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ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
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Attorney for Plaintiffs

By: Frank J. Marasco  
Deputy Attorney General  
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FILED  
BY JUDGE SUPERIOR COURT NJ  
JAN 22 2010  
JAMES E. RAFFERTY, J.S.C.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
CUMBERLAND COUNTY  
DOCKET NO. CUM-C-35-08

ANNE MILGRAM, Attorney General of the :  
State of New Jersey, and DAVID M. :  
SZUCHMAN, Director of the New Jersey :  
Division of Consumer Affairs, :  
Plaintiffs, :

v. :

JOHN DARLYMPLE and WILLIAM :  
KALAI, individually and doing business as :  
CASTAWAY POOLS & SPAS; :  
CASTAWAY POOLS & SPAS, LLC; :  
JOHN DARLYMPLE and TERESA :  
MASKER, individually and doing business :  
as CASTAWAY FIBERGLASS POOLS; :  
CASTAWAY POOLS & SPAS, LLC; and :  
JANE and JOHN DOES 1 - 20, individually :  
and as owners, officers, directors, :  
shareholders, founders, managers, agents, :  
servants, employees, representatives and/or :  
independent contractors of CASTAWAY :  
POOLS & SPAS; CASTAWAY POOLS :  
& SPAS, LLC; CASTAWAY FIBER- :  
GLASS POOLS, and/or CASTAWAY :  
POOLS & SPAS, LLC and XYZ :  
CORPORATIONS 1 - 20, :

Defendants. :

Civil Action

FINAL CONSENT JUDGMENT

(John Dalrymple; Castaway Pools &  
Spas, LLC; Teresa Masker; and  
Castaway Fiberglass Pools, LLC)

The parties ("Parties") to this Final Consent Judgment are Plaintiffs Anne Milgram, Attorney General of the State of New Jersey, and David M. Szuchman, Director of the New Jersey Division of Consumer Affairs (collectively "Plaintiffs"), and Defendants John Dalrymple ("Dalrymple"), Castaway Pools & Spas, LLC ("Castaway LLC"), Teresa Masker ("Masker") and Castaway Fiberglass Pools, LLC ("Castaway Fiberglass LLC")(collectively, "Defendants"). Plaintiffs' claims against Defendant William Kalai remain pending in this action. As evidenced by their signatures below, the Parties do consent to entry of this Final Consent Judgment ("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.

#### **PRELIMINARY STATEMENT**

In this Action, Plaintiffs have alleged that Defendants engaged in deceptive conduct, among other things, through their operation of businesses which were engaged in the advertisement, sale and installation of pools and spas. In addition, Plaintiffs have alleged that Defendants performed home improvement work without being registered as a home improvement contractor ("HIC") with the New Jersey Division of Consumer Affairs ("Division"). As such, Plaintiffs have alleged violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), the Contractor's Registration Act, N.J.S.A. 56:8-136 et seq. ("CRA"), the Regulations Governing Home Improvements, N.J.A.C. 13:45A-16.1 et seq. ("Home Improvement Regulations") and the Regulations Governing Contractor Registration, N.J.A.C. 13:45A-17.1 et seq. ("Contractor Registration Regulations").

The Defendants deny having committed any violation of law including, but not limited to, the CFA, the CRA, Home Improvement Regulations and Contractor Registration Regulations.

Based upon the Parties' agreement,

**IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:**

**1. JURISDICTION**

1.1 The Parties admit jurisdiction of this Court over the subject matter and over the Parties for the purpose of entering into this Consent Judgment. The Court retains jurisdiction for the purpose of enabling the Parties to apply to this Court at any time for such further orders and relief as may be necessary for the construction, modification, enforcement, execution or satisfaction of this Consent Judgment.

**2. VENUE**

2.1 Pursuant to N.J.S.A. 56:8-8, 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, Cumberland County.

**3. EFFECTIVE DATE**

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

**4. DEFINITIONS**

As used in this Consent Judgment, the following words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Judgment:

4.1 "Advertisement" shall be defined in accordance with N.J.S.A. 56:8-1(c). This definition shall apply to other forms of the word "Advertisement" including, without limitation, "Advertise," "Advertised" and "Advertising." For purposes of the Contractor Registration Regulations, "Advertise" shall be defined in accordance with N.J.A.C. 13:45A-17.2.

4.2. "Affected Consumers" shall refer to those Consumers who entered into Home Improvement Contracts with Defendants for Home Improvements including, but not limited to,

construction and installation of pools and/or spas prior to the closure of Defendants' businesses on or about September 8, 2008.

4.3 "Attorney General" shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

4.4 "Consumer" shall refer to any Person who is offered Merchandise for Sale.

4.5 "Contractor" shall be defined in accordance with N.J.S.A. 56:8-137.

4.6 "Home Improvement" shall be defined in accordance with N.J.S.A. 56:8-137, N.J.A.C. 13:45A-16.1, and N.J.A.C. 13:45A-17.2.

4.7 "Home Improvement Contract" shall be defined in accordance with N.J.S.A. 56:8-137, N.J.A.C. 13:45A-16.1, and N.J.A.C. 13:45A-17.2

4.8 "HIC Registration Application" shall refer to the Home Improvement Contractor Application for Initial Registration that must be submitted to the Division pursuant to the Contractors' Registration Act and the Contractor Registration Regulations.

4.9 "Merchandise" shall be defined in accordance with N.J.S.A. 56:8-1(c).

4.10 "Person[s]" shall be defined in accordance with N.J.S.A. 56:8-1(d).

4.11 "Represent" shall mean to state or imply through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages or any other manner or means by which meaning might be conveyed. This definition applies to other forms of the word "Represent" including, without limitation, "Representation" and "Misrepresent."

4.12 "Restitution shall refer to all methods undertaken by Defendants to resolve Affected Consumer complaints including but not limited to, the issuance of credits or refunds or the reversal of credit card or debit card charges.

4.13 "Sale" shall be defined in accordance with N.J.S.A. 56:8-1(c).

4.14 "State" shall refer to the State of New Jersey.

## **5. INJUNCTIVE RELIEF AND BUSINESS PRACTICES**

5.1 Defendants shall not engage in any unfair or deceptive acts or practices in the State and shall comply with all applicable State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended including, but not limited to, the CFA, the CRA, the Contractor Registration Regulations and/or the Home Improvement Regulations.

5.2 Defendants shall not advertise and/or solicit Consumers in the State for any Home Improvement.

5.3 Defendants shall not offer to sell or sell any Home Improvement to Consumers in the State.

5.4 Defendants shall neither seek nor accept full or partial payment for any Home Improvement they never completed.

5.5 Defendants shall neither seek nor accept payment for any Home Improvement that they did not satisfactorily perform.

5.6 Defendants shall not attempt to engage in the performance of any Home Improvement except as an employee of a duly registered Home Improvement Contractor.

## **6. RESTITUTION FOR AFFECTED CONSUMERS**

6.1 Attached as Exhibit A is a list prepared by the Division that identifies each Affected Consumer and the amount of Restitution owed by the Defendants to each Affected Consumer. A judgment for the Restitution shall be entered in accordance with the terms set forth in Section 7.

## **7. SETTLEMENT PAYMENT**

7.1 The Parties have agreed to a settlement of the Action in the amount of Five Hundred Seventy-Seven Thousand One Hundred Thirteen and 00/100 Dollars (\$577,113.00) (the "Settlement Amount").

7.2 From the Settlement Amount, Five Hundred Thirty-Seven Thousand One Hundred Thirteen and 00/100 Dollars (\$537,113.00) shall be applied to Restitution for Affected Consumers.

7.3 The remaining Forty Thousand and 00/100 (\$40,000.00) of the Settlement Amount ("Settlement Payment") shall be applied to civil penalties, pursuant to N.J.S.A. 56:8-13 and Plaintiffs' investigative costs, pursuant to N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19.

7.4 Judgment shall be entered against Defendants Castaway Pools, LLC and Castaway Fiberglass Pools, LLC in the amount of Five Hundred Seventy-Seven Thousand One Hundred Thirteen and 00/100 Dollars (\$577,113.00).

7.5 Judgment shall be entered against Defendant John Dalrymple in the amount of Forty Thousand and 00/100 (\$40,000.00) in equal monthly installments of Two Hundred Seventy-Five Dollars (\$275.00) commencing February 1, 2010 until July 1, 2023.

7.6 The Settlement Payment shall be made by certified check, attorney trust account check or other guaranteed funds made payable to "New Jersey Division of Consumer Affairs" and forwarded to the undersigned; or money order made payable to "New Jersey Division of Consumer Affairs" and forwarded to the undersigned:

Supervisor, Case Management Tracking  
New Jersey Department of Law and Public Safety  
Division of Consumer Affairs  
124 Halsey Street - 7<sup>th</sup> Floor  
P.O. Box 45025  
Newark, New Jersey 07101

7.7 Upon making the Settlement Payment, Defendant Dalrymple shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Division pursuant to the terms herein.

7.8 In the event Defendant Dalrymple fails to make any of the installment payments referred to in Paragraph 7.5, the entire unpaid balance of the Settlement Payment shall become

immediately due and payable upon written notice ("Notice of Noncompliance") to Defendant c/o Eric H. Lubin, Esq., Jacobs & Barbone, P.A., 1125 Pacific Avenue, Atlantic City, New Jersey 08401. Defendant Dalrymple shall have twenty (20) days from receipt of the Notice of Noncompliance to make payment ("Cure Period"). If Defendant Dalrymple makes payment within the Cure Period, the Notice of Noncompliance shall be deemed withdrawn. If Defendant Dalrymple fails to make payment within the Cure Period, the Division may move on notice to Defendant for the entry of an Order directing liability for the remaining balance of the Settlement Payment together with the entire amount of Restitution set forth in Paragraph 7.2, attorneys' fees and costs.

#### **8. DISMISSAL OF ACTION**

8.1 The entry of this Consent Judgment constitutes a dismissal with prejudice of this action as to these Defendants who are parties to this Final Consent Judgment.

#### **9. GENERAL PROVISIONS**

9.1 This 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.

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

9.3 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.

9.4 This Consent Judgment contains the entire agreement among the Parties. 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 Defendants.

9.5 Except as otherwise explicitly provided for 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.

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

9.7 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.

9.8 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 (a) an approval, sanction or authorization by the Attorney General, the Division or any other governmental unit of the State of any act or practice of the Defendants; and (b) an admission by Defendants that any of their acts or practices described in or prohibited by this Consent Judgment are unfair or deceptive or violate any of the Consumer protection laws of the State or any other applicable laws or regulations. This Consent Judgment is not intended, and shall not be deemed, to constitute evidence or precedent of any kind except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms of this Consent Judgment; or (b) any action or proceeding involving a Released Claim (as defined in Section 11) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

9.9 Unless otherwise prohibited by law, any signatures by the Parties required for entry of the 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.

## **10. REPRESENTATION AND WARRANTIES**

10.1 The Parties Represent and warrant that their signatories to this Consent Judgment have authority to act for and bind the respective Parties.

## **11. RELEASE**

11.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Judgment and conditioned on Defendants complying with Section 7, Plaintiffs hereby agree to release Defendants from any and all Consumer related administrative claims, to the extent permitted by State law, which could have brought prior to the Effective Date against Defendants for violations of the CFA, the CRA, the Contractor Registration Regulations and/or the Home Improvement Regulations as alleged in this action, as well as the matters specifically addressed in the Consent Judgment (the "Released Claims").

11.2 Notwithstanding any term of the Consent Judgment, the following do not comprise Released Claims: (a) private rights of action; provided however, that nothing herein shall prevent Defendants from raising the defense of set-off against an Affected Consumer who has received Restitution; (b) actions to enforce this Consent Judgment; and (c) any claims against Defendants by any other agency or subdivision of the State.

## **12. FORBEARANCE ON EXECUTION AND DEFAULT**

12.1 Defendants agree to pay all reasonable attorneys' fees and costs including, but not limited to, Court costs, associated with any successful collection or enforcement efforts by the Plaintiffs pursuant to this Consent Judgment.

12.2 On the Effective Date, Defendants shall provide the Plaintiffs with current addresses, telephone numbers and facsimile numbers for service of any papers in the event of default until their obligations under this Consent Judgment are completed. Within five (5) days of relocating to a new address or obtaining new telephone or facsimile numbers, Defendants shall provide such information to the Plaintiffs. In the event of Defendants's default under Section 6 and 7, service upon Defendants shall be effective upon mailing a notice via First Class Mail to the most recent address that has been provided to Plaintiffs for each Defendant. If Defendants do not respond to the notice of default within ten (10) days of the date of such notice, Plaintiffs may move before the Court upon

notice to the Defendants for entry of an appropriate order against Defendants and Defendants shall have the right to oppose any such application.

### **13. PENALTIES FOR FAILURE TO COMPLY**

13.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of this Consent Judgment or seek sanctions for violations or both.

13.2 The Parties agree that any future violation of the injunctive provisions of this Consent Judgment, CFA, CRA, Contractor Registration Regulations and/or the Home Improvement Regulations shall constitute a second or succeeding violation under N.J.S.A. 56:6-15 and that the Defendants may be liable for enhanced civil penalties.

### **14. COMPLIANCE WITH ALL LAWS**

14.1 Except as provided in this Consent Judgment, no provision herein shall be construed as:

- (a) Relieving Defendants of their obligations to comply with all State and Federal laws, regulations or rules, as now constituted or 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) Limited or expanding any right the Plaintiffs may otherwise have to obtain information, documents or testimony from Defendants pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limited or expanding any right Defendants 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.

### **15. NOTICES UNDER THIS CONSENT JUDGMENT**

15.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Parties pursuant to this Consent Judgment 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 Plaintiffs:

Frank J. Marasco, Deputy Attorney General  
Consumer Fraud Prosecution  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

For the Defendants:

Eric H. Lubin, Esq.  
Jacobs & Barbone, P.A.  
1125 Pacific Ave.  
Atlantic City, New Jersey 08401


IT IS ON THE 27<sup>th</sup> DAY OF January 2010 SO ORDERED  
AND ADJUDGED.

  
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JAMES E. RAFFERTY, J.S.G.E.

JOINTLY APPROVED AND  
SUBMITTED FOR ENTRY:


FOR THE PLAINTIFFS:

ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY


By:  Dated: Jan. 15, 2010, 2009  
Frank J. Marasco  
Deputy Attorney General  
Consumer Fraud Prosecution  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Telephone: (973) 877-1280

FOR DEFENDANTS: JOHN DALRYMPLE, TERESA MASKER, CASTAWAY POOLS AND  
SPAS, LLC and CASTAWAY FIBERGLASS POOLS, LLC

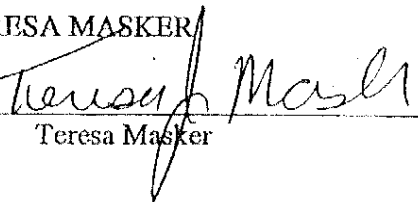
JACOBS & BARBONE, P.A.

By:  Dated: 1/7/2010, 2009  
Eric H. Lubin, Esq.  
Jacobs & Barbone, P.A.  
1125 Pacific Ave.  
Atlantic City, New Jersey 08401  
Telephone: (609) 348-1125

JOHN DALRYMPLE

By:  Dated: Jan 6, 2010, 2009  
John Dalrymple

TERESA MASKER

By:  Dated: Jan 6, 2010, 2009  
Teresa Masker

CASTAWAY POOLS AND SPAS, LLC

By: John DeBongle Esq. Dated: Jan 6 2010, 2009

CASTAWAY FIBERGLASS POOLS, LLC

By: Teresa J. Mast Dated: Jan 6<sup>th</sup>, 2010, 2009