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**FILED**

JUL 02 2015

MENELAOS W. TOSKOS, J.S.C.

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SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION: BERGEN COUNTY  
DOCKET NO. BER-C-42-15

JOHN J. HOFFMAN, ACTING  
ATTORNEY GENERAL OF NEW JERSEY;  
STEVE C. LEE, ACTING DIRECTOR  
OF THE DIVISION OF CONSUMER  
AFFAIRS; and THE NEW JERSEY  
STATE BOARD OF PHYSICAL THERAPY  
EXAMINERS,

Civil Action

FINAL CONSENT JUDGMENT

Plaintiffs,

v.

KIM POZHARSKY,

The above-captioned matter ("Action") was brought before the Court by John J. Hoffman, Acting Attorney General of New Jersey, attorney for Plaintiffs, by Christopher Salloum, Deputy Attorney General, appearing. The parties to this Action and Final Consent Judgment ("Consent Judgment") are plaintiffs John J. Hoffman, Acting Attorney General of New Jersey

("Attorney General"), Steve C. Lee, Acting Director of the Division of Consumer Affairs ("Director"), and the New Jersey State Board of Physical Therapy Examiners ("Board"), and defendant Kim Pozharsky ("Defendant") (collectively "Parties"). As evidenced by their signatures below, the Parties consent to the entry of this Consent Judgment and its provisions without trial or adjudication of any issue of fact or law, and without an admission of any liability or wrongdoing of any kind.

Plaintiffs commenced this Action on February 26, 2015, by the filing of an Order to Show Cause, with Verified Complaint and supporting certification and letter brief seeking temporary restraints and an Order authorizing the inspection and impoundment of evidence. The Verified Complaint alleged that the Defendant violated N.J.S.A. 45:9-37.19 by engaging in the unlicensed practice of physical therapy and also violated the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), by, among other things, holding himself out to the public as impliedly authorized to practice physical therapy in the State of New Jersey.

On that same day, the Honorable Menelaos W. Toskos, J.S.C., issued an ex parte order requiring the Defendant to show cause why, after summary hearing pursuant to N.J.S.A. 45:1-23 and in accordance with R. 4:67-1(a), final judgment as sought in the Verified Complaint should not be entered: permanently

restraining Defendant's unlawful activities, imposing civil penalties, assessing costs, restitution, attorneys' fees and other relief. That Order also authorized the Attorney General to enter upon the Defendant's office premises and inspect and impound any and all evidence of the unlicensed practice of physical therapy and consequent violations of the Consumer Fraud Act.

Defendant acknowledges that he does not currently possess, nor has he ever possessed, a license to practice physical therapy in the State of New Jersey.

The Court has reviewed the terms of this Consent Judgment and based upon the Parties' agreement and for good cause shown:

IT IS HEREBY ORDERED AND AGREED ON THIS 2 DAY OF July, 2015 AS FOLLOWS

1. Defendant is permanently enjoined from engaging in, or holding himself out as engaging in, the practice of physical therapy in this State, whether orally, in print, on the internet, on television, on the radio, or on any medium or form of communication, unless and until he is duly licensed by the Board to do so. The practice of physical therapy shall be defined in accordance with N.J.S.A. 45:9-37.13 and N.J.A.C. 13:39A-2.1 as now constituted and as may hereafter be amended.

2. Defendant is permanently enjoined from engaging

in, or holding himself out as engaging in, physical therapy instruction, whether orally, in print, on the internet, on television, on the radio, or on any medium or form of communication, unless and until he is duly licensed by the Board to do so. Physical therapy instruction shall be defined as follows: "The act of providing consultative, educational or advisory services or information to one or more individuals for the purpose of preventing or reducing physical dysfunction and disability that may lead to reduced functional abilities."

3. Defendant is permanently enjoined from using any professional title, designation, description, or abbreviation indicative of licensure in physical therapy including, but not limited to, "Doctor", "Doctor of Physical Therapy," "licensed physical therapist," "certified physical therapist," "registered physical therapist," "RPT," and "PT," unless and until he is duly licensed by the Board to do so.

4. Defendant is permanently enjoined from referring to himself, or permitting others to refer to Defendant without correction, whether orally, in print, or on the internet, or on any other medium or form of communication, as "Doctor", "Doctor of Physical Therapy," "licensed physical therapist," "certified physical therapist," "registered physical therapist," "RPT," "PT," or any other title denoting licensure, unless and until he is duly licensed by the Board to do so. Defendant shall be

required to correct the representations of others if he is aware, or reasonably should have been aware, that others are referring to him as a licensed physical therapist as described in this paragraph.

5. Defendant is permanently enjoined from participating in any aspect of the care and treatment of Personal Care's patients as it relates to the provision of services, including, but not limited to, physical therapy services, for which he is not licensed or certified to render in the State of New Jersey. Nothing contained herein shall be interpreted to otherwise limit Defendant's activities or roles at Personal Care. "Personal Care" refers to the Defendant's business, Personal Care Professionals Inc., also known as First Step Solutions, Inc. and Kinu Inc., currently located at 935 River Road, Suite 100, Edgewater, New Jersey 07020 and 22-18 Broadway, Fair Lawn, New Jersey 07410, and any other such related business that Defendant may establish and/or manage in the future.

6. Defendant shall immediately and permanently remove any videos, blogs, podcasts, webpages, or other related online media that represent Defendant as licensed to practice physical therapy. If the Defendant does not exercise control over any such videos, blogs, podcasts, webpages, or other related online media, the Defendant shall make a good faith

effort to remove those postings by writing letters or emails to the entities that control the videos, blogs, podcasts, webpages, or other related online media, and request that they remove the offending posts within thirty (30) days of the execution of this Consent Judgment. The Defendant shall provide the Plaintiffs with proof of compliance with this paragraph within twenty-one (21) days of the entry of this Consent Judgment.

7. Defendant is permanently enjoined from creating, causing to be created, or being in any way knowingly involved in the creation or publication of any web page, blog, electronic or print advertisement or promotion that violates the terms of this Consent Judgment.

8. Defendant is permanently enjoined from engaging in any unconscionable commercial practice, fraud, deception, false promise, false pretense or misrepresentation including, but not limited to, falsely representing himself as a licensed physical therapist or using any title or phrase implying that he is authorized to practice physical therapy in the State of New Jersey.

9. Defendant is permanently enjoined from misrepresenting a material fact in any advertisement regarding (1) the public and/or private entities that have hired Defendant and/or Personal Care; and (2) the extent to which Personal Care and/or Defendant have provided Merchandise to the public.

"Advertisement" means the definition under N.J.S.A. 56:8-1(e) as now constituted and as may hereafter be amended. "Merchandise" shall be defined in accordance with N.J.S.A. 56:8-1(d) as now constituted and as may hereafter be amended and includes professional services.

10. Defendant is permanently enjoined from engaging in any unfair or deceptive acts or practices in the conduct of any business in the State of New Jersey and shall comply with such State and/or Federal laws, rules, and regulations as now constituted and as may hereafter be amended including, but not limited to, the CFA.

11. Defendant shall, upon request by any of the Plaintiffs or their designated representatives, provide all documentation and/or information reasonably necessary for the Plaintiffs to verify compliance with this Consent Judgment, pursuant to the authority granted to the Attorney General under N.J.S.A. 56:8-3 and N.J.S.A. 45:1-18. The Defendant shall produce all such information and/or documents within thirty (30) days of receiving such request.

12. Defendant is assessed a civil penalty of Twenty Thousand and 00/100 Dollars (\$20,000.00) plus an annual interest rate of two and one-quarter percent (2.25%) thereon ("Penalty"), pursuant to N.J.S.A. 45:1-18.2(b) and N.J.S.A. 56:8-13.

13. Defendant is assessed costs in the amount of

Twenty Thousand and 00/100 Dollars (\$20,000.00) as reimbursement of Plaintiffs' costs, including attorneys' fees and investigative costs ("Costs"), pursuant to N.J.S.A. 45:1-23 and 25 and N.J.S.A. 56:8-11 and 19.

FINAL JUDGMENT

14. Final judgment in the amount of Forty Thousand and 00/100 Dollars is hereby entered against Defendant KIM POZHARSKY constituting Twenty Thousand and 00/100 Dollars (\$20,000) for the Penalty and Twenty Thousand and 00/100 Dollars (\$20,000) for Costs.

ADDITIONAL PROVISIONS

15. Defendant shall pay the total amount of the Penalty and Costs in twenty-four (24) equal monthly installments of One Thousand Six Hundred Eighty-Eight and 54/100 Dollars (\$1,688.54), which shall be due by the fifteenth (15<sup>th</sup>) day of each month, beginning on July 15, 2015, by wire transfer, bank check, certified check, or money order payable to the "Treasurer, State of New Jersey." Any other form of payment will be rejected and will be returned to the Defendant. The Defendant may make additional payments without penalty. All payments shall be forwarded 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, to the

address below:

Christopher Salloum  
Deputy Attorney General  
State of New Jersey  
Office of the Attorney General  
Department of Law and Public Safety  
Division of Law  
124 Halsey Street  
P.O. Box 45029  
Newark, New Jersey 07101

16. Upon making such payments, Defendant shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Plaintiffs pursuant to the terms herein.

17. Plaintiffs agree to suspend Ten Thousand and 00/100 Dollars (\$10,000), plus the remaining interest, of the Penalty ("Suspended Penalty") provided that, at the time Defendant has made payment of at least Ten Thousand and 00/100 Dollars (\$10,000) of the Penalty, plus interest at the above-specified rate, (a) such payments were made in a timely manner; (b) Defendant has complied in all respects with the injunctive relief and business practices set forth in this Consent Judgment; and (c) Defendant continues to make timely payments of the remainder of the Costs.

18. In the event the Suspended Penalty is suspended pursuant to the terms established in this Consent Judgment, the

Defendant shall pay the remainder of the Costs in twelve monthly installments as follows: Eight Hundred Thirty-Three and 33/100 Dollars (\$833.33) for the first eleven payments and Eight Hundred Thirty-Three and 37/100 Dollars (\$833.37) for the twelfth and final payment, all of which shall be due by the fifteenth (15<sup>th</sup>) day of each month. Payment shall be made in the same manner as provided in paragraph fifteen (15) herein.

19. In the event Defendant fails to comply with any of the payment terms of this Consent Judgment or fails to comply in all respects with the injunctive relief and business practices set forth in this Consent Judgment, Plaintiffs shall provide Defendant with written notice demanding immediate payment of the Suspended Penalty, as well as any unpaid portion of the remaining penalties and costs, which shall be immediately due and owing. In any such notice, Plaintiffs shall provide Defendant with the specific details of the alleged noncompliance. Defendant shall be afforded a fifteen (15) day period from receipt of such notice within which to cure any such noncompliance. Failure by Defendant to cure any such noncompliance shall be deemed a Default, entitling Plaintiffs to seek immediate payment of the full amount of the Penalty and Costs, less any amount already paid by the Defendant under this Consent Judgment.

20. The Defendant agrees to pay all reasonable

attorneys' fees and costs incurred by Plaintiffs for any collection efforts and efforts to enforce the terms of this Consent Judgment.

21. The Attorney General (or designated representative) shall have the authority to enforce the provisions of this Consent Judgment and/or to seek sanctions for violations hereof including, but not limited to, contempt of court.

22. The Parties agree that any violation of the injunctive provisions of this Consent Judgment, or the CFA and/or its implementing regulations, or N.J.S.A. 45:9-37 19 and/or related regulations, shall constitute a second or succeeding violation under N.J.S.A. 45:1-18.2(b) and N.J.S.A. 56:8-13 and that the Defendant may be liable for enhanced civil penalties.

23. In the event of a breach of this Consent Judgment by either party, the aggrieved party may institute an appropriate proceeding in the Superior Court of New Jersey to enforce that party's rights under this Consent Judgment or may otherwise seek intervention of the Court as permitted by the Rules of Court. Nothing contained herein shall contract or expand the rights of an aggrieved party in the event of a breach beyond those which are specifically contemplated by the Rules of Court.

24. Upon the full execution of this Order, this Action shall be dismissed with prejudice except as otherwise provided by the terms of this Consent Judgment.

25. The Consent Judgment is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Judgment.

26. This Consent Judgment shall be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey.

27. The Court retains jurisdiction for the purpose of enabling the Parties to apply to the Court at any time for such further orders and relief as may be necessary for the construction, modification, enforcement, execution, and/or satisfaction of this Consent Judgment.

28. Venue as to all matters between the Parties hereto relating to or arising out of this Consent Judgment shall lie exclusively in the Superior Court of New Jersey, Chancery Division, Bergen County.

29. The Parties have negotiated, jointly drafted, and fully reviewed the terms of this Consent Judgment and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Judgment.

30. This Consent Judgment contains the Parties' entire agreement. The terms of this Consent Judgment, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements, or prior arrangements between the parties, whether orally or written. Except as otherwise provided herein, this Consent Judgment shall be modified only by a written instrument signed by, or on behalf of, the Plaintiffs and the Defendant.

31. If any portion of this Consent Judgment is held invalid or unenforceable by operation of law, the remaining terms of this Consent Judgment shall not be affected.

32. This Consent Judgment shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Judgment avoid compliance with this Consent Judgment.

33. This Consent Judgment is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Judgment nor any action taken hereunder shall constitute, or be construed as: (1) an approval, sanction or authorization by the Attorney General, the Division, the Board, or any other governmental unit of the State of any act or practice of the Defendant; and (2) an admission by the Defendant that any of his acts or practices described in this Action's pleadings or prohibited by this

Consent Judgment constitute the unlicensed practice of physical therapy or violate the Consumer Fraud Act.

34. This Consent Judgment is not intended, and shall not be deemed, to constitute evidence or precedent of any kind except in any action or proceeding by one of the Parties to enforce, or otherwise implement or affirm any or all of the terms of this Consent Judgment.

35. Except as otherwise provided in this Consent Judgment, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State. If, at any time, the Attorney General deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the State to undertake any action affecting the Defendant, nothing in this Consent Judgment shall in any way inhibit, bar, or otherwise prevent the Attorney General from so doing.

36. Except as otherwise provided in this Consent Judgment, no provision herein shall be construed as:

- (a) Relieving Defendant of his obligation to comply with all State and Federal laws, regulations, or rules, as now constituted and as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
- (b) Limiting or expanding any right the Plaintiffs may otherwise have to obtain information, documents, or testimony from the Defendant pursuant to any State or Federal law, regulation

or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Defendant may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Plaintiffs to obtain such information, documents or testimony.

37. Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Judgment may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Judgment.

38. This Consent Judgment shall be effective on the date that it is entered with the Court ("Effective Date").

39. In consideration of the injunctive relief, payments, undertakings, mutual promises, and obligations provided for in this Consent Judgment, and to the extent permitted by State law, Plaintiffs hereby agree to release Defendant from any and all civil or administrative claims that the Plaintiffs could have brought prior to the Effective Date against Defendant for violations of the CFA and of N.J.S.A. 45:9-37.19 concerning the conduct alleged in the Verified Complaint ("Released Claims"), provided, however, that: (a) the Defendant timely makes payments of the Penalty, interest and Costs; and (b) the Defendant complies in all respects with the terms of this Consent Judgment.

40. Notwithstanding any term of this Consent

Judgment, the following do not comprise Released Claims (a) private rights of action; (b) actions to enforce this Consent Judgment; and (c) any claims against Defendant that are not the subject of this Action by any agency or subdivision of the State.

IT IS SO ORDERED, ADJUDGED, AND DECREED.



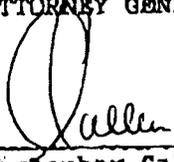
Hon. Menelaos W. Toskos, J.S.C.

JOINTLY APPROVED AND SUBMITTED FOR ENTRY:

FOR THE PLAINTIFFS:

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY

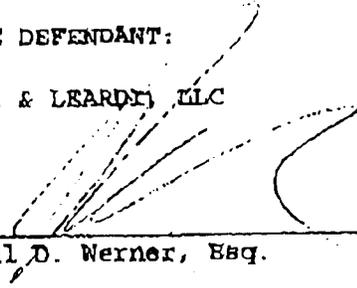
Dated: ~~June~~ July 1, 2015

By:   
Christopher Salloum  
Deputy Attorney General

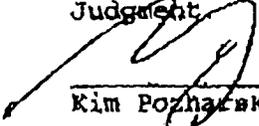
FOR THE DEFENDANT:

BUTTACI & LEARDI, LLC

Dated: June 30, 2015

By:   
Paul D. Werner, Esq.

I, Kim Pogharsky, have read and understand the terms of this Consent Judgment and agree to be bound by its terms. I consent to the entry of this Final Consent Judgment.

  
\_\_\_\_\_  
Kim Pogharsky  
6/30/15  
\_\_\_\_\_  
Date