Defendant.

16. "Weight-loss Product" shall mean any product, program, or service purported to produce weight-loss, elimination of fat, slimming, or caloric deficit in a user of the product, program or service.

FINDINGS

1. The Superior Court of New Jersey, Chancery Division, Morris County, has jurisdiction over the subject matter and the parties.

2. Plaintiffs in their Complaint allege that Defendants have violated N.J.S.A. 56:8-2 by

selling and offering to sell Goen Supplements through advertisements that exaggerated the supplement's benefits, downplayed the supplement's risks, or made claims about the supplement's safety or efficacy without substantiation. Plaintiffs also alleged that Defendants violated N.J.S.A. 56:8-2 and N.J.S.A. 56:8-2.2 by promoting the Goen Weight-loss Seminars and the Goen Smoking Cessation Seminars through advertisements that exaggerated the role that hypnosis would play in the Goen approach to weight-loss and smoking cessation and failed to disclose that the use of expensive Goen Supplements was a critical feature of that approach. Defendants, in their respective Answers, denied those allegations as being without merit.

3. In addition to seeking penalties and permanent injunctive relief, the Complaint also seeks an order requiring Defendants to restore to each affected consumer any money acquired by means of any practice found to be unlawful under the New Jersey Consumer Fraud Act. Defendants, in their respective Answers, denied that Plaintiffs were entitled to any relief.

4. Entry of the Consent Order is not, and shall not be deemed to be, an admission by any Defendant of liability for violating the New Jersey Consumer Fraud Act or any other law and Defendants enter into this Consent Order solely to avoid the costs and burdens of continuing litigation.

5. This Consent Order resolves all of Plaintiffs' claims against Defendants based on advertisements for any Goen Supplement, Goen Weight-loss Seminar, Goen Smoking Cessation Seminar or any other Weight-loss Product that Defendants promoted as a Goen or a Nutramerica product up to and including the Date of this Consent Order.

6. Entry of the Consent Order is in the public interest.

PROHIBITED ACTIVITIES

IT IS HEREBY ORDERED that each Defendant or other person or entity who signs the Consent Order, directly or through any corporation, partnership, subsidiary, division or other device, and its officers, agents, servants, employees, and attorneys, and each person in active concert or participation with it who receives actual notice of the Consent Order, by personal service or otherwise, is hereby enjoined from engaging in, or assisting others to engage in, in connection with offer or sale of any Weight-loss Product, any weight-loss seminar or any smoking cessation seminar, any practice that violates the New Jersey Consumer Fraud Act, including but not limited to any of the following practices that the Division deems to be violations of the New Jersey Consumer Fraud Act or appropriate to ensure Defendants' future compliance with the New Jersey Consumer Fraud Act:

1. Representing, expressly or by clear implication, including through the use of endorsements, that any Goen Supplement or any Weight-loss Product that is Substantially Similar to any Goen Supplement:
 - a. By itself causes rapid and Substantial Weight-loss without the need for diet or exercise;
 - b. By itself causes permanent weight-loss; or
 - c. By itself works for all overweight users.
2. Representing, expressly or by clear implication, including through the use of endorsements, any of the following types of claims about any Goen Supplement unless the representation is true and at the time the representation is made the person or entity possesses and relies upon Competent and Reliable Scientific Evidence that substantiates the representation:

- a. the supplement causes weight-loss or fat loss;
- b. the supplement enables users to lose weight or fat, or any specific amount of weight or fat;
- c. the supplement enables users to lose weight or fat without caloric reduction or exercise;
- d. the supplement enables users to lose a specific amount of weight in a specific amount of time; or
- e. the supplement causes weight-loss via a specific biochemical mechanism.

This paragraph shall not preclude Defendants from using a lay endorsement that complies with the other paragraphs in this section and is not misleading.

3. Representing, expressly or by clear implication, including through the use of endorsements, that any Weight-loss Product is X%, or Y times, more effective than another Weight-loss Product (or than diet or exercise alone) unless, at the time the representation is made, the Defendant possesses and relies upon Competent and Reliable Scientific Evidence that substantiates the claim. Moreover, any such representation must Clearly and Conspicuously disclose the average weight-loss by the persons who took the product in the study that Substantiates the claim.

4. Making any offer to sell a Weight-loss Product, including through the use of endorsements, without Clearly and Conspicuously disclosing that the product should be used with diet and exercise unless Defendants have Competent and Reliable Scientific Evidence that Substantiates the claim that the Weight-loss Product causes weight loss without the need for diet and exercise.

5. Representing, expressly or by clear implication, including through the use of endorsements, that a specific person who used the Weight-loss Product (the "Endorser") achieved

a specific amount of weight-loss in a specific period of time unless at the time the representation is made, the person or entity has a sworn statement from the Endorser that is consistent with the representation and contains the following information:

- i. The period of time during which the Endorser used the endorsed Weight-loss Product;
- ii. The amount of weight-loss the Endorser experienced during the period he/she used the product;
- iii. Whether the Endorser experienced material weight-loss or material weight gain during the three-month period prior to using the product as part of a weight-loss program;
- iv. Whether the Endorser used the recommended amount of the product;
- v. Whether the Endorser took any other Weight-loss Products during the period he/she used the product for weight-loss and the amounts of each additional product that he/she used;
- vi. Whether the Endorser, while using the product, had increased energy or reduced appetite and, if the Endorser answers that he/she did not have increased energy or reduced appetite, whether the Endorser, while using the product, increased his/her exercise routine or decreased his/her caloric intake.
- vii. Whether the Endorser underwent any medical procedure to lose weight or change his/her appearance during the period he/she used the product to lose weight;
- viii. Whether the Endorser was paid to provide the endorsement and whether he/she has a financial interest in the company that manufactures or distributes the product; and
- ix. If the endorsement includes a "before" or "after" picture, the date each picture was taken, whether each picture accurately represents the way the Endorser appeared on the date it was taken and whether it was modified to change Endorser's appearance.

6. Using an endorsement from a person who used a Weight-loss Product during a period when the person engaged in a reduced calorie diet or an enhanced exercise routine without disclosing

that the person made these changes to his/her lifestyle during the period he/she used the Weight-loss Product.

7. Using an endorsement for a Weight-loss Product that identifies weight-loss results that are not typical of what an average consumer can expect to achieve from the use of the product without Clearly and Conspicuously disclosing that the results are not typical.

8. Using an endorsement that represents that the endorser achieved better results through use of a Weight-loss Product than through use of another product or through the use of diet and exercise alone unless the person or entity has a sworn statement from the endorser that supports the representation.

9. Representing, expressly or by clear implication, including through the use of endorsements, that any Weight-loss Product has been clinically proven to be safe or effective unless at the time the representation is made, the person or entity possesses and relies upon Competent and Reliable Scientific Evidence that (a) Substantiates the representation, and (b) is available to the Division. If the Competent and Reliable Scientific Evidence does not include proprietary information, then it shall also be available to any consumer who asks to review it.

10. Representing, expressly or by clear implication, including through the use of endorsements, that any Weight-loss Product has been clinically tested to be safe or effective when the clinical tests were on the active ingredients in the product, rather than the product itself, and that fact is not Clearly and Conspicuously disclosed.

11. Misrepresenting, expressly or by clear implication, including through the use of endorsements, the existence, contents, validity, results, conclusions or interpretations of any clinical test or study.

12. Representing, expressly or by clear implication, including through the use of endorsements, that a Weight-loss Product is a traditional approach to weight-loss unless (a) the product includes an active ingredient that was traditionally used for weight-loss, and (b) at the time the representation is made, there is Support for the representation that the active ingredient aids weight loss or there is a disclaimer that the efficacy of the ingredient has not yet been Supported.

13. Using an endorsement from a medical doctor or other person who is represented as having scientific expertise that a Weight-loss Product is materially different from another weight loss product unless, at the time the representation is made, the person who provides the endorsement can support the claim.

14. Using an endorsement for a Weight-loss Product from a medical doctor or other person with apparent scientific expertise unless the endorser is an expert with respect to the matters about which he/she speaks.

15. Using an endorsement for a Weight-loss Product from a medical doctor or other person with apparent scientific expertise unless the person or entity that uses the endorsement has a sworn statement from the purported expert that: (a) was signed prior to the use of the endorsement; (b) commits the purported expert to the representations in the endorsement; and (c) has not been withdrawn by the purported expert.

16. Using an endorsement for a Weight-loss Product from a medical doctor or other person with apparent scientific expertise when the person or entity that uses the endorsement had information at the time the endorsement was used that the endorser did not have and that a reasonable person believes would have caused the endorser to withdraw his/her endorsement.

17. Making any offer to sell a Weight-loss Product through a print advertisement, an

internet promotion or a telephone promotion without providing the consumer with: (a) a statement to consult a health care professional before beginning any weight-loss program; (b) a statement to read the label before using the advertized product; and (c) with respect to internet advertisements, a link that provides easy access to a copy of the label prior to purchase.

18. Advertising or promoting any weight-loss seminar as teaching an effective approach to weight-loss without disclosing all of the material costs associated with obtaining the advertised benefits of the program, including but not limited to (a) the costs of attending the seminar, (b) the costs of any supplements that will be recommended as an integral part of the program, and (c) the costs of contacting a medical professional to determine whether the program is a safe and effective approach to weight-loss.

19. Advertising or promoting any smoking cessation seminar as teaching an effective approach to smoking cessation without disclosing all of the material costs associated with obtaining the advertised benefits of the program, including but not limited to (a) the costs of attending the seminar, (b) the costs of any supplements that will be recommended as an integral part of the program, and (c) the costs of contacting a medical professional to determine whether the program is a safe and effective approach to stop smoking.

20. Representing that a patent for a Weight-loss Product is evidence that the Federal government has determined that the Weight-loss Product is safe or effective.

SCOPE, PURPOSE AND INTERPRETATION OF THE CONSENT ORDER

IT IS FURTHER ORDERED that:

1. Aside from the advertising claims that are expressly prohibited in the Section on Prohibited Activities, nothing contained in the Consent Order prohibits any person or entity who

signs it from making any true and non-misleading advertising claim for any Weight-loss Product, any weight loss-seminar or any smoking cessation seminar.

2. The Consent Order is not intended to limit the right of any person or entity who signs it to engage in non-actionable "puffing." "Puffing" shall not, however, be considered to be a defense to any practice that is expressly prohibited by this Consent Order.

3. The Consent Order shall only apply to the activities of a person or entity that signs with respect to the offer or sale of Weight-loss Products, weight-loss seminars and smoking cessation seminars in or from New Jersey, which shall include, but may not be limited to: (a) retail sales at New Jersey locations; (b) telephone sales that result from consumer calls from or to a telephone located in New Jersey; (c) internet sales from websites hosted in New Jersey or where a website identifies the business of the person or entity offering or selling the product and the principal place of business of that person or entity is located in New Jersey; and (d) sales to consumers that are shipped from New Jersey.

4. Nothing in this Consent Order shall apply to any Weight-loss Product sold or distributed to consumers by third parties in cases where there is no participation by any Defendant in the funding, preparation or dissemination of the Weight-loss Product to consumers; provided however, that if any Defendant learns that a third party has made a misrepresentation about a product subject to this Consent Order that would constitute a violation of this Consent Order if it were made by a person or entity subject to this Consent Order, then the Defendant shall notify the Division within fifteen (15) business days of the date he/she/it learns of the action. A Defendant does not participate in the funding, preparation or dissemination of a weight loss product when it distributes what it deems to be truthful information about its product or the ingredients in its product to a third

party that is in the business of selling that product to consumers.

MONETARY RELIEF AND CONSUMER COMPLAINTS

IT IS FURTHER ORDERED that:

1. The Defendants shall be jointly and severally liable for a payment of \$50,000 to the Division for the costs it incurred in connection with investigating Defendants and prosecuting this action.
2. The Defendants shall be jointly and severally liable for a payment of \$700,000 to the Division for consumer initiatives.
3. Payment of \$750,000 on behalf of all Defendants, which shall be deemed due on June 30, 2005, shall be made by Goen Technologies Corporation according to the payment schedule set forth in paragraph 4. The schedule assumes that Defendants will pay simple interest of .5% per month on any balance due after June 30, 2005. Each payment shall be made by means of a certified check, wire transfer, attorney trust account check or other guaranteed funds to the "New Jersey Division of Consumer Affairs" and shall be delivered to the New Jersey Division of Consumer Affairs at the following address:

Attention: Case Management Tracking
New Jersey Department of Law and Public Safety
Division of Consumer Affairs
124 Halsey Street
P.O. Box 45025
Newark, New Jersey 07101
4. The payment schedule shall be: (a) an initial payment of at least \$75,000 shall be made within five (5) days of the date that Goen Technologies Corporation signs the Consent Order; (b) a second payment shall for at least \$75,000 shall be made by August 1, 2005; and (c) the final

payment, for the unpaid balance plus accrued interest, shall be paid by September 1, 2005.

5. Goen Technologies Corporation, NutrAmerica Corporation or Goen Seminars Institute, Inc. shall, as appropriate, notify each consumer on Exhibit A that it will either: (a) make restitution to the consumer in the amount listed on Exhibit A in exchange for a release from the consumer for all claims the consumer might have against the Defendants that arise from its purchase or use of the supplement; or (b) agree to submit the consumer's claim to the Division's Alternative Dispute Resolution ("ADR") Unit for resolution through binding arbitration.

6. If a consumer on Exhibit A refuses to accept the refund and provide the release provided for in paragraph 5 above, then each affected Defendant shall notify the Division that it will submit its dispute with the consumer to the ADR Unit for resolution through binding arbitration. Each Defendant agrees to consent to this arbitration process and to be bound by the arbitrator's decision. Each Defendant further agrees to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14 and the New Jersey Tort Claims Act, N.J.S.A. 59:10A-1 et. seq. The Division shall notify any such consumer of the referral of the dispute to ADR. Thereafter the arbitration shall proceed in accordance with the ADR Guidelines (a copy of which is attached as Exhibit B).

7. In the event an affected Defendant fails or refuses to participate in the ADR program, the arbitrator may enter a default against it. Unless otherwise specified in the arbitration award, the Defendant shall pay any and all arbitration awards within thirty (30) days of the arbitrator's decision. A Defendant's failure or refusal to participate in the arbitration process or to timely pay an arbitration award shall constitute a violation of this Consent Order.

8. If a consumer on Exhibit A refuses to participate in the ADR program, then it shall

have no rights under this Consent Order.

9. Each of Goen Technologies Corporation and Nutramatica Corporation agrees that, for a period of one year from the Date of this Consent Order (the "Period"), it shall have the following obligation to each consumer who is entitled to the protection of the New Jersey Consumer Fraud Act and this Consent Order as set forth in paragraphs 3 and 4 of the section SCOPE, PURPOSE AND INTERPRETATION OF THE CONSENT ORDER and who complains to it or the Division that it is entitled to a refund of the purchase price of one its Weight-loss Products it will either (a) provide the refund to the consumer in exchange for a release from the consumer for all claims the consumer might have against the Defendants that arise from the consumer's purchase or use the Weight-loss Product or (b) agree to submit the consumer's claim to the ADR Unit for resolution through binding arbitration. During each month of the Period, the Division will forward all consumer complaints it receives that seek a refund of the purchase price of a Goen Technologies Corporation or a Nutramatica Corporation Weight-loss Product to the appropriate corporation within fifteen (15) days of the end of that month. During each month of the Period, each of Goen Technologies Corporation and Nutramatica Corporation will forward the consumer complaints it receives about its Weight-loss Products to the Division within fifteen (15) days of the end of the month.

10. In each case that a Defendant submits to the ADR Unit for binding arbitration, the Defendant shall be responsible for its own costs.

RECORD KEEPING

IT IS FURTHER ORDERED that:

1. Each corporation signing this Consent Order, for a period of four (4) years from the

date of service of the Consent Order, shall maintain and, upon request, make available to the Division for inspection and copying: (a) all advertisements and promotional materials for each Weight-loss Product that it offers for sale in or from New Jersey; (b) all materials that it relied upon in preparing or confirming the accuracy of the representations in the advertisements and promotional materials; and (c) all tests, reports, studies, surveys, demonstrations, or other evidence in its possession, custody, or control that contradict, qualify, or call into question the representations in the advertisements or promotional materials, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental entities or consumer protection organizations.

MONITORING

IT IS FURTHER ORDERED that:

1. Within thirty (30) days of the date of the entry of this Consent Order, each entity that signs the Consent Order shall have an obligation, throughout the period that the Consent Order is in effect, to provide each director, manager, and employee who has responsibility for signing off on advertisements or endorsement that are subject to this Consent Order with a copy of the Consent Order and shall secure from each such person a signed and dated statement acknowledging receipt of the Consent Order.
2. Each entity that signs the Consent Order shall notify the Division at least thirty (30) calendar days prior to any change in the entity that may affect its compliance obligations arising under the Consent Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to the Consent Order;

the proposed filing of a bankruptcy petition, or a change in the corporate name or address. Provided, however, that, with respect to any proposed change that the entity learns about less than thirty (30) calendar days prior to the date such change is to take place, the entity shall notify the Division as soon as is practicable after obtaining such knowledge.

3. Each entity that signs the Consent Order shall provide the Division with its business address and business telephone number within ten (10) days of the date of this Consent Order and shall provide the Division with any change in its business address or business telephone number within ten (10) of the date of any such change.

4. The Division is authorized to monitor the compliance of each entity that signs the Consent Order by all lawful means, including but not limited to the use of compulsory process as provided in the New Jersey Rules of Court. In addition, nothing in this Consent Order shall limit the Division's lawful use of its powers under N.J.S.A. 56:8-3 and N.J.S.A. 56:8-4 to investigate whether the entity has violated the New Jersey Consumer Fraud Act, any regulation promulgated thereunder, or any provision of this Consent Order.

MEET AND CONFER

1. Plaintiffs and Defendants recognize that the negotiation and finalization of this Consent Order was the result of good faith negotiation and compromise between the Parties. In the spirit of continued cooperation between Plaintiffs and Defendants, each Plaintiff agrees that, except in cases where immediate legal action is necessary to protect consumers from irreparable harm, it will not institute any further proceedings against any Defendant for an alleged violation of this Consent Order without first providing the Defendant with: (i) notice of the alleged violation and a time frame that is reasonable in light of the alleged violation for settling the alleged violation; (ii)

an opportunity to provide a written response to the allegation; and (iii) a face-to-face meeting between Plaintiffs and the Defendant (or its representative) to discuss and attempt to resolve the allegations. If the parties cannot reach an agreement during the face-to-face meeting, then the Plaintiff may, in its sole and absolute discretion, continue negotiations to reach a settlement or commence an action against the Defendant.

2. Paragraph 1 shall constitute a pre-condition to the right of each Plaintiff to bring an action against a Defendant for violation of this Consent Order.

3. Nothing in this Consent Order shall preclude any Plaintiff from bringing an action against any Defendant for violation of the New Jersey Consumer Fraud Act or the regulations promulgated thereunder that does not also allege a violation of this Consent Order. If a Plaintiff brings any such action, then it may not rely on any provision of this Consent Order to prove its case.

GENERAL PROVISIONS

IT IS FURTHER ORDERED that:

1. Nothing contained in the Consent Order shall be construed to limit or affect any position that any person or entity that signs the Consent Order may take in any future or pending action not specifically encompassed herein.

2. The Consent Order constitutes the entire agreement between the Plaintiffs and the Defendants with respect to the subject matter hereof.

3. Any amendment to the Consent Order must be signed by the affected parties and submitted to the Court, with notice to each person or entity that signed the Consent Order, for its approval.

4. Each person or entity that has signed the Consent Order, and its respective counsel,

has had a full and fair opportunity to review the Consent Order. Accordingly, each agrees that any principle of construing ambiguities against the drafter has no application to the Consent Order.

5. No person or entity that signs the Consent Order shall represent or imply that any advertising procedure that it uses was required or approved, in whole or part, by the Attorney General or the Division or any of the State of New Jersey's agencies or agents.

6. Each person or entity that is a party to the Consent Order represents that the person who signs the Consent Order on its behalf has full knowledge, understanding and acceptance of the terms of the Consent Order and the authority to legally bind it to the terms of the Consent Order.

7. The Consent Order shall be interpreted in accordance with the laws of the State of New Jersey.

8. The Consent Order may be executed in counterparts.

9. Except as otherwise provided herein, any notice or other document required to be sent to the Division or to any Defendant shall be sent by the 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:	Division of Law Attn: Joshua T. Rabinowitz, DAG 124 Halsey Street P.O. Box 45029 Newark, New Jersey 07102
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For the Defendants:	Goen Technologies, Corporation Attn: Legal Department 35 Melanie Lane Whippany, New Jersey 07981
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and

Donald Beshada, Esq.
Drinker Biddle & Reath, LLP
500 Campus Drive
Florham Park, N.J. 07932-1047

DISMISSAL OF ACTION WITH PREJUDICE AND RELEASE

IT IS FURTHER ORDERED that:

1. Within ten (10) days of the date that the Division receives the payment required by the Consent Order, the Defendants will take all necessary measures to effectuate the dismissal of the action against them with prejudice.
2. Plaintiffs release any and all claims, known or unknown, that they have, had, or may have against Defendants for any alleged violation of the New Jersey Consumer Fraud Act or the common law relating to the advertising or labeling of any Weight-loss product, weight-loss seminar or smoking cessation seminar.
3. Each Defendant releases the Attorney General, the Director of the Division of Consumer Affairs and each of their employees or agents from any claim it may have against any one of them that arises out of what that person did or said up to and including the Date of this Consent Order in connection with: (a) the investigation that culminated in the commencement of this action; (b) the prosecution of this action; or (c) the settlement of this action.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that:

1. This Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of the Consent Order.

TERMINATING THE PROVISIONS OF THE CONSENT ORDER

1. At any time after the four (4) year anniversary of the Date of This Consent Order, any Defendant may make written application to the Superior Court of New Jersey, Chancery Division, Morris County, which retains jurisdiction in this matter, to terminate the entire Consent Order, or any specific provision therein, with respect to it. Such request shall include a certification under oath that the moving party has committed no material violation of the Consent Order for a period of not less than four (4) years prior to the date of the request.

2. If a Defendant makes an application pursuant to paragraph 1 and Plaintiffs do not dispute the certification submitted in support of its application, then Plaintiffs agree not to oppose the application.

SO STIPULATED
PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY

BY: Joshua Rabinowitz
Joshua Rabinowitz, Deputy Attorney General

DATED: July 1, 2005

THE DIVISION OF CONSUMER AFFAIRS

BY: Kimberly Ricketts
Kimberly Ricketts, Director of the
Division of Consumer Affairs

DATED: July 1, 2005

Each of the undersigned has read this Consent Order, understands it, and agrees to be bound by its terms.

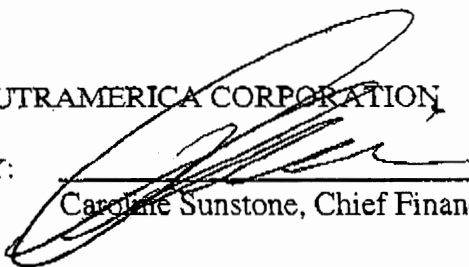
GOEN TECHNOLOGIES CORPORATION

BY: Caroline Sunstone
Caroline Sunstone, Chief Financial Officer

DATED: July , 2005

NUTRAMERICA CORPORATION

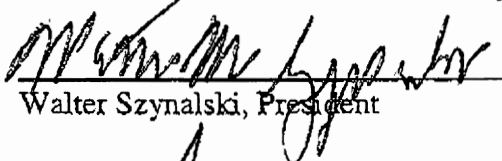
BY:


Caroline Sunstone, Chief Financial Officer

DATED: July , 2005

A. GOEN SEMINARS INSTITUTE

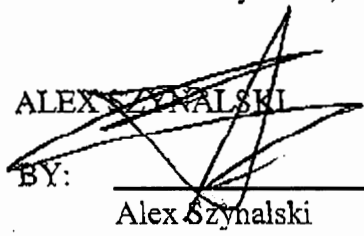
BY:


Walter Szynalski, President

DATED: July , 2005

ALEX SZYNALSKI

BY:


Alex Szynalski

DATED: July , 2005

ALBERT FLEISCHNER

BY:


Albert Fleischer

DATED: July , 2005

Consent as to the form and entry of this Order.

Drinker Biddle & Reath, LLP
500 Campus Drive
Florham Park, N.J. 07932-1047
Attorney for Defendants


BY:


~~Donald A. Beshida~~

DONALD A. BESHIDA

DATED: July 5, 2005

SO ORDERED


Kenneth C. MacKenzie, J.S.C.

DATED:

August 5,
2005

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07102
Attorney for Plaintiffs

By: Joshua T. Rabinowitz and Sunil G. Raval
Deputy Attorneys General
(973) 648-2893

RECEIVED
KENNETH C. MacKENZIE, J.S.C.

OCT 16 2003

JUDGE'S CHAMBERS
MORRIS COUNTY COURTHOUSE

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MORRIS COUNTY

DOCKET NO.

PETER C. HARVEY, Attorney General
of The State of New Jersey, and
RENI ERDOS, Director, New Jersey
Division of Consumer Affairs,

Plaintiffs,

vs.

GOEN TECHNOLOGIES CORPORATION (a New
Jersey corporation, d.b.a. "Trim Spa
Corporation/TrimSpa", "Weight Loss
Labs" and "Health Sciences Direct"),
NUTRAMERICA CORPORATION (a Delaware
Corporation), A. GOEN SEMINARS INSTITUTE,
INC. (a Delaware corporation, d.b.a.
"Goen Media Group" and "Advanced Health
Sciences"), ALEX SZYNALSKI, a.k.a. ALEX
GOEN, (individually and as officer or
agent of Goen Technologies, Inc., Goen
Seminars, and NutramERICA), ALBERT
FLEISCHNER, Ph.D., (individually and as
officer or agent of Goen Technologies,
Inc., Goen Seminars, and NutramERICA and
DOES 1 through 20,

Defendants.

Civil Action

COMPLAINT

PETER C. HARVEY, Attorney General of the State of New Jersey and RENI ERDOS, Director of the New Jersey Division of Consumer Affairs, with offices located at 124 Halsey Street, 7th Floor, Newark, New Jersey 07102, by way of complaint, upon information and belief, state:

NATURE OF COMPLAINT AND BACKGROUND

1. A. Goen Seminars Institute, Inc. ("Goen Institute") is a New Jersey-based company that promotes and conducts weight loss and smoking cessation seminars. Goen Institute was founded by Alex Szynalski, who is also known as Alex Goen.

2. Goen Technologies Corporation ("Goen Technologies") and Nutramerica Corporation ("Nutramerica") -- affiliates of Goen Institute -- are New Jersey-based companies that develop and distribute dietary supplements including TrimSpa, CarbSpa and Lipo Spa and smoking cessation aides ("Goen Supplements"). Goen Supplements are advertised and sold at Goen Institute seminars and through direct mail promotions, newspaper advertisements, radio advertisements and the internet.

3. In promotional materials for Goen Supplements, defendants state that the supplements are drug free. This statement is misleading because, as explained in greater detail below, certain Goen Supplements, such as TrimSpa, contain a combination of ingredients that has the same dangerous side effects as certain drug products banned by the Food and Drug Administration. In fact, one of TrimSpa's active ingredients is ephedra, an ephedrine

alkaloid derived from ma huang, a Chinese herbal plant and stimulant. Dangerous side effects associated with the use of ephedra and other ephedrine alkaloids, especially when used with caffeine, are well documented in medical literature. Specifically, ephedra has been proven to cause negative side effects in healthy individuals, including headaches, irritability and heart palpitations. Ephedra has also been associated with serious adverse health events such as strokes, seizures, high blood pressure and heart attacks. Due to the negative side effects associated with the combination of ephedrine alkaloids and caffeine, the Food and Drug Administration banned the sale of ephedrine/caffeine combinations in over-the-counter drug products in 1983.

4. The use of TrimSpa and other Goen Supplements is an essential component of Goen Institute's weight loss and smoking cessation seminars. In promotional materials, however, the Goen Institute claims that its weight loss seminars teach consumers a "proven way to slimness without dangerous drugs, starvation diets or endless brutal exercise." According to promotional materials, the Goen system "will let hypnosis do the work for you" and "practically works like magic." The promotional materials fail to inform consumers that Goen's "proven way to slimness" requires consumers to purchase Goen Supplements.

5. In promotions for Goen Institute's smoking cessation seminars defendants create the false impression that the Goen method relies principally, if not exclusively, on the use of hypnosis. Indeed, defendants mislead consumers by stating that consumers can stop smoking without the use of dangerous drugs. Promotional materials fail to inform consumers that a key component of the Goen system is the purchase and use of Goen Supplements.

6. Goen seminars - and the promotional material associated with those seminars - are nothing more than a classic bait and switch ploy. The purpose of the seminars is to sell Goen Supplements, rather than teach consumers to lose weight and stop smoking through hypnosis as advertised. Promotional materials for Goen seminars are false and misleading because they fail to inform consumers that the Goen method to weight loss and smoking cessation requires the purchase of Goen Supplements and that the purchase of such supplements will require consumers to make substantial expenditures beyond the cost of the seminar itself. Moreover, defendants do not disclose to consumers the adverse side effects associated with ephedra, a key ingredient in TrimSpa.

7. As stated above, defendants also sell TrimSpa and other Goen Supplements through direct mail, newspaper advertisements, radio advertisements, and the internet. In promotional materials used in these media, defendants make unsubstantiated claims about the effectiveness of TrimSpa and other Goen Supplements.

Additionally, defendants suggest that the federal government has endorsed TrimSpa as safe and effective. For example, defendants use the fact that they have obtained a patent for TrimSpa to create the false impression that the United States Government has found that TrimSpa is a safe and effective product.

8. Moreover, the TrimSpa website creates the false impression that it is safe to use TrimSpa and other Goen Supplements without first consulting a doctor. The website -- in large bold type -- states that consumers can use Goen Supplements without first consulting a doctor. Disclaimers, warning consumers to consult their doctor before using Goen Supplements, can be found, however, in small footnotes at the end of the consumer's website tour.

9. In sum, seminars and promotional materials for Goen Institute seminars and Goen Supplements are deceptive because, among other things, they: (a) mislead consumers by claiming that Goen's methods are drug-free; (b) make unsubstantiated claims about the effectiveness of Goen Supplements; and (c) fail to disclose the adverse health risks associated with the use of certain Goen Supplements.

10. The Attorney General and the Director of the Division of Consumer Affairs now seek, among other things, to: (a) permanently enjoin defendants from advertising Goen weight loss and smoking cessation seminars without proper disclosure of: (i) the role Goen

Supplements play in Goen Institute seminars, namely, that they are an essential component of Goen's seminars; (ii) the costs of Goen Supplements; and (iii) the health risks associated with the use of Goen Supplements containing ephedra; (b) permanently enjoin defendants from publishing any advertisement for any Goen Supplement that contains ephedra without disclosing, at the beginning of the advertisement, that the supplement contains ephedra and clearly describing all of the known risks associated with the use of ephedra; (c) permanently enjoin defendants from making unsubstantiated claims about TrimSpa, Lipo Spa, CarbSpa or any other Goen Supplement; (d) permanently enjoin defendants from making any statements that suggest or imply that defendants' patent for TrimSpa constitutes an endorsement by the United States government of the safety or efficacy of TrimSpa; and (e) require defendants to prominently disclose on the TrimSpa website, or the website dedicated to any other Goen Supplement, the risks associated with the use of any Goen Supplement sold on that website.

JURISDICTION AND VENUE

11. The Attorney General of the State of New Jersey is charged with the responsibility of enforcing the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("the Act"), and the regulations promulgated thereunder. The Director of the Division of Consumer Affairs is charged with the responsibility of

administering the Act on behalf of the Attorney General. This action seeking injunctive and other relief is brought by the Attorney General and the Director of the Division of Consumer Affairs pursuant to the provisions of N.J.S.A. 56:8-8, 56:8-11, and 56:8-13.

12. Goen Technologies, Nutramerica, Goen Institute, Alex Goen, Albert Fleischner, and Does 1 through 20 have conducted and continue to conduct business within the State of New Jersey through Goen Technologies' corporate headquarters at 8 Ridgedale Ave., Suite 205, Cedar Knolls, New Jersey, 07927. The violations of law alleged herein have been, and continue to be, carried out within Morris County, the location of Goen Technologies' corporate headquarters, and elsewhere in the State of New Jersey.

THE DEFENDANTS

13. Goen Technologies is a New Jersey corporation that is engaged in the business of manufacturing and distributing dietary supplements, including TrimSpa, Lipo Spa and CarbSpa. Goen Technologies' filing with the Secretary of State lists "Trim Spa Corporation/TrimSpa," "Weight Loss Labs" and "Health Sciences Direct" as other names associated with it. The entities known as Trim Spa Corporation, Weight Loss Labs and Health Sciences Direct are divisions of Goen Technologies, rather than independent corporations. Goen Technologies' principal place of business is 8 Ridgedale Avenue, Cedar Knolls, New Jersey, 07927.

14. Nutramerica is a Delaware corporation that filed with the Secretary of State of New Jersey on February 29, 1996. In 1998, its status as a corporation eligible to do business in New Jersey was revoked for failure to make annual report payments. TrimSpa, Lipo Spa and CarbSpa are all advertised as Nutramerica products. The labels for Lipo Spa and CarbSpa refer to Nutramerica as a Goen Company. Nutramerica's offices are located at 8 Ridgedale Avenue, Cedar Knolls, New Jersey 07927.

15. Goen Institute is a Delaware corporation that describes itself as "the nation's largest weight loss and stop smoking seminar corporation." Its filing with the Secretary of State of New Jersey lists "Goen Media Group" and "Advanced Health Sciences" as related names. Its promotional materials list its address as 8 Ridgedale Ave., Suite 205, Cedar Knolls, New Jersey, 07927.

16. Alex Szynalski, who is also known as Alex Goen, is the founder of Goen Institute and is actively involved in the advertising program that is used to promote the seminars. He is also actively involved in the business operations of Goen Technologies and Nutramerica, including their sale and distribution of TrimSpa, Lipo Spa and CarbSpa.

17. Albert Fleischner, Ph.D. is on the scientific advisory board of the Goen Institute, the Chief Science Officer of the Goen Group and the Chief Operating Officer of TrimSpa Corporation.

18. Defendants DOES 1 through 20 are officers, managers, agents, or independent contractors of Goen Technologies, the Goen Institute or Nutramerica who caused or engaged in violations of law alleged herein. Because the true names and capacities, whether individual, corporate, associate, or otherwise, of the defendants sued herein under the fictitious names of DOES 1 through 20, inclusive, are unknown to plaintiffs, plaintiffs have sued said defendants by such fictitious names. Plaintiffs will amend this complaint to identify each such defendant and his or her specific involvement in the wrongdoing alleged herein when the same has been ascertained.

COUNT ONE

(Misrepresentations With Respect
to the Goen Weight Loss Seminars)

19. Plaintiffs repeat and reallege each and every allegation set forth above as if fully set forth herein and incorporated by reference.

20. Defendants conduct weight loss seminars in New Jersey and throughout the United States. According to the Goen Institute's website, Goen seminars are offered on a daily basis throughout the country.

21. Defendants advertise the seminars, hereinafter referred to as the "Goen Weight Loss Seminars," in mail distributions to New Jersey residents and in New Jersey newspapers.

22. One mail promotion describes the seminar as a "Seminar with Hypnosis" and a "Risk-Free Hypnosis Seminar - 110% Guaranteed." The promotion states that the seminars would introduce people to a "fail proof" system that "practically works like magic" to help people lose "10 to 20 pounds per month to as much as 120 pounds per year." The promotion stresses that the system uses hypnosis and is a "proven way to slimness without dangerous drugs, starvation diets, or endless brutal exercise."

23. The promotion does not mention that the effectiveness of the system depends on the use of dietary supplements. Nor does it disclose that the dietary supplements that it depends on are developed and distributed by an affiliate of the Goen Institute.

24. One advertisement that has appeared in New Jersey newspapers states that:

Attend Goen Seminar's famous weight loss with hypnosis seminar and in three hours experience for yourself 34 high powered fat eliminating suggestions best described as a deliberate and systematic bombardment of fat destroying technology.

[Emphasis in text.]

That's right. The Goen Method is arguably the finest weight reducing hypnosis session of its kind.

[Emphasis in text.]

25. The advertisement also states that "if this seminar is not the best weight loss program in the United States, plain and

simple, I will give you your money back plus 10% at seminar's end.
No questions asked."

26. The advertisements fail to disclose that the "Goen Method" relies on the use of dietary supplements that are promoted at the seminar and are developed and distributed by an affiliate of the Goen Institute.

27. Another advertisement that appeared in New Jersey newspapers states that:

You've Tried Everything and

Nothing Has Worked

This Is Designed To Work!

Think of it! Finally, a proven way to slimness without dangerous drugs, starvation diets or endless brutal exercise! Instead, firm-up fast and experience for yourself 34 mesmerizing, fat-eliminating suggestions designed to work every minute of every day. Designed so that cravings no longer get the best of you because you are in total control. In fact, my system is so superior and surpasses everything else you've tried in the past that I was compelled to offer a 110% Seminar Guarantee. No longer must you deal with hard to follow starvation diets, guilt or grueling exercises - no way. My system just doesn't allow such absurdities.

Imagine Waking Up Morning

After Morning Thinner and

Leaner Than Ever Before!

My friend, your mind is such an extremely powerful resource already, yet hypnosis can intensify that power immensely. Tap deeply

into your subconscious weight loss mechanisms, and receive suggestions to reduce cravings and desires for second helpings; things you never dreamed of before! Here's how you can ...

Reshape Your Figure To The Slim, Trim,

Firm Body You Desire ...

Imagine Never Ever Having To Worry

About Your Weight Again!

That's right. Even if you've tried every diet that ever existed but failed, that's okay. My guarantee still stands. In fact, I feel that you actually deserve a pat on the back for all of your attempts. Hey look at it this way, you tried, you failed, ... but ... you tried again. Although this time, there's no trying allowed. Nope, not at my seminar. Trying is not an option. However losing weight ... well ... that's a given.

Yeah, yeah. So you've tried other diets and maybe other hypnotists, big deal. There's a reason why I receive piles and piles of testimonials.

My Program Is Designed To Make

Losing Weight An Easy Thing!

In fact, the more diets you've tried the better! That only means that you really, desperately want to lose weight. Quite frankly, your strong desire to lose weight will manifest itself and empower you during the hypnosis session, giving you an extra advantage. ...

[Bold in original, italics added, footnotes omitted.]

28. The advertisement also states that "by the end of the seminar you must be completely satisfied. If not, just ask for a refund plus 10% at seminar's end."

29. The advertisement fails to disclose that Goen's "proven way to slimness without dangerous drugs" requires the use of dietary supplements that are developed and distributed by an affiliate of the Goen Institute.

30. Moreover, consumers who called the Goen Institute prior to attending the seminars to inquire whether the seminar required additional purchases were told that it did not.

31. The advertisement also suggests that hypnosis is an essential part of the Goen Weight Loss Seminar and an essential part of the Goen weight loss program.

32. The suggestion that hypnosis is an essential part of the Goen Weight Loss Seminars and an essential part of the Goen weight loss program is reinforced by the brochure that is distributed at the Goen Weight Loss Seminars, which states that:

Hypnosis "is one of the safest and most effective methods to lose weight."

Almost everyone over the age of six can be hypnotized.

You may be hypnotized without knowing it.

Hypnosis works by changing your subconscious responses to eating fattening foods from "making your body scream for sugar or fat" to "aid[ing] you in remaining calm and pain free."

33. The suggestion that hypnosis is an essential part of the Goen Weight Loss Program is false. In fact, the hypnosis part of the seminar is not essential to the weight loss program. No effort was made during the hypnosis part of the seminar to ensure that each participant was hypnotized or that the participants who were hypnotized underwent the advertised changes to their subconscious responses to eating fattening foods.

34. The brochure also states that the seminar is designed so that participants "can achieve immediate and life long results after only one simple session."

35. The statement that defendants' method was designed so that participants "can achieve immediate and life long results after only one simple session" is false. If the statement were true, then there would be no need to sell TrimSpa and other Goen Supplements to participants as part of the Goen weight loss program.

36. A sales pitch that has been used to sell TrimSpa and other Goen Supplements at the seminars states that the supply available at the seminar was limited and that it was purchased at a special price so that the savings could be passed on to the participants at the seminar. It did not reveal that the supplements are developed and distributed by affiliates of the Goen Institute. Because the supplements were developed and distributed

by affiliates of the Goen Institute, the statements about a limited supply and a special price were false or misleading.

37. Neither the labels nor the advertisements for TrimSpa or any other Goen Supplement that is offered at the weight loss seminars states that the product is more effective when used in conjunction with hypnosis.

38. Defendants advertise a seminar that will purportedly teach participants an inexpensive program for weight loss that is based on hypnosis. The consumers who take the bait are then sold a weight loss program whose alleged effectiveness depends on using Goen Supplements, such as TrimSpa and Lipo Spa, rather than hypnosis.

39. The sales pitch for TrimSpa at the seminars also fails to disclose that TrimSpa contains a combination of ephedrine alkaloids and caffeine and that the use of this combination can result in serious adverse health consequences, including strokes, seizures, high blood pressure and heart attacks. Rather, the advertisements for the seminars state that the Goen weight loss program does not use drugs. Moreover, the sales pitch for Goen Supplements at seminars is that, because they are dietary supplements, as opposed to drugs, they are perfectly safe. In fact, the combination of ephedra and guarana, which are active ingredients in TrimSpa, has the same chemical composition, and the same adverse side-effects, as the ephedrine alkaloids/caffeine combination in drugs that the

Food and Drug Administration banned for over-the-counter use. Those negative side effects include headaches, irritability and heart palpitations, in normally healthy individuals. They also include strokes, seizures, high blood pressure and heart attacks.

40. Although some of these adverse health effects are identified on the TrimSpa label, the sales pitch for TrimSpa at the weight loss seminars does not encourage participants to read the label before purchasing it.

41. Consumers who attend the Goen Weight Loss Seminars are encouraged to purchase ephedra-based TrimSpa without any disclosure about the risks associated with its use. At best, they are asked to sign a form at the commencement of the seminar and to complete an order form for the Goen Supplements that state, in small print at the bottom of each form, that "I understand, as with any program, it's always a good idea to consult with your physician before beginning any new routines or taking any new products." Rather than warn consumers of the risks associated with the use of ephedra-based TrimSpa, the form advises them that they will be entitled to a refund if they return unopened bottles, accompanied by a doctor's note within 30 days.

42. The 110% guarantee that the defendants offer in connection with the weight loss seminars is also based on deception. The advertisements for the seminars state that "[b]y the end of the seminar you must be **completely** satisfied. If not,

just ask for a refund plus 10% at seminar's end." (Emphasis in original.)

43. This advertisement is deceptive because it is only after a consumer attends the seminar that he or she discovers that the Goen program depends on the use and alleged effectiveness of Goen Supplements. At that time, consumers who are willing to take Goen Supplements as part of a weight loss program are in no position to know or say whether they are completely satisfied. For them, the original guarantee that is used to lure them to attend the seminar is essentially worthless.

44. The only consumers inclined to demand a refund because they are not completely satisfied with the seminar are consumers who have a sufficient commitment to losing weight to attend the seminar but will not participate in any weight loss program that requires them to use dietary supplements, including supplements that are represented to be part of an effective weight loss program.

45. Moreover, these consumers, and the other consumers who attend the seminars, are required to fill out a form that purports to state the guarantee "As Advertised" but, in fact, changes the terms of the advertised 110% guarantee in two respects. First, it makes a consumer's refund contingent on returning his or her workbook. Second, it states that consumers who have prepaid for

the seminar must apply for their refunds, which will be returned at a later time.

46. Goen Weight Loss Seminars regularly refuses to make full or timely payments to people who demand a refund because they are not completely satisfied with the seminar. For example, some consumers who paid in cash and asked for a 110% refund were only offered a 100% refund.

47. The consumers who want to try a weight loss program that uses Goen Supplements before deciding whether they are completely satisfied with the seminar are offered a different guarantee to deter them from demanding an immediate refund and to lure them into purchasing the Goen Supplements. They are told that "if you choose not to obtain a refund at the end of the seminar you are automatically enrolled in our unadvertised extended lifetime money back offer." According to the new guarantee, a consumer will be entitled to get his or her money back if he or she (a) is not completely satisfied after attending two additional Goen seminars, (b) has his or her workbook stamped at the seminar and (c) follows the instructions for applying for a refund.

48. Goen Weight Loss Seminars regularly refuses to make full or timely payments to people who demand a refund they are entitled to under the extended lifetime money back offer.

49. Alex Goen is involved in promoting the Goen Weight Loss Seminars. Indeed, the seminars are promoted as his creation and he is featured in the promotions for the seminars.

50. Some of the promotions identify Dr. Albert Fleischner as the person who directs the "brilliant scientific staff" of the Goen Institute. Other promotions, which do not identify Dr. Fleischner's affiliation with the Goen Institute, include the following testimonial from Dr. Fleischner - "Goen's method of hypnosis is unlike anything I've ever seen. Not only is it clearly unique but highly effective. For once, a deliberately bold-bombardment, and systematic approach to fat destroying technology."

51. N.J.S.A. 56:8-2.2 states that it is unlawful to advertise merchandise as part of a plan or scheme not to sell the item or service so advertised. Defendants violated N.J.S.A. 56:8-2.2 by advertising the Goen Weight Loss Seminar as part of an inexpensive weight loss program based predominantly on hypnosis when, in fact, the defendants' aim was to sell participants an expensive weight loss program that required them to purchase Goen Supplements, whose alleged effectiveness had nothing to do with hypnosis.

52. N.J.S.A. 56:8-2 prohibits, *inter alia*, the use or employment of any "unconscionable commercial practice, deception, fraud, false pretense, false promise [or] misrepresentation...in connection with the sale or advertisement of any merchandise...."

53. The defendants violated, and continue to violate, N.J.S.A. 56:8-2 by (a) selling tickets to the seminars by misrepresenting that the seminars would teach participants how to lose weight through hypnosis, (b) selling tickets to the seminars without disclosing that the true purpose of the seminars was to sell Goen Supplements, and (c) selling tickets to the seminars through the lure of a refund policy, which they refused to honor.

54. The defendants also violated, and continue to violate, N.J.S.A. 56:8-2 by (a) selling TrimSpa at the seminars without disclosing the risks associated with its use, (b) selling TrimSpa and other Goen Supplements at the seminar without disclosing the affiliation between the Goen Institute and the companies that developed and distributed the Goen Supplements, and (c) providing testimonials for the Goen Institute from persons who were affiliated with it without disclosing the affiliation.

COUNT TWO

(Misrepresentations With Respect
to the Goen Smoking Cessation Seminars)

55. Plaintiffs repeat and reallege each and every allegation set forth above as if fully set forth herein and incorporated by reference.

56. Defendants conduct smoking cessation seminars in New Jersey.

57. Defendants advertise the seminars, hereinafter identified as the "Goen Smoking Cessation Seminars," in New Jersey newspapers.

58. One newspaper advertisement states that the Goen Smoking Cessation Seminar would introduce people to a "guaranteed method," which uses a "patented technology" that allows people to stop smoking without "rely[ing] on will power" and without "us[ing] drugs, the patch nicotine gum or, worst of all, substitut[ing] food for cigarettes."

59. The advertisement states that the seminar uses hypnosis and is "designed to work with absolutely no willpower, no anxiety, no weight gain, and above all, no cravings."

60. The advertisement includes a testimonial from a consumer who had smoked a minimum of two packs a day for 38 years and claimed that at the completion of the seminar he "walked out a non-smoker with no cravings or desires for a smoke." The testimonial suggests that participants would be able to leave the seminar without any further desire to smoke and without any need to spend additional funds to maintain their desire not to smoke.

61. People who called prior to attending the seminar to inquire whether the program required additional purchases were told that it did not.

62. The advertisement also states that "[i]f for any reason you are not totally satisfied by seminar's end, just ask for a refund plus 10%."

63. The suggestion that hypnosis is an essential part of the Goen smoking cessation program is false. The hypnosis part of the

seminar is not essential to the stop smoking program. No effort is made during the hypnosis part of the seminar to ensure that each participant is hypnotized or that the participants who are hypnotized experience the changes that will cause them to stop smoking.

64. The purpose of the Goen Smoking Cessation Seminar is to sell Goen Supplements to the participants. The Goen Supplements include Cigsation, which contains a natural ingredient that purportedly "mimics the action of nicotine in the body, but does not create the physiological dependence experienced by nicotine users." They also include weight loss products, including TrimSpa with ephedra, to help consumers lose weight after they have stopped smoking.

65. Neither the labels nor the advertisements for any of the Goen Supplements that are sold to participants of the Goen Smoking Cessation Seminar state that they are more effective when combined with hypnosis or that they are unnecessary for consumers who are breaking their smoking habit through hypnosis.

66. The sales pitch for the Goen Supplements at the Goen seminars is that if you are not satisfied with the supplements, you can return the unopened bottles for a complete refund. Participants are not advised to read the label of the Goen Supplements before purchasing them. Nor are they told that some of

supplements contain ephedra or that the use of ephedra subjects them to the risk of serious adverse health consequences.

67. Consumers who attend the Goen Smoking Cessation Seminars are encouraged to purchase ephedra-based TrimSpa without any disclosure about the risks associated with its use. At best, they are asked to sign a form at the commencement of the seminar and to complete an order form for the Goen Supplements that state, in small print at the bottom of each form, that "I understand, as with any program, it's always a good idea to consult with your physician before beginning any new routines or taking any new products." Rather than warn consumers of the risks associated with the use of ephedra-based TrimSpa, the form advises them that they will be entitled to a refund if they return unopened bottles, accompanied by a doctor's note within 30 days.

68. Defendants advertise a seminar that will purportedly introduce participants to an inexpensive program to stop smoking that was based on hypnosis. The consumers who take the bait are then sold a program that requires them to purchase Goen Supplements, including weight loss supplements, whose alleged effectiveness has nothing to do with hypnosis.

69. The 110% guarantee that the defendants offer in connection with the Goen Smoking Cessation Seminars is also based on deception.

70. The advertisements for the seminars state that "[b]y the end of the seminar you must be **completely** satisfied. If not, just ask for a refund plus 10% at seminar's end." (Emphasis in original.)

71. This advertisement is deceptive because it is only after a consumer attends the seminar that he or she discovers that the Goen program depends on the use and alleged effectiveness of Goen Supplements. At that time, consumers willing to take Goen Supplements as part of a smoking cessation program are in no position to know or say whether they are completely satisfied. For them, the original guarantee that is used to lure them to attend the seminar is essentially worthless.

72. The only consumers inclined to demand a refund because they are not completely satisfied with the seminar are consumers who have a sufficient commitment to stop smoking to attend the seminar but no interest in participating in any program that requires them to use dietary supplements, including supplements that are represented to be part of an effective smoking cessation program.

73. Moreover, each of these consumers, and every other consumer who attends the seminars, is required to fill out a form that purports to state the guarantee "As Advertised" but, in fact, changes the terms of the advertised 110% guarantee in two respects. First, it makes a consumer's refund contingent on returning his or

her workbook. Second, if the consumer has prepaid for the seminar, then he or she does not receive a refund on demand but will have to mail a written application to qualify for the refund.

74. Goen Smoking Cessation Seminars regularly refuse to make full or timely payments to people who demand a refund because they are not completely satisfied with the seminar. For example, some consumers who paid in cash and asked for a 110% refund were only offered a 100% refund.

75. The consumers who want to try a smoking cessation program that uses Goen Supplements before deciding whether they are completely satisfied with the seminar are offered a different guarantee to deter them from demanding an immediate refund and to lure them into purchasing the Goen Supplements. Each is told that "if you choose not to obtain a refund at the end of the seminar you are automatically enrolled in our unadvertised extended lifetime money back offer." According to the new guarantee, a consumer will be entitled to get his or her money back if he or she (a) is not completely satisfied after attending two additional Goen seminars, (b) has his or her workbook stamped at the seminar and (c) follows the instructions for applying for a refund.

76. Goen Smoking Cessation Seminars regularly refuse to make full or timely payments to people who demand a refund they are entitled to under the extended lifetime money back offer.

77. Alex Goen is involved in promoting the Goen Smoking Cessation Seminars. Indeed, the seminars are promoted as his creation and he is featured in the promotions for the seminars.

78. Some of the promotions identify Dr. Albert Fleischner as the person who directs the "brilliant scientific staff" of the Goen Institute. Other promotions, which fail to identify Dr. Fleischner's affiliation with the Goen Institute, use his testimonial that "Goen's method of hypnosis is unlike anything I've ever seen. Not only is it clearly unique but highly effective. For once, a deliberately bold-bombardment, and systematic approach to fat destroying technology."

79. N.J.S.A. 56:8-2.2 states that it is unlawful to advertise merchandise as part of a plan or scheme not to sell the item or service so advertised. Defendants violated N.J.S.A. 56:8-2.2 by advertising the Goen Smoking Cessation Seminars as part of an inexpensive stop smoking program based predominantly on hypnosis when, in fact, the defendants' aim was to sell participants an expensive stop smoking program that depended on the use of Goen Supplements, whose alleged effectiveness had nothing to do with hypnosis.

80. N.J.S.A. 56:8-2 prohibits, inter alia, the use or employment of any "unconscionable commercial practice, deception, fraud, false pretense, false promise [or] misrepresentation...in connection with the sale or advertisement of any merchandise...."

81. The defendants violated, and continue to violate, N.J.S.A. 56:8-2 by (a) selling tickets to the seminars by misrepresenting that the seminars would teach participants how to stop smoking through hypnosis, (b) selling tickets to the seminars without disclosing that the true purpose of the seminars was to sell Goen Supplements, and (c) selling tickets to the seminars through the lure of a refund policy that they refused to honor.

82. The defendants also violated, and continue to violate, N.J.S.A. 56:8-2 by (a) selling TrimSpa at the seminars without disclosing the risks associated with its use and (b) selling TrimSpa and other Goen Supplements at the seminar without disclosing the affiliation between the Goen Institute and the companies that developed and distributed the Goen Supplements.

COUNT THREE

(Misrepresentations About TrimSpa,
CarbSpa and Lipo Spa)

83. Plaintiffs repeat and reallege each and every allegation set forth above as if fully set forth herein and incorporated by reference.

84. Through magazine and other advertisements and displays on TrimSpa's website "www.trimspa.com", defendants, have asserted, and continue to assert, numerous false, deceptive, or misleading claims about ephedra-based TrimSpa, including but not limited to the following:

A. TrimSpa does not contain any drugs.

This statement is deceptive because one of TrimSpa's active ingredients, ma huang (or ephedra) and guarana seed, has the same chemical composition and the same adverse health effects as the ephedrine/caffeine combination that was banned by the Food and Drug Administration as an over-the-counter drug. Those adverse health effects include strokes, seizures, high blood pressure and heart attacks.

- B. "Trim Spa's patented formula takes the extra glucose, or blood sugar that your body produces when you overeat-or eat the wrong things-and directs it to your muscles, where it's used as energy instead of being stored as-you guessed it-fat!"

In fact, there is no basis for this claim. In the patent application for TrimSpa, glucosamine, in the form of glucosamine sulfate, is identified as active ingredient that "contributes to weight loss' because it "blocks the effect of insulin, burning up stored fat and resulting in weight loss." However, recent clinical studies have found that glucosamine infusion in humans has no effect on insulin or insulin-induced glucose uptake.

- C. The "thermogenic (fat destroying) influences" of TrimSpa "helps to immediately metabolize ugly fat."

In fact, ma huang (or ephedra), the purported fat destroying ingredient in TrimSpa, does not metabolize fat. Rather, it acts as an appetite suppressant, and requires several weeks before weight loss is realized. Nor is there any other basis for claiming that ephedra causes thermogenesis because the amounts of ephedra in the

recommended dosages are grossly insufficient to achieve a thermogenic effect.

- D. "...a clinical study also proves this formula produces 100% more weight loss than diet and exercise alone."

This statement is misleading because "100% more weight loss than diet and exercise alone" may not be clinically significant and defendants failed to identify any clinical study that demonstrated that the use of their formula produces a clinically significant amount of weight loss when compared to diet and exercise alone. For example, a one pound loss of weight compared to a two pound loss of weight would not be clinically significant.

85. The Nutramerica website makes the following statements about ephedra-based TrimSpa:

TrimSpa represents the latest advancement in the field of weight reduction. Featuring a unique blend of specialized herbs and essential nutrients, this high tech balanced formula is not only exceptionally safe and effective, but is designed to help your body burn fat naturally, while protecting, even increasing vital muscle tissue.

[Emphasis added.]

The website advertisement is false or misleading because: (a) it makes the false statement that TrimSpa is exceptionally safe; (ii) it fails to disclose the risks associated with the use of ephedra-based TrimSpa; and (c) it suggests that TrimSpa is more effective than other weight loss products that use ephedrine/caffeine combinations when there is no scientific basis for that claim.

86. Print advertisements for ephedra-based TrimSpa also state that:

This Formula Is So Effective At Producing Weight Loss! It Is Protected By A Trademark And A Patent Has Now Been Approved By The United States Government Patent And Trademark Office.

Moreover, radio advertisements for ephedra-based TrimSpa state that:

Trim Spa is so unique the United States Government recognized it and awarded Trim Spa a patent. It is almost impossible in this type of industry to get a patent but Trim Spa proved to be so effective and so unique, there's nothing else like it.

[Emphasis added.]

Trim Spa's unique herbal blend and key ingredients are so effective - Trim Spa has been awarded a U.S. government patent.

[Emphasis added.]

[H]ard nosed research scientists in more than 21 clinical studies agreed that people experienced significant weight loss using Trim Spa's key ingredients. In fact, the U.S. government found Trim Spa so unique and effective they awarded it a patent."

[Emphasis added.]

87. The statements in the previous paragraph create the false impression that the United States Patent and Trademark Office did an independent evaluation of the effectiveness of the TrimSpa formula and awarded TrimSpa a patent based on a finding that the formula was an effective product. They also create the false impression that glucosamine -- the ingredient that makes TrimSpa

unique - also makes it more effective than other weight loss products that use an ephedrine/caffeine combination.

88. Radio advertisements for ephedra-based TrimSpa promote it as "an amazing high speed diet pill" that works without a "diet routine" and without an "exhausting exercise routine." None of them states that TrimSpa contains ephedra. Nor does any identify the risks associated with the use of TrimSpa or warn consumers to consult their doctors before embarking on a weight loss program.

89. Other print advertisements for ephedra-based TrimSpa state that "[r]esearch proves that by using patented TrimSpa, you can become 15 times more confident, unforgettable and heart-stopping gorgeous." There is no support for this claim.

90. The defendants have also introduced an ephedra-free version of TrimSpa, TrimSpa EF, which they promote for consumers who "have high blood-pressure, thyroid complications, are taking an MAO inhibitor, or have a history of heart complications." The advertisements for TrimSpa EF identify five active ingredients -- forksolin, chromium, glucomannan, green tea extract, and vanadium -- that purportedly make it an effective weight loss supplement. In fact, none of these ingredients has been adequately tested to establish that it is, either individually or in combination with the other ingredients, safe or effective as part of a weight loss program.

91. The TrimSpa website includes statements that are designed to lead consumers to believe that ephedra is safe because it is a natural product. One example is the following description of the TrimSpa ingredient that increases a person's metabolic rate and calorie expenditure:

Listen up. Before you jump on the prescription drug bandwagon that most pharmaceutical companies would love for you to join, let's quash any apprehension about using natural supplements. (see Chart A on pg. 8.) Because the main ingredient we happen to be referring to is completely natural and speeds up the amazing transformation. Not only that, but this Chinese herb has been used for at least 5,000 years.

92. The product label for TrimSpa, includes the following misleading claims about TrimSpa, including but not limited to the following:

A. TrimSpa contains an "Appetite Control Blend."

In fact, none of the components of the "Appetite Control Blend" has been shown in peer-reviewed medical literature to actually control appetite.

93. Through magazine and other advertisements and displays on TrimSpa's website "www.trimspa.com", defendants have asserted, and continue to assert, numerous false, deceptive, or misleading claims about Lipo Spa, including but not limited to the following:

A. Lipo Spa is "like liposuction in a bottle;" it "sucks the fat right out of food you eat before it can get to your hips, thighs, waist, neck or arms;" and when you use it "the fat content of your food automatically gets

absorbed and is flushed right out of your body."

In fact, there is no published clinical study for humans that supports these claims. To the contrary, the studies show that when chitosan, the active ingredient that is supposed to increase fat absorption and increase fecal fat excretion, is used in the amounts that Lipo Spa recommends it has none of the alleged beneficial effects.

- B. If you use Lipo Spa "you can 'cheat' on your diet and eat delicious foods you've been sacrificing - without gaining weight" and "have the body of your dreams - and still eat the foods you crave - pizza, cheesecake, ice cream, juicy burgers, chocolate - you name it."

In fact, the only published clinical studies that correlate the use of chitosan, the active ingredient in Lipo Spa that is supposed to cause these results, with weight loss relate to subjects who were placed on low calorie diets. Therefore, these statements are misleading.

- C. "At last, it's really possible to experience a weight loss of up to four pounds a week with almost no effort on your part!"

There are no published clinical studies that support this statement. Moreover, the mean weight loss of these subjects was only 2.2 pounds over an eight week period.

- D. "...the active ingredient in Lipo Spa absorbs 4 to 5 times its weight in fat molecules" and "[e]ach half gram capsule soaks up as much as 2.5 grams of fat from the food you eat."

These statements are misleading because the in vivo studies relating to this ingredient indicate that it does not impair fat absorption and does not facilitate fecal fat excretion.

94. The product label for Lipo Spa, includes the following false or misleading claims about Lipo Spa:

- A. Lipo Spa is "Like liposuction in a bottle!" and "Amazing new 'Lipo Spa' sucks the fat right out of the food you eat-before it can get to your hips, thighs, waist, neck or arms."

In fact, there is no published clinical study for humans that supports these claims. To the contrary, the studies show that when chitosan, the active ingredient that is supposed to increase fat absorption and increase fecal fat excretion, is used in the amounts that Lipo Spa recommends it has none of the alleged beneficial effects.

- B. "Now you can 'cheat' on your diet and eat delicious foods you've been sacrificing --WITHOUT gaining weight."

In fact, the only published clinical studies that correlate the use of chitosan, the active ingredient in Lipo Spa that is supposed to cause these results, with weight loss relate to subjects who were placed on low calorie diets. Moreover, the mean weight loss of these subjects was only 2.2 pounds over an eight week period. Therefore, these statements are misleading.

95. Through magazine and other advertisements and displays on TrimSpa's website "www.trimspa.com", defendants have made, and

continue to make, the following false, deceptive, or misleading claims about CarbSpa:

- A. CarbSpa can "block carbohydrates and simple sugars from being converted into fat."

In fact, clinical investigations of phaseolamin products, such as CarbSpa, have failed to demonstrate any significant inhibitory effects of carbohydrate digestion or absorption.

96. The product labels for CarbSpa make the following false or misleading claims about CarbSpa:

- A. CarbSpa "reduces absorption of carbohydrates."

In fact, clinical studies utilizing pasta, potatoes, bread, rice, etc. as test meal components demonstrated that phaseolamin-containing products had no effect on blocking carbohydrate absorption.

- B. "Bring back the fun in food and enjoy pasta, bread, and potatoes with this new formula."

In fact, clinical studies utilizing pasta, potatoes, bread, rice, etc. as test meal components demonstrated that phaseolamin-containing products had no effect on blocking carbohydrate absorption.

97. Defendants Alex Goen and Albert Fleischner were instrumental in preparing or giving credibility to the statements set forth in paragraphs 84 to 96.

98. The use of the statements about TrimSpa, Lipo Spa and CarbSpa set forth in paragraphs 84 to 96 violated, and continue to

violate, N.J.S.A. 56:8-2, which prohibits, inter alia, the use of any "deception, fraud, false pretense, false promise [or] misrepresentation . . . in connection with the sale or advertisement of any merchandise."

COUNT FOUR

(Selling TrimSpa Through an 800 Number Without
Disclosing the Risks Associated With Its Use.)

99. Plaintiffs repeat and reallege each and every allegation set forth above as if fully set forth herein and incorporated by reference.

100. Radio advertisements for TrimSpa have advised, and continue to advise, consumers that they can purchase TrimSpa by calling 1-800-TRIMSPA.

101. A consumer who calls 1-800-TRIMSPA and reports that he or she is interested in purchasing TrimSpa is interviewed by a TrimSpa representative to determine which TrimSpa product is appropriate for him or her.

102. The TrimSpa representative does not warn the consumer that the interview is no substitute for medical advice or that he or she should consult a physician before taking any TrimSpa product.

103. The TrimSpa representative asks the consumer eight questions, including whether the consumer has heart problems, high blood pressure, cancer, diabetes, allergies or an enlarged or swollen prostate. If the consumer represents that he or she does

not have heart problems, high blood pressure, cancer, diabetes, allergies or an enlarged or swollen prostate, then the TrimSpa representative will recommend ephedra-based TrimSpa to the consumer.

104. The TrimSpa representative does not, however, disclose the risks associated with the use of the ephedra-based TrimSpa product. Nor does the TrimSpa representative disclose that the consumer should consult a physician before using the product.

105. The TrimSpa representative refrains from making these disclosures because defendants do not want consumers to (a) consult their physicians about whether to commence a weight loss program that includes TrimSpa or (b) recognize that one of the costs of safely and responsibly using TrimSpa is paying a physician to monitor its use.

106. Because defendants have used, and continue to use, these deceptive practices to sell TrimSpa and other Goen Supplements they have violated, and continue to violate, N.J.S.A. 56:8-2, which prohibits the use or employment of any "unconscionable commercial practice, deception, fraud, false pretense, false promise [or] misrepresentation ... in connection with the sale or advertisement of any merchandise."

COUNT FIVE

(Deceptive Practices on the TrimSpa Website)

107. Plaintiffs repeat and reallege each and every allegation set forth above as if fully set forth herein and incorporated by reference.

108. Defendant Goen maintains a website at www.trimspa.com that it uses to advertise and sell TrimSpa and other Goen products.

109. The first page of the website gives a consumer the following choices: (a) Consultation, (b) Information, (c) Questions, (d) Events, (e) Testimonials and (f) Shop.

110. If a consumer chooses the Information option, he or she can participate in a free consultation to determine "the ultimate weight loss plan for your unique metabolism and lifestyle." The consumer is advised that:

Before starting a new diet, it's important you have all the facts necessary to make an informed decision.

This site contains everything you need, including testimonials, complete ingredient testing and even frequently asked questions. Your health is important to us and helping you to achieve your ideal goal weight is our number one priority. [Continue Tour] [Click here to buy.]

[Bold in text, italics added.]

111. The statement the website provides a consumer with all of the information he or she needs to make an informed decision about starting a new diet is false because it does not contain the most important information that a consumer needs to make an

informed decision, i.e., the informed advice of his or her physician.

112. Other statements on the website are designed to encourage the belief that it is safe to use TrimSpa and other Goen Supplements without first consulting with a doctor. For example, if a consumer leaves the Information section and goes directly to the Shop section to purchase TrimSpa or another Goen Supplement, he or she receives the following information:

Before you continue, please acknowledge that you've elected not to take Trim Spa's product consultation, which selects the products most appropriate for a consumer with your health history.

If you continue without our advice, please be sure to consult your physician before taking the products you purchase.

We apologize for this additional step, but *your health is extremely important to us*. We've added this because we care and want you to have only the best products and results.

I acknowledge the above comments. Please continue.

Never mind, I'll take the online consultation.

[Italics added, bold in original.]

113. The statement that "[i]f you continue without our advice, please be sure to consult your physician before taking the products you purchase," suggests that a consumer who takes the consultation and follows the website's advice does not have to consult his or her physician.

114. Moreover, if a consumer goes to the Questions section of the website, and reads its answer to the question "Is ephedra safe?" he or she is advised that: (a) certain people, including consumers with high blood pressure, consumers who take MAO inhibitors and consumers with heart complications" should not take ephedra products; and (b) "[i]f you feel you might have an undiagnosed medical problem, please consult a physician before taking TrimSpa." The second piece of advice suggests that consumers who do not "feel" they have undiagnosed medical problems can take TrimSpa without consulting their physicians.

115. A consumer who goes to the Testimonials section of the website is given additional reasons to believe that most consumers can take TrimSpa without consulting a physician because none of the testimonials states that the consumer took TrimSpa after consulting with his or her doctor.

116. The website sometimes advises consumers to consult their physician before taking a Goen Supplement. This advice is inconsistent with the assurance that the website contains all of the information that a consumer needs before starting a new diet. Moreover, it appears in small print in footnotes or in other parts of the website that undermine the message.

117. One footnote, which is strategically placed so that most visitors to the website will scroll to the next page without reading it, states that:

The statements contained in this website have not been evaluated by the Food and Drug Administration. Not intended to diagnose, treat, prevent, mitigate or cure any disease. Testimonial results not typical. Your actual results may vary. Please read product labels before purchasing product. Please check with your physician before starting any weight loss program.

[Emphasis added.]

118. Another footnote, which appears in small print at the bottom of each page of the consultation, states that: "This TrimSpa advisor should not be considered medical advice. *If you have any questions or concerns, please consult your own doctor.*" (Emphasis added.)

119. After a consumer answers all of the questions presented during the consultation, he or she is warned that:

This program is not intended as a substitute for your doctor's professional recommendation. Consulting with your doctor is extremely important *if you are currently being treated for ANY medical condition.* Do you understand that you should always seek the advice of your doctor before starting any weight loss program?

[Emphasis added.]

120. The statements that "[t]his TrimSpa advisor should not be considered medical advice" and "[t]his program is not intended as a substitute for your doctor's professional recommendation," contradict the earlier statement that the website contains all of the information that a consumer needs to make an informed decision about whether to commence a diet program. They also contradict the

clear implication of the earlier statement that "[i]f you continue without our advice, please be sure to consult your physician before taking the products you purchase," i.e., that it is not necessary to consult a doctor if you continue and follow the website's advice. Moreover, they are at odds with the fact that none of the persons who gave testimonials stated that he or she consulted with a doctor before taking TrimSpa.

121. The statements that "[i]f you have any questions or concerns, please consult your own doctor," and "[c]onsulting with your doctor is extremely important if you are currently being treated for ANY medical condition," encourage consumers to believe that if they do not have questions and are not being treated for a current medical condition, then they can safely use the Goen Supplements without consulting a physician.

122. Consumers who complete the consultation and represent that they understand that they should always seek the advice of a doctor before starting any weight loss program are given reports that identify "the ideal weight loss package for [their] needs," based on their "specific lifestyle[s] and health histor[ies]." If the consumers provide certain answers to the questions they are told "[a]ccording to your answers, you don't seem to have any medical conditions that would otherwise limit your choice of weight loss aids. This is great news." This statement was designed to

lead consumers to believe that they can use the recommended Goen Supplements, including TrimSpa, without consulting a physician.

123. In a footnote at the conclusion of the reports, consumers are told:

Note: Results may vary based on individual effort and other factors. The statements made herein have not been evaluated by the Food and Drug Administration. Not intended to diagnose, prescribe for, treat, prevent, mitigate or cure any disease or psychological condition. Always check with your physician before starting new routines. We do not discourage eating or exercising. Use products only according to directions.

(Emphasis added.)

The italicized statement, which is hidden in a footnote, is the only statement in the report that suggests that a consumer should consult a physician before using a Goen Supplement that Goen recommends as appropriate for the consumer's needs.

124. Goen's website was deceptive in the following respects:

- A. It created the false impression that it contained all of the information that a consumer needed to make an informed decision about whether to commence a diet program;
- B. It created the false impression that it was safe and proper for consumers who used its consultation service to use the Goen Supplements recommended by that service without consulting with their physicians;
- C. It was only after a consumer had participated in an interactive consultation that recommended the Goen Supplements appropriate for

that consumer that the website warned the consumer to consult his or her physician before commencing a weight loss program;

- D. The warning it provided encouraged the consumer to infer that it was necessary to consult a physician only if he or she was currently being treated for a medical condition; and
- E. It stated that each consumer's health was important to it but then sold Goen Supplements to consumers with known health risks regardless of whether the consumer consulted with his or her physician about the use of the supplement.

125. Goen created the false impression that its website contained everything a consumer needed -- including testimonials, complete ingredient listings and frequently asked questions -- to make an informed decision about commencing a diet and sold its products to any consumer who orders it, represents that he or she is at least 18 years old and has the capacity to complete an internet transaction.

126. Goen hides and delays its more candid statements about the importance of consulting a physician before commencing a weight loss program because it does not want consumers to (a) consult their physicians about whether to commence a weight loss program that includes TrimSpa or other Goen Supplements or (b) recognize that one of the costs of safely and responsibly using the Goen Supplements is paying a physician to monitor their use.

127. Goen's statement that it is interested in the health of the consumers is belied by its willingness to sell its products to consumers who order its supplements without representing that their doctors approved the use of the supplement as part of a weight loss program.

128. Defendants Alex Goen and Albert Fleischner prepared or made statements that gave credibility to the TrimSpa website.

129. Because defendants have used, and continue to use, these deceptive practices to sell TrimSpa and other Goen Supplements they have violated, and continue to violate, N.J.S.A. 56:8-2, which prohibits the use or employment of any "unconscionable commercial practice, deception, fraud, false pretense, false promise [or] misrepresentation ... in connection with the sale or advertisement of any merchandise."

COUNT SIX

(Misrepresentations With Respect To the
Guarantees On the Goen Supplements)

130. Plaintiffs repeat and reallege each and every allegation set forth above as if fully set forth herein and incorporated by reference.

131. Consumers who visit the TrimSpa website are also told that if they purchase TrimSpa or any other Nutramerica product from TrimSpa's website, they will be "eligible to receive the 110% Lifetime Guarantee." The guarantee, which is for the price of the products they purchase, is advertised as subject to the following

conditions: (a) the consumer must fill out and return the registration card that comes with the product within 5 days from receipt; (b) the consumer must use the entire amount of the product that he or she purchased; (c) if the consumer does not experience favorable results with within a few weeks, he or she must speak to a consultant in the Customer Care Department for assistance in attaining his or her goals; and (d) if the consumer is still unsatisfied, he or she has to write a letter explaining his or her dissatisfaction and return the empty containers to receive the refund.

132. The advertised guarantee is misleading because it fails to disclose that the registration card requires consumers to provide personal information such as family income, marital status and the gender of their children.

133. If a consumer refuses to provide this personal information, the guarantee is reduced to a right to a refund for unopened products.

134. Moreover, the TrimSpa website misleads consumers with respect to the guarantee that comes with TrimSpa and other Nutramerica products that it sells. The TrimSpa website advises consumers that they are entitled to a refund for the price of any unopened container. The TrimSpa website does not, however, disclose that TrimSpa and every other Nutramerica product comes "with a No-Nonsense, Unconditional, 30 Day Money-Back Guarantee! If for any

reason you're not completely satisfied, simply return the container to your place of purchase for a full refund." This guarantee gives consumers who stop using TrimSpa on their doctor's advice, or for any other reason, a right to a refund for the opened, as well as the unopened, containers that they purchased.

135. Because defendants have used, and continue to use, these deceptive practices to sell TrimSpa and other Goen Supplements they have violated, and continue to violate, N.J.S.A. 56:8-2, which prohibits the use or employment of any "unconscionable commercial practice, deception, fraud, false pretense, false promise [or] misrepresentation ... in connection with the sale or advertisement of any merchandise."

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, the Plaintiffs respectfully request that the Court:

- a. Find that the acts of each defendant that are alleged to be unlawful are in violation of N.J.S.A. 56:8-2 or N.J.S.A. 56:8-2.2;
- b. Assess the maximum statutory civil penalties against defendants for each violation of the Act, as authorized by N.J.S.A. 56:8-13;
- c. Assess costs, including costs for expert witnesses, and attorney's fees against defendants for the use of the

State of New Jersey as authorized by N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19;

d. Direct defendants at their own expense to restore to any affected consumer any money acquired by means of any practice alleged herein to be unlawful and found to be unlawful as authorized by N.J.S.A. 56:8-8;

e. Grant plaintiffs a permanent injunction, pursuant to N.J.S.A. 56:8-8, restraining and enjoining defendants from making, disseminating, or causing to be made or disseminated any advertisement for Goen Weight Loss Seminars or Goen Smoking Cessation Seminars unless and until it provides proper disclosure of (1) the role Goen Supplements play in the seminars, namely, that they are an essential component of Goen Weight Loss Seminars or Goen Smoking Cessation Seminars, (2) the costs of Goen Supplements, and (3) the health risks associated with the use of Goen Supplements containing ephedra;

f. Grant plaintiffs a permanent injunction, pursuant to N.J.S.A. 56:8-8, restraining and enjoining Defendants from making, disseminating, or causing to be made or disseminated any advertisement for a guarantee for any Goen seminar or any Goen Supplement unless and until defendants disclose all of the terms and conditions of the guarantee;

g. Grant plaintiffs a permanent injunction, pursuant to N.J.S.A. 56:8-8, restraining and enjoining defendants from making, disseminating, or causing to be made or disseminated any advertisement of TrimSpa, TrimSpa EF, CarbSpa, Lipo Spa, and any other Goen products that contains unsubstantiated or misleading claims, as set forth in this Complaint;

h. Order defendants, pursuant to N.J.S.A. 56:8-8, to cease, desist and refrain from any advertising or marketing of TrimSpa, or any other Goen Supplement that contains ephedra, without disclosing at the beginning of the advertisement that the supplement contains ephedra and the risks associated with the use of ephedra;

i. Order defendants, pursuant to N.J.S.A. 56:8-8, to cease, desist, and refrain from the sale or distribution of TrimSpa, TrimSpa EF, CarbSpa, Lipo Spa, or any other Goen product unless and until they recall and re-label all such products to include adequate and complete warnings to consumers of all substantial health risks of these products;

j. Order defendants, pursuant to N.J.S.A. 56:8-8, to cease, desist and refrain from advertising or marketing TrimSpa, TrimSpa EF, CarbSpa, Lipo Spa, or any other Goen product, unless and until the advertisement prominently warns consumers about all health risks, including ephedra related risks, associated with the product;

k. Grant Plaintiffs a permanent injunction, pursuant to N.J.S.A. 56:8-8, restraining and enjoining Defendants from making, disseminating, or causing to be made or disseminated any claim that suggests that the patent that TrimSpa obtained constitutes an endorsement by the United States government of the safety or efficacy of TrimSpa; and

l. Grant such other relief as the interests of justice may require.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Paul Josephson (JTR)
Paul Josephson
Director, Division of Law
Assistant Attorney General

By: Joshua T. Rabinowitz
Joshua T. Rabinowitz
Deputy Attorney General

Dated: October 15, 2003

Exhibit A

Exhibit A - Restitution

Consumer	Restitution
Abigail, Bonnie	\$ 159.87
Bonillo, Annette	\$ 199.99
Burdick, Debra	\$ 79.99
Burnett, Linda	\$ 201.69
Cerbone, Jude	\$ 94.95
Dallas, Ron	\$ 94.95
Drayer, Charles	\$ 59.99
Fernandez, Mary	\$ 59.99
Hurlbrink, Bonnie	\$ 519.98
Lerch, Dora	\$ 159.98
MacDonald, Barbara	\$ 59.99
Mackiewicz, Frances	\$ 49.99
Maronna, Joseph	\$ 20.97
Mauro, John	\$ 285.50
McGill, Jan	\$ 39.95
McMahon, Debra	\$ 459.99
Mehrman, Maureen	\$ 394.99
Padon Morrow, Jr., Jack	\$ 84.99
Parish, Kristopher	\$ 500.00
Schmidt, Diana	\$ 125.90
Stevens-Krosbakken, Terry	\$ 400.00
Theos, Danielle	\$ 99.80
Yelmini, Lisa	\$ 153.95

TOTAL: \$ 4,307.40

Exhibit B

State of New Jersey
Alternative Dispute Resolution Unit
Division of Consumer Affairs
Department of Law and Public Safety
153 Halsey Street
Post Office Box 45023
Newark, New Jersey 07101
(973) 504 - 6100

Alternative Dispute Resolution Guidelines

Revised June 2004

NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
ALTERNATIVE DISPUTE RESOLUTION UNIT

GUIDELINES

INTRODUCTION

The Division of Consumer Affairs ("Division") started the Alternative Dispute Resolution ("ADR") in May 1992 to offer people a method of resolving problems without using the court system. This long and expensive court cases can be avoided. Two programs are now available for settling disputes: mediation and arbitration. In the mediation program, the parties involved work directly with a mediator, who is an uninvolved and neutral third party, to create and put into effect a solution that is agreeable to everyone. In arbitration, the parties present their problem to a neutral individual who analyzes the presentations and issues a final decision that all parties must follow. Both approaches use trained volunteers and are most times available to the parties at no cost. Originally, the Division made these services available only for settling disputes between businesses and consumers. Over time, however, the focus has been expanded and this assistance is now available for a variety of cases coming from various State agencies.

DEFINITIONS

Listed below are definitions for terms used in these Guidelines and in the various ADR processes:

- (1) "Arbitration" is a voluntary means of settling a disagreement in which an arbitrator, an uninvolved and neutral third party assigned by the ADR Unit, reviews the facts of the case, meets with the parties and issues a final decision that is binding on everyone involved. Once such a decision is issued, the disputants cannot seek further review through the court system, although the terms of the award can be enforced by the courts. (See discussion below).
- (2) "Arbitrator" is an individual trained by the Division who reviews the facts of the case, meets with the parties and issues a final and binding decision.
- (3) A "complaint" is the basis for cases filed with the Division and can stem from a dispute arising out of an interaction between a business and a consumer or between an individual and a State agency, as well as from cases referred by a State agency.
- (4) A "complainant" is the person who first brings the dispute to the attention of the Division ADR Unit.

mediation is the process by which a mediator works with the parties in an effort to reach upon a solution to the dispute that is acceptable to all parties. For the purposes of these rules, a mediation begins at the time of the first contact with a mediator.

- (6) A "mediation document" is any written material prepared before or during the mediation. Documents may include, but are not limited to, memoranda, notes, files, records, and all documents of the mediator. This category does not include agreements between the parties or internal records of a mediator necessary to evaluate or monitor the performance of the program.
- (7) A "mediator" is an individual trained by the Division to serve as a neutral third party to help settle disputes brought to the ADR Unit. The mediator does not have the authority to impose a solution upon the parties.
- (8) "Merchandise" shall include, but not be limited to, any objects, wares, goods, commodities, services or anything offered, directly or indirectly, to the public.
- (9) A "party" is a complainant or respondent and may be an individual, corporation, partnership or other legal entity.
- (10) A "respondent" is the party against whom the complaint is filed.
- (11) "Sale" shall include, but not be limited to, any sale, rental or distribution, offer for sale, offer of distribution or attempt directly or indirectly to sell, rent or distribute a service or a product.

WHAT IS MEDIATION

In mediation, the mediator, a neutral, third party, assists the complainant and respondent in settling a problem with a solution that is agreeable to all involved. The mediator is a volunteer trained by the ADR Unit to work directly with the parties in creating acceptable solutions. The mediator does not have the authority to make a decision. Instead, through one or more sessions, the mediator encourages each party to explain its position about the current dispute and helps them create a solution that is acceptable to both parties. This is a voluntary process which, when successful, quickly turns a dispute into a winning situation for both parties; as a result, long and costly litigation can be avoided.

The mediator cannot force a settlement but works with those involved to construct a solution that is satisfactory to all. The mediator may conduct joint and separate meetings with the parties and may propose oral and written suggestions for settlement. The mediator is authorized to determine when each party may speak during a mediation conference. The mediator may also decide whether the party's representative may speak during the conference. If necessary, the mediator may obtain expert advice concerning technical aspects of the dispute. When appropriate and when the parties agree, they will

It is important to note that once a resolution is reached and agreed upon by the parties it is binding and final. It is important to note that once a resolution is reached and agreed upon by the parties it is binding and final.

WHAT IS ARBITRATION

The arbitration process also uses trained volunteers to resolve disputes. The arbitrator reviews the facts and issues of the dispute. Unlike mediation, there is a binding decision in which there is no discussion of fact and no opinion or rationale provided by the arbitrator. The parties are bound by and must accept the decision issued. This process is also faster and less costly than taking a case to court, and the arbitrator's award is viewed as an end to the case. Arbitration awards usually cannot be challenged in court except under very limited circumstances. In order to overturn a decision there must be a showing of bias or partiality of the parties of favoritism, prejudice, fraud, misconduct, or blatant disregard of the rules and procedures in relation to the process of the arbitration or by the arbitrator personally. Moreover, once a dispute has been submitted for arbitration and an award issued, neither party can later choose to resolve the dispute again in any other manner, including use of the court system. Please note that if any party to a dispute fails to comply with the arbitrator's decision, the offended party(s) may apply to the court with appropriate jurisdiction to have the decision enforced pursuant to N.J.S.A. 2A:23-22.

GENERAL GUIDELINES FOR DISPUTE RESOLUTION

Standard for Participation

The ADR Unit may mediate or arbitrate any complaint referred to it by a State agency and which the Director of the Unit finds appropriate for mediation or arbitration. Matters referred to the Unit for resolution pursuant to a Consent Order, must be arbitrated and are not subject to the discretion of the Director.

Complaint Review

The ADR Unit reviews complaints forwarded to it to determine those which fit the standard defined above. If the ADR Unit finds a complaint is appropriate for resolution, either through mediation or arbitration, it will offer those services to the parties involved; the ADR Unit and/or the parties then decide if mediation or arbitration will be used. If the ADR Unit considers the complaint inappropriate for resolution under any of the presently available dispute resolution procedures, it shall return the complaint to the agency.

ing the Process

Once a complaint has been accepted by the ADR Unit, a letter is sent to all parties. The letter to complainant says that the complaint has been received and that the other party, the respondent, is contacted. The available procedures are explained to the disputants. The letter to the respondent the same information as well as a brief description of the complaint. Both parties are asked if it is le for them to settle the matter directly.

If either side indicates that it is not possible to settle without the assistance of the Unit, the parties en agree to participate in one of the dispute resolution processes available from the Division. If tion is decided upon the ADR Unit sends letters to both parties naming the neutral third party ted and stating how to best contact that person. (In arbitration ex parte meetings [contact by one without the presence of the other] are strictly prohibited.) When the parties agree to participate in te resolution, the process is then started. Should an arbitrator or mediator become unwilling or e to serve, the ADR Unit will appoint an alternate.

esentation

Any party may be represented by an attorney during dispute resolution proceedings. Additionally, arty wants representation by a non-lawyer, the opposing party and mediator or arbitrator must be ned. The name(s), address(es) and telephone number(s) of such persons shall be communicated iting to all parties to the dispute, and to the ADR Unit.

, Time and Place of Mediation or Arbitration

The mediator or arbitrator (through the ADR Unit staff) shall set the date and time of each erence. Unless the parties are notified otherwise, sessions which are held in person will be at the es of the ADR Unit, located at 153 Halsey Street, 7th floor, Newark, New Jersey. In the case of liation, the mediator and the parties may decide that the sessions will be conducted over the phons. In arbitration, telephone hearings will only be conducted under extenuating circumstances. date and time of all sessions will be decided by all involved.

ication of Matters in Dispute

Mediation

By the first mediation session, the parties will be expected to have produced all documents and background information required for the mediator to understand the nature of the complaint. Also, at least five (5) days before the first session (whether in person or by telephone), each participant shall provide the mediator with a brief written description of the facts and issues in dispute. The information to be in such a document will be discussed among the parties and the mediator during an initial one-on-one conference. That document shall also state each parties' position about the dispute. Such documents may be exchanged between the parties if everyone agrees to that process. The mediator may request additional information be provided before or during or after the sessions.

Arbitration

The ADR Unit will assign an arbitrator who will hear the matter. Once an arbitrator has been selected to hear the case, the arbitrator's curriculum vitae ("CV") will be sent to each party to the dispute. (See the Disclosure section - D, below, for the process used to challenge the selection of that arbitrator.) An ADR staff member will then contact the parties to establish a schedule. Prior to the first arbitration session, each party must give to the arbitrator all appropriate documents and background information that is relevant to the dispute. Also, at least five (5) days before the first session, each party must provide the arbitrator, through the Unit staff, a brief written description of the facts and issues in dispute, and a statement of the relief sought through the arbitration process. Such requests for relief, as well as the final award of the arbitrator, may not exceed the actual issues in controversy. The arbitrator is authorized to provide only compensatory and not punitive damages. At any time during the process, the arbitrator may compel the production of additional information through documents or witnesses by way of a subpoena process.

Written Requirements

Before starting either a mediation or arbitration, parties must agree to certain terms. There are consent forms that must be understood and signed before anyone can participate. Copies of those forms are provided at the initial mediation or arbitration session and are signed in the presence of the mediator or arbitrator.

Disclosure

A person appointed as an arbitrator shall disclose to the ADR staff and the parties any circumstance likely to raise justifiable doubt as to the arbitrator's impartiality or independence, including bias or financial interest or past or present relationship with any party or their representatives. This

tain a continuing obligation of the arbitrator. Notice of any challenge to the impartiality or competence of the arbitrator shall be made within five (5) days of becoming aware of circumstances giving rise to the challenge. This notice shall be in writing to the ADR Unit and shall set forth the facts and circumstances giving rise to the challenge.

Privacy

All sessions are private and confidential. Only parties and their authorized representatives may attend conferences. Other persons may attend only with the permission of the parties and with the approval of the mediator or arbitrator and the Unit director.

CONFIDENTIALITY OF DISPUTE RESOLUTION SESSIONS

All information provided by parties during the mediation process is confidential. Success of mediation depends in large part on an open exchange of information, so it is important that parties feel free to discuss issues openly. Accordingly, the mediator cannot be forced to release any information or testimony about the mediation in a lawsuit or court proceeding.

Information provided to the arbitrator must also be given to the opposing party. However, this information is privileged in that it cannot go beyond the parties themselves, the arbitrator and the staff of the ADR Unit. Also, no taped or stenographic record may be made of any dispute resolution process.

TERMINATION

A mediation will be concluded in one of the following ways:

- 1) the signing of a written settlement agreement by the parties;
- 2) an oral agreement between the parties;
- 3) a written or oral statement of the mediator saying that further efforts at mediation are no longer worthwhile; or
- 4) a statement by a party or parties to the effect that the mediation proceedings are over.

An arbitration will be concluded in one of the following ways:

- 1) the signing and distribution to the parties of a written decision by the arbitrator;
- 2) a written agreement among the parties resolving the dispute; or
- 3) a written statement of the parties that they no longer wish to continue the arbitration.

EXCLUSION OF LIABILITY

Neither the staff of the ADR Unit nor any mediator or arbitrator is a necessary party in a judicial proceeding related to the dispute which is being resolved. Moreover, the parties to an arbitration expressly agree to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 3B-14 and the New Jersey Tort Claims Act, N.J.S.A. 59:10A-1 et seq. The parties to a mediation or arbitration shall be deemed to have consented that neither the staff of the ADR Unit nor any mediator or arbitrator shall be liable to any party in any way for damages or injunctive relief for any act or omission in connection with any mediation or arbitration conducted under these rules.

INTERPRETATION AND APPLICATION OF RULES

The mediator or arbitrator shall interpret and apply these rules as far as they relate to that person's duties and responsibilities. All other rules shall be interpreted and applied by the director of the ADR Unit.

NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
ALTERNATIVE DISPUTE RESOLUTION UNIT

Arbitration Program

INTRODUCTION

In order to resolve a pending dispute that resulted in the filing of a complaint with or against a State agency, you have agreed to participate in an arbitration conducted by the Alternative Dispute Resolution Unit ("ADR Unit") of the New Jersey Department of Law and Public Safety's Division of Consumer Affairs.

Arbitration is a process in which a trained volunteer reviews the facts of the case and the issues in question in order to come up with a final decision which will resolve the controversy. Although the arbitrator is not a judge, the decision issued is final and binding on the parties who have agreed to participate in arbitration as a method of settling a dispute.

There are certain of your rights that may be altered by participating in arbitration and there are certain agreements to which you must be willing to commit in order for this process to be successful in resolving your complaint. Completion of the "Agreement to Arbitrate" is designed to ensure that you understand the process involved, as well as the impact of a completed arbitration.

By signing this form, you agree to comply with its terms and with the terms of any agreed upon resolution, as set forth below.

DISCLOSURE

Before agreeing to participate in arbitration, all parties must be aware that the arbitrator's decision is final and binding and after a decision has been issued the parties cannot use any process, including the court system, to seek further relief for the dispute at hand. Essentially, once an arbitration has been completed and a decision issued, there is no more dispute. Consequently, decisions are issued as conclusions only. There will be no findings of fact, and no opinion or rationale given by the arbitrator. In short, the arbitrator's award is final, binding and prevents either party from looking for further assistance through any other process.

There are only a very few instances in which an arbitration can be reviewed by a court or reconsidered by the arbitrator. An arbitrator's award is final and usually not subject to review by the courts unless it can be shown that fraud, corruption, or misconduct occurred in the process of arbitration or by the arbitrator. This is not legal advice nor is it a legal interpretation upon which any party can rely. At no time can any member of the ADR Unit, including the arbitrator, offer or provide any form of legal advice to a participant in dispute resolution.

NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
ALTERNATIVE DISPUTE RESOLUTION UNIT

AGREEMENT TO ARBITRATE

By signing this form and participating in the arbitration process, I hereby state that agree with the following:

1. I am willingly and voluntarily participating in arbitration;
2. I will participate fully in the arbitration process and participate in good faith at all times;
3. I will not subpoena or ask the arbitrator or any member of the ADR staff and its legal counsel to testify or divulge any records or information from the arbitration process in any judicial, administrative or other proceeding or action;
4. I agree that neither the arbitrator nor the staff of the ADR Unit will be liable in anyway for damages or injunctive relief for any act of omission in connection with the arbitration conducted in accordance with the rules, procedures and guidelines provided to me before the start of the session;
5. I agree that arbitration sessions are to be private and that persons other than the parties, their attorney or other representative, the director of the ADR Unit or an authorized representative and the arbitrator may attend the proceedings only with the permission and agreement of both parties and the arbitrator;
6. I will not record the arbitration session by or with any electronic or other recording or stenographic device;
7. I will comply with all the rules, procedures and guidelines set out in the document and established by the arbitrator at the start of the session;
8. There will be no finding of fact, and no opinion or rationale provided by the arbitrator.

I HAVE READ THIS DOCUMENT CAREFULLY AND UNDERSTAND THE RULES SET FORTH ABOVE. THE ARBITRATION PROCESS HAS BEEN EXPLAINED TO ME AND ALL OF MY QUESTIONS HAVE BEEN ANSWERED. I UNDERSTAND THAT I DO NOT

PARTICIPATION IS NOT A PRECONDITION TO SEEKING ANY OTHER RELIEF PRIOR TO THE BEGINNING OF THE ADR PROCESS. I AM AWARE AND AGREE THAT ONCE I HAVE SIGNED THIS AGREEMENT TO ARBITRATE I MAY NO LONGER WITHDRAW FROM THIS ARBITRATION PROCESS. ALSO, WHEN A DECISION IS REACHED ALL PARTIES ARE BOUND BY THAT DECISION. MOREOVER, THAT DECISION IS BINDING AND PREVENTS EITHER PARTY FROM PURSUING ADDITIONAL RELIEF RELATED TO THIS MATTER IN ANY OTHER FORUM OR THROUGH ANY OTHER PROCESS.

Complainant

Signature

Print Name

Address

City, State and Zip Code

Date

Respondent

Signature

Print Name

Address

City, State and Zip Code

Date

revised June 2004