

1 **MICHAEL FREUND & ASSOCIATES**

2 Michael Freund (State Bar No. 99687)

3 Ryan Hoffman (State Bar No. 283297)

4 1919 Addison Street, Suite 105

5 Berkeley, CA 94704

6 Tel: (510) 540-1992

7 Fax: (510) 540-5543

8 Email: freund1@aol.com

9 Attorneys for Plaintiff

10 ENVIRONMENTAL RESEARCH CENTER

11 Ryan M. Andrews (SBN 274106)

12 Venable LLP

13 2049 Century Park East, Suite 2100

14 Los Angeles, CA 90067

15 Tel: (310) 229-0344

16 Fax: (310) 229-9901

17 Email: RMAndrews@Venable.com

18 Attorney for Defendant

19 FIRST FITNESS INTERNATIONAL, INC.

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA

21 COUNTY OF ALAMEDA

22 ENVIRONMENTAL RESEARCH
23 CENTER, a California non-profit
24 corporation,

25 Plaintiff,

26 v.

27 FIRST FITNESS INTERNATIONAL, INC.,

28 Defendant.

CASE NO. CGC-13-532166

[PROPOSED] STIPULATED
CONSENT JUDGMENT; [PROPOSED]
ORDER

Health & Safety Code § 25249.5 et seq.

Action Filed: June 17, 2013

Trial Date: None set

1. INTRODUCTION

1.1 On June 17, 2013 Plaintiff Environmental Research Center ("ERC"), a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by filing

1 a Complaint for Injunctive and Declaratory relief and Civil Penalties (the "Complaint")
2 pursuant to the provisions of California Health and Safety Code section 25249.5 et seq.
3 ("Proposition 65"), against FIRST FITNESS INTERNATIONAL, INC. ("First Fitness" or
4 "Defendant"). In this action, ERC alleges that the products manufactured, distributed or sold
5 by Defendant, as more fully described below, contain lead, a chemical listed under Proposition
6 65 as a carcinogen and reproductive toxin, and that such products expose consumers at a level
7 requiring a Proposition 65 warning. These products are: FirstFitness RejuvaCel with
8 Glucosanol; FirstFitness LipoMax Liver Cleanse; FirstFitness Renu Ultimate Colon Cleanse;
9 FirstFitness Slim 'N Up! Xtreme; FirstFitness Vital Green Plus; and FirstFitness Suddenly Slim
10 Body FX Tropical Crème Weight Control Beverage Mix (collectively the "Covered Products").
11
12 ERC and Defendant are referred to individually as a "Party" or collectively as the "Parties."

13
14 **1.2** ERC is a California non-profit corporation dedicated to, among other causes,
15 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
16 and toxic chemicals, facilitating a safe environment for consumers and employees, and
17 encouraging corporate responsibility.
18

19 **1.3** Defendant is a business entity that employed ten or more persons. Defendant
20 arranges the manufacture, distribution and sale of the Covered Products.

21 **1.4** The Complaint is based on allegations contained in ERC's Notice of Violation,
22 dated August 5, 2011 that was served on the California Attorney General, other public
23 enforcers, and Defendant. A true and correct copy of the Notice of Violation is attached as
24 **Exhibit A**. More than 60 days have passed since the Notice of Violation was mailed, and no
25 designated governmental entity has filed a complaint against Defendant with regard to the
26 Covered Products or the alleged violations.
27
28

1 **1.5** ERC's Notice of Violation and the Complaint allege that use of the Covered
2 Products exposes persons in California to lead without first providing clear and reasonable
3 warnings in violation of California Health and Safety Code section 25249.6. Defendant denies
4 all material allegations contained in the Notice of Violation and Complaint and specifically
5 denies that the Covered Products required a Proposition 65 warning or otherwise caused harm
6 to any person. Except for the representations made above, nothing in the Consent Judgment
7 shall be construed as an admission by Defendant of any fact, issue of law, or violation of law,
8 nor shall compliance with the Consent Judgment constitute or be construed as an admission by
9 Defendant of any fact, issue of law, or violation of law, at any time, for any purpose.
10

11 **1.6** The Parties have entered into this Consent Judgment in order to settle,
12 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.
13 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
14 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
15 parent companies, subsidiaries, divisions, affiliates, franchises, licensees, customers, suppliers,
16 distributors, wholesalers, or retailers.
17

18 **1.7** Except as expressly set forth herein, nothing in this Consent Judgment shall
19 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
20 other or future legal proceeding unrelated to these proceedings.
21

22 **1.8** The Effective Date of this Consent Judgment is the date on which it is entered as
23 a Judgment by this Court.
24

25 **1.9** Subsequent to ERC's Notice of Violation, First Fitness discontinued sales of Slim
26 'N Up to California.
27
28

1 **2. JURISDICTION AND VENUE**

2 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
3 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
4 over Defendant as to the acts alleged in the Complaint, that venue is proper in Alameda County,
5 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of
6 all claims which were or could have been asserted in his action based on the facts alleged in the
7 Notice of Violation and the Complaint.
8

9 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

10 **3.1** On and after the Effective Date of this Consent Judgment, Defendant shall not
11 distribute into the State of California or sell in the State of California any Covered Product for
12 which the maximum daily dose recommended on the label contains more than 0.5 micrograms
13 (mcg) of lead, unless the warnings are provided as set forth in section 3.2.
14

15 **3.2 Clear and Reasonable Warnings**

16 For Covered Products that cause exposures in excess of that permitted by
17 Paragraph 1, Defendant shall provide the following warning (the language in brackets in the
18 warning below is optional):
19

20 [California Proposition 65] **WARNING: This product contains lead, a chemical**
21 **known [to the State of California] to cause [cancer and] birth defects or other reproductive**
22 **harm.**
23

24 Defendant shall use the term “cancer and” in the warning only if the maximum daily dose
25 recommended on the label contains more than 15 micrograms of lead as determined pursuant to
26 the quality control methodology set forth in Section 3.4. The words “California Proposition 65”
27 may be included at Defendant’s option.
28

1 First Fitness shall provide the warning on all of the following: 1) on First Fitness's
2 checkout page on its website for California consumers; 2) on First Fitness's insert in boxes of
3 Covered Products shipped to California; and 3) on First Fitness's receipt/order confirmation
4 provided to California customers for Covered Products.

5 The warning shall appear with such conspicuousness, as compared with other words,
6 statements, designs, or devices on the labeling, website, package insert, or receipt/order
7 confirmation provided as to render it likely to be read and understood by an ordinary individual
8 under customary conditions of purchase or use of the product. The warning shall not exceed the
9 language specified in Section 3.2. However, this provision does not prohibit First Fitness from
10 including information about the Proposition 65 warning separately from the warning on its website
11 (e.g., on a Frequently Asked Questions page). The warning shall be at least the same size as the
12 largest of any other health or safety warnings on the product container or labeling, website,
13 package insert, or receipt/order confirmation provided, and the word "WARNING" shall be in all
14 capital letters and in bold print. The warning shall be contained in the same section that states
15 other safety warnings concerning the use of the Covered Product, if there are any.
16
17
18

19 3.3 Naturally-Occurring Lead Levels

20 If appropriate, First Fitness may exclude the sum of the amount of lead contained in each
21 ingredient listed in Table 1 present in the maximum daily serving recommended by First Fitness
22 in each Covered Product. If First Fitness seeks to subtract out the amount of lead pursuant to this
23 Section, upon calculating lead content, First Fitness shall provide ERC with the name of the
24 Covered Product that First Fitness contends contains naturally-occurring lead, the exact
25 ingredient(s) listed below in Table 1 in the Covered Product, the percentage of each ingredient in
26 the Covered Product (in grams), and the amount (in grams) in the maximum daily serving
27 recommended by First Fitness of each ingredient in Table 1.
28

1 First Fitness may update this list from time to time. First Fitness will be entitled to
2 submit this information to ERC confidentially.

3 **TABLE 1**

INGREDIENT	NATURALLY-OCCURRING AMOUNT OF LEAD
Calcium (elemental)	0.8 mcg lead per gram of elemental calcium
Ferrous Fumarate	0.4 mcg lead per gram of ferrous fumarate
Zinc Oxide	8.0 mcg lead per gram of zinc oxide
Magnesium Oxide	0.4 mcg lead per gram of magnesium oxide
Potassium Chloride	1.1 mcg lead per gram of potassium chloride
Cocoa powder	1.0 mcg lead per gram of cocoa powder

12 **3.4 Reformulated Covered Products**

13 A Reformulated Covered Product is one for which the maximum recommended daily
14 serving on the label contains no more than 0.5 micrograms of lead per day as determined by the
15 quality control methodology described in Section 3.5. As used in this Consent Judgment, “no
16 more than 0.5 micrograms of lead per day” means that the samples of the testing performed by
17 Defendant under Section 3.5 yield a daily exposure of no more than 0.5 micrograms of lead
18 (with daily exposure calculated pursuant to Section 3.5 of this Consent Judgment), after
19 excluding levels of naturally occurring lead pursuant to Section 3.3. For products that cause
20 exposures in excess of 0.5 micrograms of lead per day, Defendant shall provide the warning set
21 forth in Section 3.2.
22
23

24 Defendant may reformulate the Covered Products to reduce the lead content to below
25 levels requiring a Proposition 65 warning, in which case the Parties agree that the Covered
26 Products may be offered for sale in California without the warnings discussed in this Consent
27 Judgment. If Defendant contends that a Covered Product has been so reformulated, then at
28

1 least once each year, Defendant shall undertake testing of any reformulated Covered Product on
2 which it does not intend to place a warning label discussed in Section 3.2 above.

3 Defendant shall arrange for testing of at least three (3) randomly-selected samples of each such
4 reformulated Covered Product for lead content, to confirm whether the daily dose is more or
5 less than 0.5 micrograms of lead when taken as directed on the Covered Product's label. For
6 purposes of determining whether a warning, if any, is required pursuant to Section 3.2, the
7 highest lead detection result of the three (3) randomly-selected samples of the reformulated
8 Covered Products will be controlling.
9

10 **3.5 Testing and Quality Control Methodology**

11 In the event that First Fitness chooses to classify a Covered Product as a
12 Reformulated Product under Section 3.4 (as opposed to meeting the warning requirements set
13 out in Section 3.2), the below testing requirements apply.
14

15 **3.5.1** For purposes of this Consent Judgment, daily lead exposure levels shall
16 be measured in micrograms, and shall be calculated using the following formula: micrograms
17 of lead per gram of the Covered Product, multiplied by grams of product per serving of the
18 Covered Product (using the largest serving size appearing on the Covered Product label),
19 multiplied by servings of the Covered Product per day (using the largest number of servings in
20 a recommended dosage appearing on the Covered Product label), which equals micrograms of
21 lead exposure per day.
22

23 **3.5.2** All testing pursuant to this Consent Judgment shall be performed using a
24 laboratory method that complies with the performance and quality control factors appropriate
25 for the method used, including limit of detection, limit of qualification, accuracy, and precision
26 and meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (ICP-MS)
27
28

1 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
2 method agreed upon in writing by the Parties.

3 **3.5.3** All testing pursuant to this Consent Judgment shall be performed by a
4 laboratory certified by the California Environmental Laboratory Accreditation Program or a
5 laboratory that is registered with the United States Food & Drug Administration, a federal
6 agency, the National Environmental Laboratory Accreditation Program, or similar nationally-
7 recognized accrediting organization for the analysis of heavy metals or a laboratory that is
8 approved by, accredited by, or registered with the United States Food & Drug Administration
9 for the a federal agency, the National Environmental Laboratory Accreditation Program, or
10 similar nationally-recognized accrediting organization to perform analysis of heavy metals First
11 Fitness may test the Covered Products if First Fitness is a qualified laboratory as described
12 above. Nothing in this Consent Judgment shall limit Defendant's ability to conduct, or require
13 that others conduct, additional testing of the Covered Products, including the raw materials
14 used in their manufacture.
15
16

17 **4. SETTLEMENT PAYMENT**

18
19 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
20 penalties, attorney's fees and costs (which includes, but is not limited to, filing fees and costs of
21 attorneys and testing nutritional health supplements), Defendant shall make a total payment of
22 \$60,000.00. Said payment shall be for the following:
23

24 **4.2** \$10,488.00 shall be payable as civil penalties pursuant to California Health
25 and Safety Code section 25249.7(b)(1). Of this amount, \$7,866.00 shall be payable to the
26 Office of Environmental Health Hazard Assessment ("OEHHA") and \$2,622.00 shall be
27 payable to Environmental Research Center. California Health and Safety Code section
28

1 25249.12(c)(1) & (d). Defendant shall send both civil penalty payments to ERC's counsel who
2 will be responsible for forwarding the civil penalty.

3 **4.3** \$26,919.00 shall be payable to Environmental Research Center as
4 reimbursement to ERC for (A) reasonable costs associated with the enforcement of Proposition
5 65 and other costs incurred as a result of work in bringing this action; and (B) \$6,991.00 shall
6 be payable to Environmental Research Center in lieu of further civil penalties, for the day-to-
7 day business activities such as (1) continued enforcement of Proposition 65, which includes
8 analyzing, researching and testing consumer products that may contain Proposition 65
9 chemicals, focusing on the same or similar type of ingestible products that are the subject
10 matter of the current action; (2) the continued monitoring of past consent judgments and
11 settlements to ensure companies are in compliance with Proposition 65
12
13

14 **4.4** \$10,395.00 shall be payable to Michael Freund as reimbursement of ERC's
15 attorney's fees and \$5,207.00 shall be payable to Ryan Hoffman as reimbursement of ERC's
16 attorney's fees.
17

18 **4.5** Defendant shall make a total payment of \$60,000.00 ("Payment"). The
19 Payment shall be made in twelve equal installments. The first installment of the Payment, in the
20 amount of \$5,000.00, is due on the First of the month following the Effective Date. The
21 remaining eleven payments are due on the First of each month thereafter. Each installment of
22 the Payment shall be in the form of a check sent to counsel for ERC, Michael Freund, Michael
23 Freund & Associates at 1919 Addison Street, Suite 105, Berkeley, CA. 94704 and shall be
24 delivered on or before the deadline set forth herein for that installment. The checks shall be
25 made payable to "Michael Freund & Associates."
26

27 **4.6** In the event that any payments owed under Section 4 of this Consent Judgment are
28

1 not remitted on or before the due date, Defendant shall be in default of its obligations under this
2 Settlement Agreement. ERC shall provide written notice to Defendant of any default at: First
3 Fitness International Inc., 1430 Bradley Lane Suite 196, Carrollton, TX. 75007. If Defendant fails
4 to remedy the default within five (5) business days of receiving such notice, then all future
5 payments due herein shall become immediately due and payable.
6

7 **5. MODIFICATION OF CONSENT JUDGMENT**

8 **5.1** This Consent Judgment may be modified only (i) by written stipulation of the
9 Parties; and (ii) upon entry by the Court of a modified Consent Judgment.
10

11 **5.2** If either Party seeks to modify this Consent Judgment under Section 5.1, then
12 the Party requesting the modification must provide written notice to the other Party of its intent
13 (“Notice of Intent”). If the Party receiving the Notice of Intent seeks to meet and confer
14 regarding the proposed modification, then the Party must provide written notice to the other
15 Party within thirty (30) days of receiving the Notice of Intent. If such notice is provided in a
16 timely manner, then the Parties shall meet and confer in good faith as required in this Section.
17 The Parties shall meet in person or on the telephone within thirty (30) days of notification of
18 intent to meet and confer. Within thirty (30) days of such meeting, if the Party receiving the
19 Notice of Intent disputes the proposed modification, that Party shall provide the other Party a
20 written factual basis for its position. The Parties shall continue to meet and confer for an
21 additional thirty (30) days in an effort to resolve any remaining disputes. The Parties may agree
22 in writing to different deadlines for the meet-and-confer period.
23

24 **5.3** In the event that Defendant initiates or otherwise requests a modification
25 under Section 5.1, Defendant shall reimburse ERC its costs and reasonable attorney’s fees for
26 the time spent in the meet-and-confer process and filing and arguing a joint motion or
27
28

1 application in support of a modification of the Consent judgment, as well as ERC's reasonable
2 costs.

3 **5.4** Where the meet-and-confer process does not lead to a joint motion or
4 application in support of a modification of the Consent Judgment, then either Party may seek
5 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs and
6 reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"
7 means a party who is successful in obtaining relief more favorable to it than the relief that the
8 other party was amenable to providing during the Parties' good faith attempt to resolve the
9 dispute that is the subject of the modification.
10

11 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
12 **JUDGMENT**

13
14 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or
15 terminate this Consent Judgment.

16 **6.2** Only after it complies with Section 15 below may any Party, by motion or
17 application for an order to show cause filed with this Court, enforce the terms and conditions
18 contained in this Consent Judgment.
19

20 **6.3** If ERC alleges that any Covered Product fails to qualify as a Reformulated
21 Covered Product (and for which ERC alleges that no warning has been provided), then ERC
22 shall inform First Fitness in a reasonably prompt manner of its test results, including information
23 sufficient to permit First Fitness to identify the Covered Products at issue. The Parties shall first
24 attempt to resolve the matter prior to ERC taking any further legal action pursuant to Section 15.
25

26 **7. APPLICATION OF CONSENT JUDGMENT**

27 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
28

1 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
2 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,
3 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
4 application to Covered Products which are exclusively distributed and/or or sold outside the State
5 of California. With respect to Covered Products that are distributed and/or sold both inside and
6 outside of California, the requirements contained in this Consent Judgment apply to the Covered
7 Products only to the extent that the distribution and/or sales occur in California. This Consent
8 Judgment shall terminate without further action by any Party when Defendant no longer
9 manufactures, distributes or sells all of the Covered Products and all of such Covered Products
10 previously "distributed for sale in California" have reached their expiration dates and are no longer
11 sold.
12
13

14 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

15
16 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
17 behalf of itself and in the public interest, and Defendant, of any alleged violation of Proposition
18 65 or its implementing regulations for failure to provide Proposition 65 warnings of exposure to
19 lead from the handling, use, or consumption of the Covered Products and fully resolves all
20 claims that have been or could have been asserted in this action up to and including the date of
21 entry of Judgment for Defendant's failure to provide Proposition 65 warnings for the Covered
22 Products as asserted in the Notice of Violation and the Complaint. ERC, on behalf of itself and
23 in the public interest, hereby discharges Defendant and its respective officers, directors,
24 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers,
25 customers (not including private label customers of Defendant), distributors, wholesalers,
26 retailers, General Research Laboratories, American Nutritional Corporation and all other entities
27 in the distribution chain of any Covered Product, and the predecessors, successors and assigns of
28

1 any of them (collectively, "Released Parties"), from any and all claims, actions, causes of action,
2 suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that could
3 have been asserted, as to any alleged violation of Proposition 65 arising from the failure to
4 provide Proposition 65 warnings on the Covered Products regarding lead as stated in the Notice
5 of Violation and the Complaint.

6 **8.2** ERC, on behalf of itself only, hereby releases and discharges the Released
7 Parties from all known and unknown claims for alleged violations of Proposition 65, or for any
8 other statutory or common law claims, arising from or relating to alleged exposures to in the
9 Covered Products as set forth in the Notice of Violation. It is possible that other claims not
10 known to the Parties arising out of the facts alleged in the Notice of Violation or the Complaint
11 and relating to the Covered Products will develop or be discovered. ERC, on behalf of itself
12 only, acknowledges that this Consent Judgment is expressly intended to cover and include all
13 such claims, including all rights of action therefore. ERC has full knowledge of the contents of
14 California Civil Code section 1542. ERC, on behalf of itself only, acknowledges that the claims
15 released in Sections 8.1 and 8.2 above may include unknown claims, and nevertheless waives
16 California Civil Code section 1542 as to any such unknown claims. California Civil Code
17 section 1542 reads as follows:
18

19
20 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
21 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
22 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
23 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
24 OR HER SETTLEMENT WITH THE DEBTOR.
25

26 ERC, on behalf of itself only, acknowledges and understands the significance and
27 consequences of this specific waiver of California Civil Code section 1542.
28

1 **8.3** Compliance with the terms of this Consent Judgment shall be deemed to
2 constitute compliance by any Released Party with Proposition 65 regarding alleged exposures
3 to lead in the Covered Products.

4 **8.4** ERC and Defendant each release and waive all claims they may have against
5 each other for any statements or actions made or undertaken by them in connection with the
6 Notice of Violation or the Complaint; provided, however, that nothing in Section 8 shall affect
7 or limit any Party's right to seek to enforce the terms of this Consent Judgment.
8

9 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

10 In the event that any of the provisions of this Consent Judgment is held by a court to be
11 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.
12

13 **10. GOVERNING LAW**

14 The terms and conditions of this Consent Judgment shall be governed by and construed in
15 accordance with the laws of the State of California.

16 **11. PROVISION OF NOTICE**

17 All notices required to be given to either Party to this Consent Judgment by the other shall be in
18 writing and sent to the following agents listed below by: (a) first-class, registered, or certified mail;
19 (b) overnight courier; or (c) personal delivery. Courtesy copies via email may also be sent.
20

21 **FOR ENVIRONMENTAL RESEARCH CENTER:**

22
23 Chris Heptinstall, Executive Director
24 Environmental Research Center
25 3111 Camino Del Rio North, Suite 400
San Diego, CA 92108

26 With a copy to:

27 Michael Freund
28 Ryan Hoffman

1 1919 Addison Street, Suite 105
2 Berkeley, CA 94704
3 Tel: (510) 540-1992
4 Fax: (510) 540-5543
5 Email: freund1@aol.com

6 **FOR FIRST FITNESS INTERNATIONAL, INC.**

7 Ryan M. Andrews
8 Venable LLP
9 2049 Century Park East, Suite 2100
10 Los Angeles, CA 90067
11 Tel: (310) 229-0344
12 Fax: (310) 229-9901
13 Email: RMAAndrews@Venable.com

14 With a copy to:

15 Nigel Branson
16 First Fitness International Inc.
17 1430 Bradley Lane Suite 196
18 Carrollton, TX. 75007

19 **12. COURT APPROVAL**

20 **12.1** If this Stipulated Consent Judgment is not approved by the Court, it shall be
21 void and have no force or effect.

22 **12.2** ERC shall comply with California Health and Safety Code section 25249.7(f)
23 and with Title II of the California Code Regulations, Section 3003.

24 **13. EXECUTION AND COUNTERPARTS**

25 This Consent Judgment may be executed in counterparts, which taken together shall be deemed to
26 constitute one document. A facsimile or .pdf signature shall be construed as valid as the original
27 signature.

28 **14. DRAFTING**

The terms of this Consent Judgment have been reviewed by the respective counsel for the each

1 Party to this Settlement prior to its signing, and each Party has had an opportunity to fully discuss
2 the terms with counsel. The Parties agree that, in any subsequent interpretation and construction
3 of this Consent Judgment entered thereon, the terms and provisions shall not be construed against
4 any Party.

5
6 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

7
8 If a dispute arises with respect to either Party's compliance with the terms of this Consent
9 Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to
10 resolve the dispute in an amicable manner. No action or motion may be filed in the absence of
11 such a good faith attempt to resolve the dispute beforehand. In the event an action or motion is
12 filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As
13 used in the preceding sentence, the term "prevailing party" means a party who is successful in
14 obtaining relief more favorable to it than the relief that the other party was amenable to providing
15 during the parties' good faith attempt to resolve the dispute that is the subject of such enforcement
16 action.
17

18
19 **16. ENTIRE AGREEMENT, AUTHORIZATION**

20 **16.1** This Consent Judgment contains the sole and entire agreement and
21 understanding of the Parties with respect to the entire subject matter herein, and any and all
22 prior discussions, negotiations, commitments and understandings related hereto. No
23 representations, oral or otherwise, express or implied, other than those contained herein have
24 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
25 herein, shall be deemed to exist or to bind any Party.
26
27
28

1 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully
2 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
3 explicitly provided herein, each Party shall bear its own fees and costs.

4 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
5 **CONSENT JUDGMENT**

6
7 This Consent Judgment has come before the Court upon the request of the Parties. The Parties
8 request the Court to fully review this Consent Judgment and, being fully informed regarding the
9 matters which are the subject of this action, to:

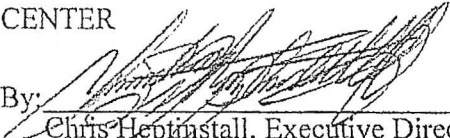
10 (1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable
11 settlement of all matters raised by the allegations of the Complaint, that the matter has been
12 diligently prosecuted, and that the public interest is served by such settlement; and

13
14 (2) Make the findings pursuant to California Health and Safety Code section 25249.7(f)(4),
15 approve the Settlement, and approve this Consent Judgment.
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **IT IS SO STIPULATED:**


2
3 Dated: 5/21/, 2014

ENVIRONMENTAL RESEARCH
CENTER

4
5 By: 
6 Chris Heptinstall, Executive Director

7 Dated: 6/4/2014, 2014


FIRST FITNESS INTERNATIONAL, INC.

8
9 By: 
10 Nigel Branson, President

11 **APPROVED AS TO FORM:**


12
13 Dated: 6/5/, 2014

ENVIRONMENTAL RESEARCH
CENTER

14
15 By: 
16 Michael Freund
17 Attorney for Plaintiff

18 Dated: 6/5/, 2014

VENABLE LLP

19
20 By: 
21 Ryan M. Andrews
22 Attorney for Defendant

JUDGMENT

Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is approved and Judgment is hereby entered according to its terms.

Dated: _____, 2014

Judge of the Superior Court