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FIRST FITNESS INTERNATIONAL, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ENVIRONMENTAL RESEARCH  
CENTER, a California non-profit  
corporation,

Plaintiff,

v.

FIRST FITNESS INTERNATIONAL, INC.,

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 ERC and Defendant are referred to individually as a "Party" or collectively as the "Parties."

12  
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

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

4

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

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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

#### 18 **4. SETTLEMENT PAYMENT**

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

17           **11.     PROVISION OF NOTICE**

18 All notices required to be given to either Party to this Consent Judgment by the other shall be in  
19 writing and sent to the following agents listed below by: (a) first-class, registered, or certified mail;  
20 (b) overnight courier; or (c) personal delivery. Courtesy copies via email may also be sent.  
21

22           **FOR ENVIRONMENTAL RESEARCH CENTER:**

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:

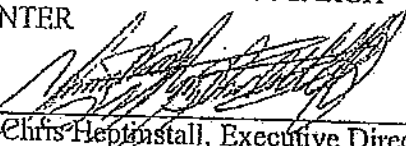
10 (1)     Find that the terms and provisions of this Consent Judgment represent a fair and equitable  
11 settlement of all matters raised by the allegations of the Complaint, that the matter has been  
12 diligently prosecuted, and that the public interest is served by such settlement; and

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.  
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27  
28

1 IT IS SO STIPULATED:


2  
3 Dated: 5/21, 2014

ENVIRONMENTAL RESEARCH  
CENTER

4  
5  
6 By:   
Chris Heptinstall, Executive Director

7  
8 Dated: 6/4/2014 2014

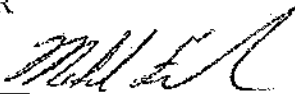
FIRST FITNESS INTERNATIONAL, INC.

9  
10 By:   
Nigel Branson, President

11 APPROVED AS TO FORM;

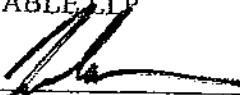
12  
13 Dated: 6/5, 2014

ENVIRONMENTAL RESEARCH  
CENTER

14  
15  
16 By:   
Michael Freund  
Attorney for Plaintiff

17  
18 Dated: 6/5, 2014

VENABLE LLP

19  
20  
21 By:   
Ryan M. Andrews  
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

MICHAEL FREUND  
ATTORNEY AT LAW  
1915 ADDISON STREET  
BERKELEY, CALIFORNIA 94704-101

TEL 510/540-1992  
FAX 510/540-5543  
EMAIL FREUND1@AOL.COM

August 5, 2011

**NOTICE OF VIOLATIONS OF  
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.  
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center ("ERC"), 5694 Mission Center Road #199, San Diego, CA 92108; Tel. (619) 309- 4194. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is an attachment with the copy of this letter served to the alleged Violator identified below.

**Alleged Violator.** The name of the company covered by this notice that violated Proposition 65 (hereinafter "the Violator") is:

**First Fitness International, Inc.**

**Consumer Products and Listed Chemicals.** The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

FirstFitness RejuvacCel with Glucosanol - Lead  
FirstFitness LipoMax Liver Cleanse - Lead  
FirstFitness Renu Ultimate Colon Cleanse - Lead  
FirstFitness Slim 'N Up! Xtreme -Lead

*Exhibit A*

August 5, 2011

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**FirstFitness Vital Green Plus -Lead  
FirstFitness Suddenly Slim Body FX Tropical Crème Weight Control Beverage  
Mix -Lead.**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

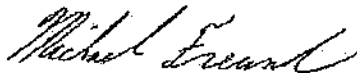
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least August 5, 2008; as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; and (2) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.

Sincerely,



---

Michael Freund, Esq.

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

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Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to First Fitness International, Inc. and its Registered Agent for  
Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center's Notice of Proposition 65 Violations by First Fitness International, Inc.**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

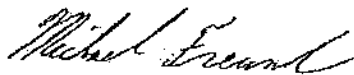
2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: August 5, 2011



---

Michael Freund

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742

On August 5, 2011 I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Current CEO or President  
First Fitness International, Inc.  
1430 Bradley Lane, Suite 196  
Carrollton, TX 75007

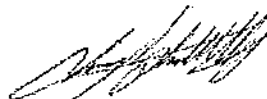
Nigel P. Branson  
First Fitness International, Inc.'s  
(Registered Agent for Service of Process)  
1430 Bradley Lane, Suite 196  
Carrollton, TX 75007

On August 5, 2011 I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, CA 94612-0550

On August 5, 2011 I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service for delivery by Priority Mail.

Executed on August 5, 2011 in Fort Oglethorpe, Georgia.



Chris Heptinstall



Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

August 5, 2011

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Service List

District Attorney, Alameda County  
1225 Fallon Street, Room 900  
Oakland, CA 94612

District Attorney, Alpine County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney, Amador County  
708 Court Street, #202  
Jackson, CA 95642

District Attorney, Butte County  
25 County Center Drive  
Oroville, CA 95965

District Attorney, Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney, Colusa County  
547 Market Street  
Colusa, CA 95932

District Attorney, Contra Costa County  
900 Ward Street  
Martinez, CA 94553

District Attorney, Del Norte County  
450 H Street, Ste. 171  
Crescent City, CA 95531

District Attorney, El Dorado County  
515 Main Street  
Placerville, CA 95667

District Attorney, Fresno County  
2220 Tulare Street, #1000  
Fresno, CA 93721

District Attorney, Glenn County  
Post Office Box 430  
Willows, CA 95988

District Attorney, Humboldt County  
825 5th Street  
Eureka, CA 95501

District Attorney, Imperial County  
939 West Main Street, Ste 102  
El Centro, CA 92243

District Attorney, Inyo County  
230 W. Line Street  
Bishop, CA 93514

District Attorney, Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings County  
1400 West Lacey Boulevard  
Hanford, CA 93230

District Attorney, Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney, Lassen County  
220 South Lassen Street, Ste. 8  
Susanville, CA 96130

District Attorney, Los Angeles County  
210 West Temple Street, Rm 345  
Los Angeles, CA 90012

District Attorney, Madera County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney, Marin County  
3501 Civic Center, Room 130  
San Rafael, CA 94903

District Attorney, Mariposa County  
Post Office Box 730  
Mariposa, CA 95338

District Attorney, Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Merced County  
2222 M Street  
Merced, CA 95340

District Attorney, Modoc County  
204 S Court Street, Room 202  
Alturas, CA 96101-4020

District Attorney, Mono County  
Post Office Box 617  
Bridgeport, CA 93317

District Attorney, Monterey County  
230 Church Street, Bldg 2  
Salinas, CA 93901

District Attorney, Napa County  
931 Parkway Mall  
Napa, CA 94559

District Attorney, Nevada County  
110 Union Street  
Nevada City, CA 95959

District Attorney, Orange County  
401 Civic Center Drive West  
Santa Ana, CA 92701

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

August 5, 2011

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District Attorney, Placer County  
10810 Justice Center Drive, Ste 240  
Roseville, CA 95678

District Attorney, Plumas County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney, Riverside County  
4075 Main Street, 1st Floor  
Riverside, CA 92501

District Attorney, Sacramento County  
901 "G" Street  
Sacramento, CA 9581

District Attorney, San Benito County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

District Attorney, San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415-0004

District Attorney, San Diego County  
330 West Broadway, Room 1300  
San Diego, CA 92101

District Attorney, San Francisco County  
850 Bryant Street, Room 325  
San Francisco, CA 94103

District Attorney, San Joaquin County  
Post Office Box 990  
Stockton, CA 95201

District Attorney, San Luis Obispo County  
1050 Monterey Street, Room 450  
San Luis Obispo, CA 93408

District Attorney, San Mateo County  
400 County Ctr., 3<sup>rd</sup> Floor  
Redwood City, CA 94063

District Attorney, Santa Barbara County  
1105 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney, Santa Clara County  
70 West Hedding Street  
San Jose, CA 95110

District Attorney, Santa Cruz County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

District Attorney, Shasta County  
1525 Court Street, Third Floor  
Redding, CA 96001-1632

District Attorney, Sierra County  
PO Box 457  
Downieville, CA 95936

District Attorney, Siskiyou County  
Post Office Box 986  
Yreka, CA 96097

District Attorney, Solano County  
675 Texas Street, Ste 4500  
Fairfield, CA 94533

District Attorney, Sonoma County  
600 Administration Drive, Room 2121  
Santa Rosa, CA 95403

District Attorney, Stanislaus County  
832 12<sup>th</sup> Street, Ste 300  
Modesto, CA 95353

District Attorney, Sutter County  
446 Second Street  
Yuba City, CA 95991

District Attorney, Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney, Tulare County  
221 S. Mooney Avenue, Room 224  
Visalia, CA 93291

District Attorney, Tuolumne County  
423 N. Washington Street  
Sonora, CA 95370

District Attorney, Ventura County  
800 South Victoria Avenue  
Ventura, CA 93009

District Attorney, Yolo County  
301 2<sup>nd</sup> Street  
Woodland, CA 95695

District Attorney, Yuba County  
215 Fifth Street  
Marysville, CA 95901

Los Angeles City Attorney's Office  
City Hall East  
200 N. Main Street, Rm 800  
Los Angeles, CA 90012

San Diego City Attorney's Office  
1200 3rd Avenue, Ste 1620  
San Diego, CA 92101

San Francisco City Attorney's Office  
City Hall, Room 234  
1 Drive Carlton B Goodlett Place  
San Francisco, CA 94102

San Jose City Attorney's Office  
200 East Santa Clara Street  
San Jose, CA 95113