

FILED

DEC 11 2012

**KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: T. Fraguero, Deputy**

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3 THE CHANLER GROUP
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9 Attorneys for Plaintiff
10 JOHN MOORE

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

UNLIMITED CIVIL JURISDICTION

13 JOHN MOORE,

14 Plaintiff,

15 v.

16 GOFIT, L.L.C.; and DOES 1-150, inclusive,

17 Defendants.

Case No. CIV-1100910

**~~PROPOSED~~ JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT AS TO GOFIT, L.L.C.**

(Consolidated with Case No. CIV-1002842
for purposes of entry of the Consent Judgment
As To GoFit, L.L.C.)

Date: December 11, 2012

Time: 9:00 a.m.

Dept. L

Judge: Hon. M. Lynn Duryee

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AND CONSOLIDATED ACTION

1 Plaintiff, John Moore, and defendant, GoFit, L.L.C., having agreed through their
2 respective counsel that Judgment be entered pursuant to the terms of their settlement
3 agreement in the form of a Consent Judgment, and following this Court's issuance of an
4 Order approving this Proposition 65 settlement and Consent Judgment,

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to
6 Health and Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is
7 hereby entered in accordance with the terms of the Consent Judgment attached hereto as
8 Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to enforce the
9 settlement under Code of Civil Procedure § 664.6.

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11 **IT IS SO ORDERED.**

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14 Dated: DEC 11 2012

15 LYNN DURYEE
16 JUDGE OF THE SUPERIOR COURT
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EXHIBIT 1

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1. INTRODUCTION

1.1 John Moore and GoFit, L.L.C.

This Consent Judgment is entered into by and between plaintiff John Moore (“Moore”) and GoFit, L.L.C. (“GoFit”), with Moore and GoFit collectively referred to as the “parties,” and individually referred to as a “party.”

1.2 John Moore

Moore is an individual residing in the State of California who has asserted that he seeks to promote awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer and commercial products.

1.3 GoFit, L.L.C.

Moore alleges that GoFit employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

1.4 General Allegations

Moore alleges that GoFit has manufactured, imported, distributed and/or sold mats, exercise balls and training/sauna fitness suits that contain di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warnings. DEHP is on the Proposition 65 list as known to cause birth defects and other reproductive harm.

1.5 Product Description

As used in this Consent Judgment, “Products” shall mean mats containing DEHP including, but not limited to, *GoFit.net Aerobic Floormat, GF-AM6 (#6 87339 30200 7)*, exercise balls containing DEHP including, but not limited to, *GoFit.net Ultimate Core Stability Ball 55cm, GF-55BRBALL (#6 87339 20271 0)*, and training/sauna fitness suits containing DEHP including, but not limited to, *GoFit.net Sweat Suit, #GF-TTSS/M (#6 87339 22100 1)*, manufactured, imported, distributed and/or sold by, or on behalf of, GoFit in California.

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1 **1.6 Notices of Violation**

2 On March 19, 2010, Moore served GoFit and various public enforcement agencies with a
3 document entitled “60-Day Notice of Violation” (the “Notice”) that provided recipients with notice
4 alleging that GoFit was in violation of Proposition 65 for failing to warn consumers and customers
5 that its mats exposed users in California to DEHP.

6 On November 12, 2010, Moore served GoFit and various public enforcement agencies with
7 a document entitled “Supplemental 60-Day Notice of Violation” (the “Supplemental Notice”) that
8 provided recipients with notice alleging that GoFit was in violation of Proposition 65 for failing to
9 warn consumers and customers that the Products exposed users in California to DEHP.

10 The Notice and Supplemental Notice are referred to collectively herein as the “Notices.” To
11 the best of the parties’ knowledge, no public enforcer has diligently prosecuted the allegations set
12 forth in the Notices.

13 **1.7 Complaints**

14 On June 2, 2010, Moore filed a complaint in the Superior Court in and for the County of
15 Marin against Natco Products Corporation and Does 1 through 150, *Moore v. Natco, et al.*, Case
16 No. CIV-1002842 (hereinafter the “First Action”), alleging violations of Proposition 65 based on
17 the alleged exposures to DEHP contained in certain vinyl flooring products sold by Natco. On July
18 2, 2010, Moore filed a first amended complaint in the First Action, renaming it as *Moore v. Bell*
19 *Sports, Inc., et al.*, adding GoFit, and others, as defendants, alleging, *inter alia*, additional violations
20 of Proposition 65 based on the alleged exposures to DEHP contained in mats sold by GoFit.

21 On February 17, 2011, Moore filed a complaint in the Superior Court in and for the County
22 of Marin against GoFit, *Moore v. GoFit, et al.*, Case No. CIV-1100910 (hereinafter the “Second
23 Action”), alleging violations of Proposition 65, based on the alleged exposures to DEHP contained
24 in certain exercise balls and training/sauna fitness suits manufactured, distributed and/or sold by
25 GoFit. All defendants other than GoFit in the First Action have settled. To facilitate the
26 administration of justice, the First Action shall be deemed to have been consolidated with the
27 Second Action upon entry of this Consent Judgment by the Court, *nunc pro tunc*, so that Judgment

1 pursuant to the terms of this Consent Judgment shall apply to the allegations and operative
2 pleadings in the First Action and the Second Action, hereinafter referred to collectively as “the
3 Actions.”

4 **1.8 No Admission**

5 GoFit denies the material, factual and legal allegations contained in each of Moore’s Notices
6 and complaints in the Actions, and maintains that it has at all times been in compliance with all laws
7 and all products that it has sold, manufactured, imported and/or distributed in California including
8 the Products. Nothing in this Consent Judgment shall be construed as an admission by GoFit of any
9 fact, finding, issue of law or violation of law, nor shall compliance with this Consent Judgment
10 constitute or be construed as an admission by GoFit of any fact, finding, conclusion, issue of law or
11 violation of law. However, this Section shall not diminish or otherwise affect GoFit’s obligations,
12 responsibilities and duties under this Consent Judgment.

13 **1.9 Consent to Jurisdiction**

14 For purposes of this Consent Judgment only, the parties stipulate that this Court has
15 jurisdiction over GoFit as to the allegations contained in the complaints in the Actions, that venue is
16 proper in the County of Marin and that this Court has jurisdiction to enter and enforce the
17 provisions of this Consent Judgment. GoFit reserves the right to assert any defenses of jurisdiction
18 and venue in any and all other matters, save and except for purposes of this Consent Judgment, and
19 does not waive the right to raise such defenses by agreeing to enter into this Consent Judgment.

20 **1.10 Execution Date**

21 For purposes of this Consent Judgment, the term “Execution Date” shall mean the date on
22 which this Consent Judgment is signed by all parties.

23 **1.11 Effective Date**

24 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date on
25 which the Court enters Judgment pursuant to the terms of this Consent Judgment.

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1 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

2 **2.1 Reformulation Standards**

3 Reformulated Products are defined as those Products containing DEHP in concentrations of
4 less than 0.1 percent (1,000 parts per million) in each accessible component when analyzed
5 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any
6 other methodology utilized by federal or state agencies for the purpose of determining DEHP
7 content in a solid substance.

8 **2.2 Reformulation Commitment**

9 GoFit shall ship, sell or offer for sale in California Products that qualify as Reformulated
10 Products as defined in Section 2.1. However, GoFit may ship, sell or offer for sale in California
11 Products that do not qualify as Reformulated Products, so long as GoFit complies with the warning
12 requirements set forth in Section 2.3 below.

13 **2.3 Product Warnings**

14 Commencing on the Effective Date, GoFit shall, for all Products that do not qualify as
15 Reformulated Products as defined in Section 2.1, provide clear and reasonable warnings as set forth
16 in subsections 2.3(a) and (b). Each warning shall be prominently placed with such conspicuousness
17 as compared with other words, statements, designs or devices as to render it likely to be read and
18 understood by an ordinary individual under customary conditions before purchase or use. Each
19 warning shall be provided in a manner such that the consumer or user understands to which *specific*
20 Product the warning applies, so as to minimize the risk of consumer confusion.

21 **(a) Retail Store Sales**

22 **(i) Product Labeling.** GoFit shall affix a warning to the packaging,
23 labeling or directly on each Product sold in retail outlets in California by GoFit or any person
24 selling the Products, that states:

25 **WARNING:** This product contains a chemical known to
26 the State of California to cause birth defects
27 or other reproductive harm.

1 (ii) **Point-of-Sale Warnings.** Alternatively, GoFit may provide
2 warning signs in the form below to its customers in California with instructions to post the
3 warnings in close proximity to the point of display of the Products. Such instruction sent to
4 GoFit's retailers shall be sent by certified mail, return receipt requested.

5 **WARNING:** This product contains a chemical known to
6 the State of California to cause birth defects
or other reproductive harm.

7 Where more than one Product is sold in proximity to other like items or to Products that do
8 not require a warning (e.g., Reformulated Products as defined in Section 2.1), the following
9 statement must be used:¹

10 **WARNING:** The following products contain a chemical
11 known to the State of California to cause
birth defects or other reproductive harm:

12 *[list products for which warning is required]*

13 (b) **Mail Order Catalog and Internet Sales.** In the event that GoFit sells
14 Products via mail order catalog and/or the Internet, to customers located in California, after the
15 Effective Date, that are not Reformulated Products, GoFit shall provide warnings for such Products
16 sold via mail order catalog or the Internet to California residents. Warnings given in the mail order
17 catalog or on the Internet shall identify the *specific* Product to which the warning applies as further
18 specified in Sections 2.3(b)(i) and (ii).

19 (i) **Mail Order Catalog Warning.** Any warning provided in a mail
20 order catalog shall be in the same type size or larger than the Product description text within the
21 catalog. The following warning shall be provided on the same page and in the same location as the
22 display and/or description of the Product:

23 **WARNING:** This product contains a chemical known
24 to the State of California to cause birth
defects or other reproductive harm.

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26 ¹ For purposes of the Consent Judgment, "sold in proximity" shall mean that the Products and another product are
27 offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not
reasonably determine which of the products is subject to the warning sign.

1 Where it is impracticable to provide the warning on the same page and in the same location
2 as the display and/or description of the Products, GoFit may utilize a designated symbol to cross
3 reference the applicable warning and shall define the term "designated symbol" with the following
4 language on the inside of the front cover of the catalog or on the same page as any order form for
5 the Product(s):

6 **WARNING:** Certain products identified with this symbol
7 ▼ and offered for sale in this catalog contain
8 a chemical known to the State of California
 to cause birth defects or other reproductive
 harm.

9 The designated symbol must appear on the same page and in close proximity to the display
10 and/or description of the Products. On each page where the designated symbol appears, GoFit must
11 provide a header or footer directing the consumer to the warning language and definition of the
12 designated symbol.

13 (ii) **Internet Website Warning.** A warning shall be given in conjunction
14 with the sale of the Products via the Internet, which warning shall appear either: (a) on the same
15 web page on which any Product is displayed; (b) on the same web page as the order form for any
16 Product; (c) on the same page as the price for any Product; or (d) on one or more web pages
17 displayed to a purchaser during the checkout process. The following warning statement shall be
18 used and shall appear in any of the above instances adjacent to or immediately following the
19 display, description or price of the Product for which it is given in the same type size or larger than
20 the Product description text:

21 **WARNING:** This product contains a chemical known to
22 the State of California to cause birth defects
 or other reproductive harm.

23 Alternatively, the designated symbol may appear adjacent to or immediately following the
24 display, description or price of the Product for which a warning is being given, provided that the
25 following warning statement also appears elsewhere on the same web page, as follows:

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WARNING: Products identified on this page with the following symbol ▼ contain a chemical known to the State of California to cause birth defects or other reproductive harm.

If a website, other than that controlled by GoFit, fails to use the warning after having been instructed to do so in writing by GoFit (a copy of which GoFit shall retain), then such failure shall not be a violation of the Consent Judgment by GoFit.

3. MONETARY PAYMENTS

3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)

GoFit shall pay a total civil penalty payment of \$60,000, as follows:

3.1.1 Initial Civil Penalty. GoFit shall pay an initial civil penalty of \$15,000 on or before January 15, 2013, in the manner provided by Section 3.3.1. The initial civil penalty shall be apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Moore.

3.1.2 Final Civil Penalty. On or before August 30, 2013, GoFit shall pay a final civil penalty of \$45,000 in the manner provided by Section 3.3.3. The final civil penalty shall be waived in its entirety, however, if an officer of GoFit provides Moore with a written certification by August 15, 2013, that, as of August 1, 2013, and continuing into the future, GoFit has met the reformulation standard specified in Section 2.1 above such that all of the Products manufactured, produced, assembled, imported, distributed, shipped, sold or offered for sale in California are Reformulated Products. Moore must receive any such certification on or before August 15, 2013, and time is of the essence. The final civil penalty shall be apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to OEHHA and the remaining 25% of the penalty remitted to Moore.

3.2 Reimbursement of Moore’s Fees and Costs

The Parties acknowledge that Moore and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee

1 issue to be resolved after the material terms of the agreement had been settled. GoFit then
2 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
3 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
4 Moore and his counsel under general contract principles and the private attorney general doctrine
5 codified at California Code of Civil Procedure § 1021.5, for all work performed in this matter,
6 except fees that may be incurred on appeal. Under these legal principles, GoFit shall pay the
7 amount of \$60,000 for fees and costs incurred investigating, litigating and enforcing this matter
8 including the fees and costs incurred (and yet to be incurred) negotiating, drafting and obtaining
9 the Court's approval of this Consent Judgment in the public interest. Provided that GoFit complies
10 with all terms of the Consent Judgment, GoFit will not be responsible for, nor will Moore seek
11 from GoFit any additional attorney fees or costs beyond the amount set forth in this paragraph 3.2
12 in the event a third party objects to this Consent Judgment, the Court does not approve this Consent
13 Judgment, or there is an appeal of the approval or denial of this Consent Judgment.

14 **3.3 Payment Procedures**

15 **3.3.1 Initial Civil Penalty Payment.** The payments required by Section 3.1.1
16 shall be delivered within fifteen (15) days of the Execution Date to The Chanler Group in two
17 checks made payable as follows:

- 18 (a) One check made payable to "The Chanler Group in Trust for OEHHA"
19 in the amount of \$11,250; and
- 20 (b) One check to "The Chanler Group in Trust for John Moore" in the
21 amount of \$3,750.

22 **3.3.2 Reimbursement of Moore's Fees and Costs.** The payment required by
23 Section 3.2 shall be delivered on or before January 15, 2013 to The Chanler Group in one check
24 made payable to "The Chanler Group" in the amount of \$60,000. Upon receipt of the payment
25 required by Section 3.2, if the Court has not approved this Consent Judgment as to GoFit, the
26 Chanler Group shall hold said payment in trust until the Consent Judgment as to GoFit is approved
27 by the Court.

1 **3.3.3 Final Civil Penalty Payment.** If the final civil penalty of \$45,000
2 referenced in Section 3.1.2 above is not waived, payments shall be delivered on or before August
3 30, 2013, to The Chanler Group in two checks made payable as follows:

- 4 (a) One check made payable to “The Chanler Group in Trust for OEHHA”
5 in the amount of \$33,750; and
6 (b) One check to “The Chanler Group in Trust for John Moore” in the
7 amount of \$11,250.

8 **3.3.4 Issuance of 1099 Forms.** After the settlement funds have been transmitted
9 to Moore’s counsel, GoFit shall issue separate 1099 forms, as follows:

- 10 (a) The first 1099 shall be issued to the Office of Environmental Health
11 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-
12 0284486) in the amount of \$11,250;
13 (b) The second 1099 shall be issued to Moore in the amount of \$3,750,
14 whose address and tax identification number shall be furnished upon
15 request;
16 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-
17 3171522) in the amount of \$60,000.
18 (d) If the penalty of \$45,000 referenced in Section 3.1.2 above is paid, a
19 fourth 1099 shall be issued to the Office of Environmental Health
20 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-
21 0284486) in the amount of \$33,750; and
22 (e) If the penalty of \$45,000 referenced in Section 3.1.2 above is paid, a
23 fifth 1099 shall be issued to Moore in the amount of \$11,250, whose
24 address and tax identification number shall be furnished upon request.

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3.3.5 Payment Address. All payments and tax information required under this Section shall be delivered to Moore’s counsel at the following address:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

4. CLAIMS COVERED AND RELEASED

4.1 Moore’s Release of GoFit

Moore, acting on his own behalf, and on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in the public interest, releases GoFit, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom GoFit directly or indirectly distributes or sells Products including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors and licensees (“Releasees”), from all claims for violations of Proposition 65 through the Effective Date based on either exposure to or alleged failure to warn about exposure to DEHP allegedly contained in the Products as set forth in the Notices. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products as set forth in the Notices.

Moore also, on behalf of only himself as an individual, and his past and current agents, representatives, attorneys, successors, and/or assignees, but *not* in his representative capacity in the public interest, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Moore of any nature, character or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the Products manufactured, distributed or sold in California by GoFit. Moore acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides as follows:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
2 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
3 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
OR HER SETTLEMENT WITH THE DEBTOR.

4 Moore also, on behalf of only himself as an individual, and his past and current agents,
5 representatives, attorneys, successors, and/or assignees, but *not* in his representative capacity in the
6 public interest, expressly waives and relinquishes any and all rights and benefits which he may have
7 under, or which may be conferred on him by the provisions of Section 1542 of the California Civil
8 Code, as well as under any other state or federal statute or common law principle of similar effect,
9 to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released
10 matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a
11 full and complete release notwithstanding the discovery or existence of any such additional or
12 different claims or facts arising out of the released matters. The parties further understand and
13 agree that the foregoing releases shall not extend upstream to any entities that manufactured the
14 Products for GoFit (except for Products manufactured by GoFit, if any) or any component parts
15 thereof, or to any distributors or suppliers who sold the Products or any component parts thereof to
16 GoFit.

17 By agreeing to the terms of this Consent Judgment and entering into the foregoing releases,
18 Moore, on behalf of himself, his past and current agents, representatives, attorneys, successors,
19 and/or assignees, and not for the public interest, hereby represents and warrants that as of the date of
20 execution of this Consent Judgment, Moore has not asserted, nor does he presently intend to assert,
21 nor does he have any present knowledge of any basis to assert, any claims against GoFit related to
22 or arising under Proposition 65 save and except those claims set forth in the complaints in the
23 Actions which are being settled and released by this Consent Judgment.

24 **4.2 GoFit's Release of Moore**

25 GoFit on behalf of itself, its past and current agents, representatives, attorneys, successors,
26 and/or assignees, hereby waives any and all claims against Moore, his attorneys, and other
27 representatives for any and all actions taken or statements made (or those that could have been

1 taken or made) by Moore and his attorneys and other representatives, whether in the course of
2 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter
3 with respect to the Products.

4 **5. COURT APPROVAL**

5 This Consent Judgment is not effective until it is approved and entered by the Court and
6 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
7 after the Execution Date. In the event the Court does not approve this Consent Judgment within one
8 year, the funds paid pursuant to Section 3 of this Consent Judgment shall be returned to GoFit.

9 **6. SEVERABILITY**

10 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
11 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
12 remaining shall not be adversely affected.

13 **7. GOVERNING LAW**

14 The terms of this Consent Judgment shall be governed by the laws of the State of California
15 and the obligations of GoFit hereunder as to the Products apply only within the State of California.
16 In the event that Proposition 65 is repealed, preempted or is otherwise rendered inapplicable by
17 reason of law generally, or if any of the provisions of this Consent Judgment are rendered
18 inapplicable as a result of any such repeal or preemption or reason of law generally, including,
19 without limitation, the removal of DEHP from OEHHA's list of Proposition 65 chemicals, then
20 GoFit shall notify Moore and his counsel and may have no further obligations pursuant to this
21 Consent Judgment with respect to, and to the extent that, the Products are so affected.

22 **8. NOTICES**

23 Unless specified herein, all correspondence and notices required to be provided pursuant to
24 this Consent Judgment shall be in writing and: (i) personally delivered; (ii) sent by first-class,
25 (registered or certified mail) return receipt requested; or (iii) sent by overnight courier to one party
26 from the other party at the following addresses:
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To GoFit:

To Moore:

Charles Caswell, President
GoFit, L.L.C.
9825 East Admiral Place
Tulsa, OK 74116

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

With a copy to:

Michael L. Schack, Esq.
Plager Schack LLP
16152 Beach Boulevard, Suite 207
Huntington Beach, CA 92647

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS; FACSIMILE/PDF SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A facsimile or pdf signature shall be as valid as the original.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Moore and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

11. ADDITIONAL POST EXECUTION ACTIVITIES

Moore and GoFit agree to mutually employ their, and their counsel's, best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which Moore shall draft and file, and GoFit shall not oppose. If any third party objection to the noticed motion is filed, Moore and GoFit shall work together to file a joint reply or separate replies if the parties so desire and appear at any hearing before the Court. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach. If the Court does not grant the motion to approve this Consent Judgment, and if the denied party appeals

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the Court's decision, any and all payments made pursuant to Section 3 shall be held in trust jointly by the parties. If the parties choose not to pursue a modified Consent Judgment within 30 days after the Court's denial of the motion to approve, then, upon remittitur, any and all payments made pursuant to Section 3 of this Consent Judgment will be returned to GoFit.

12. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified Consent Judgment by the Court.

13. AUTHORIZATION

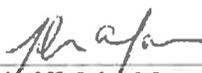
The undersigned are authorized to execute this Consent Judgment and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: 10/11/12

Date: _____

By: 
Plaintiff, John Moore

By: _____
Charles Caswell, President
Defendant, GoFit, L.L.C.

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the Court's decision, any and all payments made pursuant to Section 3 shall be held in trust jointly by the parties. If the parties choose not to pursue a modified Consent Judgment within 30 days after the Court's denial of the motion to approve, then, upon remittitur, any and all payments made pursuant to Section 3 of this Consent Judgment will be returned to GoFit.

12. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified Consent Judgment by the Court.

13. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

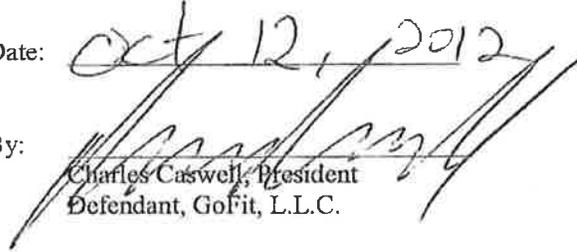
AGREED TO:

AGREED TO:

Date: _____

Date: Oct 12, 2012

By: _____
Plaintiff, John Moore

By: 
Charles Caswell, President
Defendant, GoFit, L.L.C.