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LEXINGTON LAW GROUP, LLP
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Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

**ENDORSED
FILED**
San Francisco County Superior Court

OCT 10 2006

GORDON PARK-LI, Clerk
BY: ERICKA LARNAUTI
Deputy Clerk

EL

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)

Plaintiff,)

v.)

BODYBUILDING.COM, and Defendant DOES)
1 through 200, inclusive,)

Defendants.)

Case No. CGC-06-454489

~~[PROPOSED]~~ **CONSENT JUDGMENT**

Health & Safety Code §25249.5 *et seq.*

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1. INTRODUCTION

1.1 On July 25, 2006, plaintiff the Center for Environmental Health (“CEH”), a non-profit corporation, filed a complaint in San Francisco County Superior Court, entitled *Center for Environmental Health v. Bodybuilding.com* (the “Action”), for civil penalties and injunctive relief pursuant to the provisions of Cal. Health & Safety Code §25249.5 *et seq.* (“Proposition 65”). CEH’s Complaint named Bodybuilding.com and unnamed “Does” as defendants.

1.2 Bodybuilding.com is a corporation that employs 10 or more persons. Through its website, { HYPERLINK "http://www.bodybuilding.com" }, Bodybuilding.com sells or has sold, in the State of California, the dietary supplements that are listed on Exhibit A to this Consent Judgment (the “Products”). Each of the Products contains one or more of the ingredients listed on Exhibit B to this Consent Judgment (the “Ingredients”). This Consent Judgment requires warnings for the Products and for any other product that contains a listed Ingredient. Bodybuilding.com does not sell any product containing an ingredient listed on 21 U.S.C. §802(41)(A) and/or scheduled pursuant to 21 U.S.C. section 811, nor will it sell any such product.

1.3 On or about November 4, 2005, CEH served Bodybuilding.com and the appropriate public enforcement agencies with notice that Bodybuilding.com was in violation of Proposition 65. CEH’s notice and the Complaint in this Action allege that the Bodybuilding.com exposes people who ingest the Products to anabolic steroids contained in the Products, chemicals known to the State of California to cause birth defects and other reproductive harm, without providing prior clear and reasonable warning to such persons regarding the reproductive toxicity of anabolic steroids, in violation of Health & Safety Code §25249.6. Bodybuilding.com disputes these allegations. CEH claims that the Ingredients are anabolic steroids within the meaning of 22 California Code of Regulations section 12000 and are listed under California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”). Bodybuilding.com denies that the Products contain anabolic steroids, denies that the

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1 Ingredients are anabolic steroids, and denies that any warning is required for its products
2 under Proposition 65.

3 1.4 For purposes of this Consent Judgment only, the parties stipulate that
4 this Court has jurisdiction over the allegations of violations contained in CEH's Complaint
5 and personal jurisdiction over Bodybuilding.com as to the acts alleged in CEH's Complaint,
6 that venue is proper in the County of San Francisco, and that this Court has jurisdiction to
7 enter this Consent Judgment as a full and final resolution of all claims which were or could
8 have been raised in the Complaint based on the facts alleged therein.

9 1.5 The parties enter into this Consent Judgment pursuant to a settlement of
10 certain disputed claims as alleged in the Complaint for the purpose of avoiding prolonged and
11 costly litigation.

12 1.6 Nothing in this Consent Judgment shall be construed as an admission
13 by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall
14 compliance with the Consent Judgment constitute or be construed as an admission by the
15 Parties of any fact, conclusion of law, issue of law, or violation of law.

16 1.7 Nothing in this Consent Judgment shall prejudice, waive or impair any
17 right, remedy, argument or defense the Parties may have in this or any other or future legal
18 proceeding.

19 1.8 This Consent Judgment is the product of negotiation and compromise
20 and is accepted by the Parties, for purposes of settling, compromising and resolving issues
21 disputed in this action, including future compliance by Bodybuilding.com with Section 2 of
22 this Consent Judgment and shall not be used for any other purpose, or in any other matter.

23 **2. COMPLIANCE - WARNING**

24 2.1 Within 60 days of entry of this Consent Judgment by the Court (the
25 "Compliance Date"), Bodybuilding.com shall not engage in any California sale of any of the
26 Products without providing the following warning language:

27 **WARNING: This product contains chemicals known to the State of**
28 **California to cause birth defects or other reproductive harm.**

1 This warning shall: (a) be displayed automatically for each of the Products offered for sale on
2 Bodybuilding.com's internet web site before a California consumer purchases any of the
3 Products without the need for the consumer to follow any additional hyperlinks beyond those
4 required as part of the ordinary purchasing process; (b) be set out in a text box on a separate
5 line or in a separate paragraph; (c) be displayed in a font size in which the smallest character
6 is no less than the equivalent of the height of the equivalent characters in 9 point Arial font;
7 and (d) be displayed with such conspicuousness, as compared with other words, statements, or
8 designs as to render it likely to be read and understood by an ordinary individual. The
9 warning statement shall not be preceded, followed, or surrounded by words, symbols, or other
10 matter that reduces its conspicuousness or that introduces, modifies, qualifies, or explains the
11 required text, such as "legal notice required by law."

12 **3. SETTLEMENT PAYMENT**

13 3.1 Within 30 days of entry of this Consent Judgment by the Court,
14 Bodybuilding.com shall pay twenty-two thousand five hundred dollars (\$22,500) to CEH at
15 the offices of the Lexington Law Group, LLP. The payment shall be apportioned as follows:

16 3.1.1 Monetary Payment in Lieu of Penalty: Five thousand five
17 hundred dollars (\$5,500) shall be paid to CEH in lieu of any penalty pursuant
18 to Health and Safety Code § 25249.7(b). CEH shall use such funds to continue
19 its work protecting people from exposures to toxic chemicals, including those
20 listed under Proposition 65. Some of the projects CEH is currently working on
21 include research and public education aimed at protecting children and other
22 consumers from products that expose them to toxic chemicals; research and
23 advocacy promoting public policies aimed at reducing exposures to persistent
24 bioaccumulative toxins and heavy metals; supporting community-based
25 organizations in their work protecting people from toxic chemicals; and
26 participation in and leadership of national coalitions dedicated to protecting
27 public health.

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3.1.2 Attorneys' Fees and Costs: Seventeen thousand dollars (\$17,000) of such payment shall be used to reimburse CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to Bodybuilding.com's attention, litigating and negotiating a settlement in the public interest.

4. MODIFICATION OF CONSENT JUDGMENT

4.1 This written Consent Judgment may be modified by written agreement of CEH and Bodybuilding.com upon stipulation and Order of the Court, or after noticed motion, and upon entry of a consent judgment by the Court thereon, or upon motion of CEH or Bodybuilding.com as provided by law and upon entry of a modified consent judgment by the Court.

5. ENFORCEMENT OF CONSENT JUDGMENT

5.1 Either party may, by motion or application for an order to show cause before the Superior Court of the County of San Francisco, consistent with the terms and conditions set forth in paragraphs 9.2 and 9.3 of this Consent Judgment, enforce the terms and conditions contained in this Consent Judgment. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such motion or application.

6. APPLICATION OF CONSENT JUDGMENT

6.1 This Consent Judgment shall apply to and be binding upon the parties hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

7. CLAIMS COVERED

7.1 This Consent Judgment is a full, final and binding resolution between CEH and Bodybuilding.com of any violation of Proposition 65 that could have been asserted against Bodybuilding.com in the Complaint based on Bodybuilding.com's failure to warn about exposure to anabolic steroids. Compliance with the terms of this Consent Judgment shall constitute compliance with Proposition 65 with respect to exposures to anabolic steroids.

1 This release does not limit or effect the obligations of any party created under this Consent
2 Judgment.

3 **8. SEVERABILITY**

4 8.1 In the event that any of the provisions of this Consent Judgment are
5 held by a court to be unenforceable, the validity of the enforceable provisions shall not be
6 adversely affected.

7 **9. NOTICE AND CURE**

8 9.1 In the event that Bodybuilding.com is found to be in breach of this
9 Consent Judgment for failure to comply with the provisions of Section 2 hereof, the parties
10 agree that it would be impracticable to measure the resulting damages. Accordingly, CEH, in
11 addition to any other available rights or remedies, may sue in equity for specific performance.

12 9.2 No action to enforce this Consent Judgment may be commenced, and
13 no Notice of Violation related to alleged anabolic steroids may be served or filed against
14 Bodybuilding.com by CEH, unless the party seeking enforcement or alleging violation
15 notifies the other party of the specific acts alleged to breach this Consent Judgment at least 90
16 days before serving or filing any motion, action, or Notice of Violation. Any notice to
17 Bodybuilding.com must contain (a) the name of the Ingredient alleged to be an anabolic
18 steroid, (b) the name of the Product containing the Ingredient, (c) specific dates when the
19 Product or Ingredient was sold in California without the warning specified in Section 2, and
20 (d) any evidence or other support for the allegations in the notice.

21 9.3 Within 30 days of receiving the notice described in Section 9.2,
22 Bodybuilding.com shall either (1) withdraw the Product or (2) provide for the Product the
23 warning described in Section 2 or (3) refute the information provided under Section 9.2.
24 Should the parties be unable to resolve the dispute, either party may seek relief under Section
25 5.

26 **10. GOVERNING LAW**

27 10.1 The terms of this Consent Judgment shall be governed by the laws of
28 the State of California.

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11. RETENTION OF JURISDICTION

11.1 This Court shall retain jurisdiction of this matter to implement this Consent Judgment.

12. PROVISION OF NOTICE

12.1 All notices required pursuant to this Consent Judgment and correspondence shall be sent to the following:

For CEH:

Mark N. Todzo
Lexington Law Group, LLP
1627 Irving Street
San Francisco, CA 94122

For Bodybuilding.com:

Lisa L. Halko
Greenberg Traurig LLP
1201 K Street, Suite 1100
Sacramento, CA 95814

13. COURT APPROVAL

13.1 If this Consent Judgment is not approved by the Court, it shall be of no further force or effect.

13.2 CEH shall comply with Health and Safety Code section 25249.7(f) and with Title 11 California Code of Regulations section 3003.

14. EXECUTION AND COUNTERPARTS

14.1 The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

15. AUTHORIZATION

15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the party represented and legally bind that party. The undersigned have read, understand and agree to all of the terms and conditions

///

1 of this Consent Judgment. Except as explicitly provided herein, each party is to bear its own
2 fees and costs.

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4 CENTER FOR ENVIRONMENTAL HEALTH

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7 Michael Green
8 Executive Director

Dated: 7/20, 2006

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9 BODYBUILDING.COM

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11 (See next pg.)

12 Russell DeLuca
13 President

Dated: _____, 2006

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CENTER FOR ENVIRONMENTAL HEALTH

(see previous page)
Michael Green
Executive Director

Dated: _____, 2006

BODYBUILDING.COM


Russell DeLuca
President

Dated: 7/19, 2006

ORDER AND JUDGMENT

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Based upon the stipulated Consent Judgment between CEH and
Bodybuilding.com, the settlement is approved and judgment is hereby entered according to
the terms herein.

Dated: _____, 2006

OCT 10 2006

PETER J. BUSCH

Judge, Superior Court of the State of California

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EXHIBIT A

List of Products

- Ergomax
- FiniGenX Magnum Liquid
- Formadrol Extreme
- Methyl 1-Alpha
- Methyl 1-D
- Methyl 1-P
- Prostanozol
- Revolt
- Trenadrol
- Superdrol

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EXHIBIT B

List of Ingredients

- 1,4,6-etioallocholan-dione
- 2a, 17a-dimethyl-5a-androstane-3-one-17B-ol
- [3,2-pyrazole-]5a-androstan-17b-tetrahydro[pyranol
- 3-beta-hydroxyetioallocholan-5-ene-17-one
- 6a-methylandrostene-3, 17-dione and 5a-pregnan-17a-ol-3,20-dione
- 6-alpha-methyl-etiocholene-3,17-dione
- 13-ethyl-3methoxygona-2, 5(10)-dien-17-one
- 17-methyl-delta-2-etioallocholane
- 17b-methoxy-Trienbolone
- desoxymethyltestosterone (DMT)
- Methyl-1-etiocholenolol