



MEMO

To: [Insert Name of Retailer] ("Retailer")

From: Total Gym Fitness, LLC ("TGF")

Date: [Insert date]

Re: California Affiliate Non-Solicitation Agreement
Under California Revenue and Taxation Code Section 6203

In 2011, the California Revenue and Taxation Code (RTC) section 6203 was amended to require the collection of sales tax by certain out-of-state retailers selling to California residents. The new RTC section 6203(c)(5), known as the "affiliate nexus provision," creates an in-state nexus for out-of-state retailers who enter into an agreement with a person or company in California that solicits sales on behalf of the retailer in exchange for sales commissions, provided that certain in-state sales thresholds are reached.

On September 5, 2012, the California Board of Equalization (BOE) issued Sales and Use Tax Regulation 1684 (Collection of Use Tax by Retailers) which offers guidance for out-of-state retailers seeking to avoid application of the affiliate nexus provision. In particular, Regulation 1684 states, in part, that a retailer can demonstrate that an agreement with a California affiliate is not subject to the affiliate nexus provision if:

1. The retailer's agreement prohibits persons operating under the agreement from engaging in any solicitation activities in California that refer potential customers to the retailer including, but not limited to, distributing flyers, coupons, newsletters and other printed promotional materials or electronic equivalents, verbal soliciting (for example, in-person referrals), initiating telephone calls, and sending emails;

2. The person or persons operating under the agreement in California certify annually under penalty of perjury that they have not engaged in any prohibited solicitation activities in California at any time during the previous year; and

3. The retailer accepts the certification or certifications in good faith, and the retailer does not know or have reason to know that the certification or certifications are false or fraudulent.

Retailer hereby agrees that it will not engage in any solicitation activities in California that refer potential customers to TGF including, but not limited to, distributing flyers, coupons, newsletters and other printed promotional materials or electronic equivalents, verbal soliciting (for example, in-person referrals), initiating telephone calls, and sending emails. In addition, beginning in September 2013, Retailer will certify annually, under penalty of perjury, that it has not engaged in any prohibited solicitation activities on TGF's behalf in California at any time during the previous year. For the avoidance of doubt, Retailer will continue to maintain Internet links to TGF's website in exchange for commissions on sales generated through such links.

This Memo is intended to represent an agreement between Retailer and TGF satisfying the compliance provisions set forth in Regulation 1684. Retailer has been afforded the opportunity to consult with an attorney prior to signing below.

Agreed to by Retailer:

By: _____