ATTORNEY GENERAL OF THE STATE OF NEW YORK
CONSUMER FRAUDS & PROTECTION BUREAU

In the Matter of the

Assurance No. 17-135

Investigation by BARBARA D. UNDERWOOD,
Attorney General of New York, of

ADVENTURE RESORTS OF AMERICA, LLC,
ADIRONDACK ADVENTURE RESORTS OF
LAKE GEORGE, INC., and SARATOGA ESCAPE LODGES
& RV RESORT, INC.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York ("OAG") commenced an investigation, pursuant to Executive Law § 63(12) and General Business Law Articles 22-A and 31, into the marketing and sales practices of Adventure Resorts of America, LLC, Adirondack Adventure Resorts of Lake George, Inc., and Saratoga Escape Lodges & RV Resort, Inc. (collectively, "Respondents").

This Assurance of Discontinuance ("Assurance") contains the findings of the OAG's investigation and the relief agreed to by the OAG and Respondents (collectively, "the parties").

OAG'S FINDINGS

1. Adventure Resorts of America LLC, Adirondack Adventure Resorts of Lake George, Inc. and Saratoga Escape Lodges & RV Resort, Inc., are New York domestic entities with their principal places of business at 10 Queens Lane, Queensbury, New York 12804 (Adventure Resorts of America, LLC) and 265 Brigham Road, Greenfield Center, New York

12833 (Adirondack Adventure Resorts of Lake George, Inc. and Saratoga Escape Lodges & RV Resort, Inc.) that market and sell memberships at campgrounds located in Sturbridge, Massachusetts ("Sturbridge"), Diamond Point, New York ("Schroon River") and Greenfield Center, New York ("Saratoga"), respectively. All three companies' memberships include camping privileges at all three campgrounds.

2. From 1987 until 2016, Raymon and Shauna Sheppard owned Adirondack Adventure Resorts of Lake George, Inc. and Saratoga Escape Lodges & RV Resort, Inc. together (each had a 50% ownership interest).[1] Raymon was the president of Adirondack Adventure Resorts of Lake George, Inc., which owned and operated the Schroon River campground, and Shauna was the president of Saratoga Escape Lodges & RV Resort, Inc., which owned and operated the Saratoga campground. In 2013, Raymon Sheppard acquired an ownership interest in the Sturbridge campground. In June 1, 2016, pursuant to a divorce agreement, Raymon transferred his interest in the Schroon River and Saratoga campgrounds to Shauna, who now serves as the president of both companies.

3. Respondents sell lifetime campground memberships and memberships for terms of 5 or 10 years for fees that typically range from $3,000 to nearly $6,000 (plus annual dues of approximately $349), depending on the membership package. A membership affords members the liberal right, with certain restrictions, to reserve and use the resort facilities for recreation and camping during the campground season, late May through October.

4. Respondents market their services through direct mail fliers and phone calls to consumers who have purchased recreational vehicles ("RVs") or attended RV shows or other events that attract recreational vehicle enthusiasts. The mailers typically offer consumers free

[1] Prior to 2001, the company was known as American Campgrounds, Inc.

giveaways, such as a netbook computer, touchpad, restaurant gift card, and/or free ten-night camping pass. Some fliers represent that consumers must call "within 72 hours" to schedule a visit to one of Respondents' campgrounds to avail themselves of the giveaway.

5. Other mailings simply announce that consumers have been awarded a specified giveaway and that if they call the advertised telephone number "within 72 hours" they will receive an additional gift, but do not disclose either that the solicitation comes from Respondents or any other conditions attached to the receipt of the gifts. Consumers only learn when they call the advertised phone number that they have to take a tour of one of Respondents' campgrounds and sit through a sales pitch to get the free gifts.

6. Respondents also contact by phone consumers who provided Respondents with contact information at RV Shows. During the phone calls, sales representatives similarly induce consumers to tour one of Respondents' campgrounds by promising free giveaways.

7. During the campground tours, which are typically conducted in the camping off-season (November through May), sales representatives advise consumers of various improvements that will be made by the start of camping season, such as a new pool deck or wifi installation, and also discuss the standard services and amenities available, such as electricity and waste removal/pumping for all RVs.

8. After the tour, consumers are subjected to a one-on-one high-pressure sales pitch. For example, if a consumer hesitates to enroll because of the cost, the sales representative advises that the advertised deal is available "today only." If the consumer is still uncertain, the sales representative often offers a less expensive option (e.g., five or ten-year membership instead of lifetime membership) and/or financing. Some consumers have stated that the sales representatives "do not take no for an answer." These sales pitches, including the tour, often far

exceed the amount of time promised when consumers agree to visit the campground, stretching two to three hours.

9. During the sales pitch, representatives also tout the Resorts of Distinction ("ROD") reciprocal campground program as one of the benefits of membership, representing that, for an additional fee of $150, consumers will be able to reserve campsites at participating campgrounds across the country at a discounted rate. Sales representatives create the impression that the network of participating campgrounds is extensive, often assuring consumers of the availability of ROD campgrounds in particular locations where consumers wish to travel. In many cases, sales representatives give prospective members a directory of participating campgrounds but fail to disclose that some campgrounds have numerous black-out dates (i.e., dates that are not available to ROD members) during popular vacation weeks. They also promise that consumers will be able to access ROD benefits immediately upon joining the ROD program. The ROD membership is a big selling point for consumers, many of whom are retirees who want to travel the country by RV. In fact, most consumers who purchase campground memberships also agree to enroll in the ROD program.

10. Consumers who decline to purchase a campground membership are frequently told that the free giveaway is unavailable or out of stock, and will be mailed to them at a later date, or that they can only get either a giveaway *or* a free camping pass, although the fliers promised both.

11. Consumers who elect to purchase a membership but are unable to pay the entire membership fee upfront are given the option to accept financing from Respondents at a 12% interest rate. Respondents contract with a third-party company that handles their billing and collection for consumers who accept the financing. When completing the purchase, sales

representatives give consumers paperwork to fill out, review and sign. The sales contract includes a clause stating that the consumer has a three-day right to cancel.

12. After enrolling, some consumers attempt to cancel their membership within the three-day period by sending cancellation letters to Respondents. Yet, consumers who have financed their purchase continue to be billed monthly by Respondents' billing company and those who have paid in full do not receive refunds or even confirmation of cancellation. Consumers who call to confirm that their memberships have been cancelled or to inquire about why they are still being charged after sending a letter of cancellation are frequently unable to reach Mr. Sheppard or someone in the executive office, and voice messages are not returned.

13. After enrolling, consumers discover that the membership or ROD benefits fall far short of what was promised during the tour and sales pitch. For instance, some members try to book trips to reciprocal campgrounds through the ROD program only to learn that: ROD has no record of their enrollment; some campgrounds in the ROD Directory no longer participate in the program; ROD has no campgrounds in areas where Respondents' salespeople had assured consumers they did; and certain campgrounds have numerous "black out" dates unavailable to ROD members.

14. When members have returned to Respondents' campgrounds "in season" to camp, they have found that some promised upgrades had not been made and/or the promised services and/or basic amenities are lacking. For example, the campground store has lacked basic supplies and the grounds and picnic tables have been in disrepair; wifi installation was either incomplete or the service simply did not work; and promised improvements (such as a new pool deck) have not been made or even begun. Further, basic services have been unreliable, *e.g.*, the electricity has gone on and off and RVs have not been pumped out regularly.

15. When members attempt to cancel their contracts by mail because they are dissatisfied, Respondents often fail to honor their requests and continue to have their third-party billing company charge consumers.

16. New York Executive Law § 63(12) prohibits persons or business entities from engaging in repeated fraudulent or illegal acts or otherwise demonstrating persistent fraud or illegality in the carrying on, conducting or transaction of business.

17. New York General Business Law ("GBL") Article 22-A prohibits deceptive acts or practices (GBL § 349), and false advertising in the conduct of any business, trade or commerce in this State (GBL § 350).

18. GBL Article 31 governs membership campgrounds and requires, among other things, that membership campgrounds permit members to cancel their contract after three days if they report a material breach of their contract, such as the failure to provide essential services and programs (GBL § 654-a(2)(a)(1)) and refund any money due to the consumer within 30 days (GBL § 654(2)).

19. OAG finds that Respondents' actions have repeatedly violated GBL §§ 349, 350, 654, and 654-a, and Executive Law § 63(12).

20. Respondents admit OAG's Findings, in paragraphs 1-19 above, and are willing to enter into this Assurance in order to resolve their dispute with OAG.

21. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of GBL §§ 349, 350, 654, and 654-a, and Executive Law § 63(12), based on the conduct described above, from 2012 through 2016.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

General Injunction:

22. Respondents shall not engage, or attempt to engage, in violations of any applicable laws, including but not limited to Executive Law § 63(12), GBL Article 22-a, §§ 349, 350, and GBL Article 31.

Prohibited Practices:

23. In their solicitations, advertising, marketing and other dealings with consumers, Respondents shall not:

a. represent, directly or by implication, that consumers will receive free "giveaway" items or other inducements for attending a sales presentation, unless Respondents will in fact provide the specific inducements on the date consumers attend the presentation;

b. misrepresent, directly or by implication, any planned repairs and/or enhancements to, or available services and/or amenities at, campground facilities;

c. misrepresent, directly or by implication, the terms and conditions of any reciprocal campground program, including the names and locations of participating campgrounds;

d. represent, directly or by implication, that a certain price is available for a specified period of time, e.g., "today only," unless that is, in fact, the case.

Affirmative Obligations:

24. In its solicitations, advertising, marketing and other dealings with consumers, Respondents shall:

a. affirmatively disclose any material restrictions concerning use of campgrounds and/or reciprocal programs, including but not limited to the fact that ROD campgrounds may have blackout dates;

b. clearly and conspicuously disclose that Respondents are the sender of all mailings and fliers, and any terms and conditions applicable to any "giveaways" or other inducements;

c. promptly forward any payments made by consumers for a third-party program, including, but not limited to, the ROD program, to the appropriate party;

d. honor the contract cancellations of consumers who cancel their contracts with or without cause within three business days of the contract execution in accordance with GBL Article 31;

e. honor consumers' contract cancellations after three businesses days for any grounds permitted under GBL Article 31, including but not limited to, Respondents' material breach of the contract;

f. provide consumers who cancel contracts as set forth in (d) and (e) with any refunds due within 30 days; and

g. respond to consumers' phone calls, letters, and/or e-mail messages within a reasonable time period.

25. Respondents shall take all necessary steps to ensure that any information that could potentially negatively affect consumers' credit scores, such as delinquencies, defaults, judgments or similar credit information, is removed from the credit reports of consumers who are identified in Exhibit A or are deemed eligible for restitution pursuant to the procedures set forth in paragraph 30.

26. Respondents shall take such corrective action within 60 days from the execution of this AOD for consumers identified on Exhibit A; or any notice of determination of the OAG that a consumer is entitled to restitution, as set forth in paragraph 30.

27. Respondents also agree to work with the OAG to resolve any credit disputes concerning other consumers who claim that their credit reports contain incorrect negative information stemming from their transactions with Respondents.

28. Respondents shall also cancel all contracts and cease billing consumers who are identified in Exhibit A or deemed eligible for restitution pursuant to paragraph 30.

Monetary Relief:

29. Respondent Adventure Resorts of America, on behalf of all Respondents, shall pay to the State $66,133.56 in penalties, costs, and restitution (the "Monetary Relief Amount"), $41,133.56 of which shall be used to provide restitution to consumers who have filed complaints with the OAG that have not been resolved and/or have unsatisfied small claims judgments related to Respondents' business activities, as detailed in Exhibit A. The OAG agrees to suspend the remaining $25,000 from said Monetary Relief Amount, provided that Respondent Adventure Resorts of America complies with the payment schedule set forth in paragraphs 31 and 32.

30. In addition to the Monetary Relief Amount, Respondent Adventure Resorts of America shall make restitution in the following manner to any consumer who files a complaint with the Attorney General within 180 days of entry of this Assurance, which establishes an injury from Respondents' deceptive and/or illegal acts and practices described herein. The Attorney General shall notify Respondent Adventure Resorts of America of receipt of each complaint and provide Respondent Adventure Resorts of America with any supporting documentation by mail or e-mail. Within 25 days after mailing or transmittal, Respondent

Adventure Resorts of America shall submit any written objections to the Attorney General concerning each complaint. The Attorney General shall be the final arbiter of all disputed claims and upon either the expiration of 25 days after mailing or transmitting consumer complaints to Respondent Adventure Resorts of America or considering any objections submitted by it, the Attorney General shall determine the amount of restitution which shall be paid by Respondent Adventure Resorts of America, if any, and shall notify Respondent Adventure Resorts of America by mail or e-mail.

31. Within 15 days of the execution and delivery of this Assurance, Respondent Adventure Resorts of America shall make a payment of $7,000 toward the unsuspended portion of the Monetary Relief Amount.

32. Payment of the remainder of the unsuspended portion of the Monetary Relief Amount, as well as the additional restitution due pursuant to the procedure described in paragraph 30, shall be made by Respondent Adventure Resorts of America in monthly payments of $1,200, to be paid on or before the 15th day of each month, commencing the month following the effective date this Assurance and continuing thereafter until payment is made in full;

33. Payments shall be made by corporate or certified check, or bank draft, which shall be made payable to the "State of New York," and shall reference Assurance No. 17-135; payments shall be addressed to the attention of Assistant Attorney General Emily Auletta, State of New York, Office of the Attorney General, Consumer Frauds and Protection Bureau, The Capitol, Albany, New York 12224.

34. To secure the payment described by paragraph 29, Respondent Adventure Resorts of America will execute and deliver, at the time of the execution and delivery of this Assurance, the accompanying Affidavit of Judgment by Confession (attached hereto as Exhibit B),

confessing judgment for the Monetary Relief Amount of $66,133.56, plus collection fees of twenty-two percent (22%) of the Monetary Relief Amount of $66,133.56, for a collection fee total of $80,682.94, and statutory costs of $15.00, for a total amount confessed of $80,697.94.

35. In the event that Respondent Adventure Resorts of America fails to timely and properly make payments as required by paragraphs 31 and 32, the OAG shall provide Respondents with twenty (20) days written notice, by first class mail, to cure such failure, and upon the failure of Respondent Adventure Resorts of America to cure such failure, the OAG may file and enter the applicable Affidavit for Judgment by Confession against Respondent Adventure Resorts of America, at any time, and without further notice, for the balance owed pursuant to this Assurance.

36. Respondent Adventure Resorts of America represents and warrants that the signatory below has been duly authorized to and has the authority to sign an Affidavit for Judgment by Confession on its behalf.

MISCELLANEOUS

37. Respondents expressly agree and acknowledge that a default in the performance of any obligation under paragraphs 22-28 is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 21, supra, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall constitute prima facie proof of the statutory violations described in paragraphs 16-19, pursuant to Executive Law § 63(15).

38. In any subsequent investigation, civil action, or proceeding by the OAG to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 45, the Respondents expressly agree and acknowledge that:

a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;

b. the OAG may use statements, documents or other materials produced or provided by the Respondents prior to or after the effective date of this Assurance;

c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondents irrevocably and unconditionally waive any objection based upon personal jurisdiction, inconvenient forum, or venue.

39. If a court of competent jurisdiction determines that Respondents have violated the Assurance, Respondent Resorts of America shall pay to OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation, legal fees, expenses, and court costs.

40. To the extent not already provided under this Assurance, Respondents shall, upon request by OAG, provide all documentation and information necessary for OAG to verify compliance with this Assurance and to effectuate the terms of this Assurance.

Effects of Assurance:

41. Acceptance of this Assurance by OAG is not an approval or endorsement by OAG of any of Respondents' practices or procedures, and Respondents shall make no representation to the contrary.

42. This Assurance is not intended for use by any third party in any other proceeding.

43. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of Respondents. Respondents shall cause this Assurance to be adopted in any such transfer agreement. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written

consent of OAG.

44. Nothing contained herein shall be construed to deprive any person of any private right under the law.

45. Any failure by the Attorney General to insist upon the strict performance by Respondents of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the Attorney General, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by Respondents.

Communications:

46. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 17-135, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to Respondent Adventure Resorts of America, LLC, to: Raymon Sheppard, or in his absence, to the person holding the title of President;

If to Respondents Adirondack Adventure Resorts of Lake George, Inc. and/or Saratoga Escape Lodges & RV Resort, Inc., to: Shauna Sheppard, or in her absence, to the person holding the title of President;

If to the OAG, to: Assistant Attorney General Emily Auletta, or in her absence, to the person holding the title of Bureau Chief, Consumer Frauds and Protection Bureau.

Representations and Warranties:

47. The OAG has agreed to the terms of this Assurance based on, among other things,

the representations made to OAG by Respondents and OAG's own factual investigation as set forth in Findings, paragraphs 1-15 above. Respondents represent and warrant that they have not made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondents are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

48. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Respondents in agreeing to this Assurance.

49. Respondents represent and warrant, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. Respondents shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance, or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Respondents' (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party.

<u>General Principles</u>:

50. Unless a term limit for compliance is otherwise specified within this Assurance, Respondents' obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Respondents of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

51. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that Respondents violate the Assurance after its effective date.

52. This Assurance may not be amended except by an instrument in writing signed on

behalf of the Parties to this Assurance.

53. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

54. Respondents acknowledge that they have entered this Assurance freely and voluntarily.

55. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

56. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

57. This Assurance may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

58. The effective date of this Assurance shall be June 29, 2018.

BARBARA D. UNDERWOOD
Attorney General of the State of New York
By: Jane M. Azia

JANE M. AZIA
Bureau Chief
Bureau of Consumer Frauds and Protection

Emily L. Auletta

EMILY L. AULETTA
Assistant Attorney General

ADVENTURE RESORTS OF AMERICA, LLC,
ADIRONDACK ADVENTURE RESORTS OF LAKE GEORGE, INC.,
SARATOGA ESCAPE LODGES & RV RESORT, INC.

By:

RAYMON SHEPPARD, President
Adventure Resorts of America, LLC
10 Queens Lane
Queensbury, NY 12804
Dated: 6/13/18

SHAUNA KING-SHEPPARD, President
Adirondack Adventure Resorts of Lake George, Inc.
Saratoga Escape Lodges & RV Resort, Inc.
265 Brigham Road
Greenfield Center, New York 12833
Dated: 6/21/18