

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

In the Matter of:)	
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PERFECT FITNESS)	CPSC Docket No.: <u>11-C0009</u>
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SETTLEMENT AGREEMENT

1. In accordance with 16 C.F.R. § 1118.20, Perfect Fitness and staff (“Staff”) of the United States Consumer Product Safety Commission (“Commission”) hereby enter into this Settlement Agreement (“Agreement”) under the Consumer Product Safety Act (“CPSA”). The Agreement and the incorporated attached Order resolve Staff’s allegations set forth below.

THE PARTIES

2. Staff is the staff of the Commission, an independent federal regulatory agency established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. §§ 2051–2089.

3. Perfect Fitness is a privately-held Limited Liability Company, organized and existing under the laws of the State of California, with its principal corporate office located at 1750 Bridgeway, Suite A100, Sausalito, California, 94965.

STAFF ALLEGATIONS

4. Between January 2008 and August 2008, Perfect Fitness manufactured and distributed approximately ten thousand (10,000) “Perfect Pullup” exercise equipment (“Subject Products”). Retailers continued to sell the Subject Products until they were recalled on February

17, 2011. The Subject Products sold for approximately \$80-\$100 through major sporting goods stores, online retailers, and through direct television marketing.

5. The Subject Products are “consumer products” and, at all relevant times, Perfect Fitness was a “manufacturer” of these consumer products, which were “distribute[d] in commerce,” as those terms are defined or used in sections 3(a)(5), (8), and (11) of the CPSA, 15 U.S.C. § 2052(a)(5), (8), and (11).

6. The Subject Products are defective because the handle can break during use, resulting in consumers falling to the floor.

7. Perfect Fitness received its first complaint involving handle breakage in May 2008. In response, Perfect Fitness initiated an internal review. The internal review revealed that an unusual number of purchasers were returning or requesting replacement Subject Products. Some purchasers of the returned products indicated that the handles had broken during use.

8. In June 2008, Perfect Fitness began re-testing the handle design. The firm preliminarily concluded that the handle design was defective because the material used to make the handles was not strong enough to withstand the pressure load needed to perform properly.

9. In July 2008, Perfect Fitness redesigned the Subject Products in an effort to correct the design defect.

10. By August 2008, Perfect Fitness received additional confirmation through a testing agency that the original design would experience handle failure at an average load of 158.3 pounds. The testing agency additionally confirmed that the redesigned handles would be able to withstand a higher pressure load without handle breakage.

11. On August 1, 2008, Perfect Fitness began production of the redesigned Subject Products, and discontinued distribution of the Subject Products without notifying the Commission of the problems associated with handle breakage.

12. By the end of August 2008, Perfect Fitness received at least eleven (11) more reports of handles breaking, resulting in injuries to consumers.

13. On March 30, 2010, Perfect Fitness posted a notice on its website indicating that consumers could replace the Subject Products free of charge. In communications with consumers, representatives of Perfect Fitness represented that the original handles were “inferior” and could result in an “accident.” By this date, Perfect Fitness was aware of at least twenty-three (23) incidents of handle breakage causing injury.

14. Despite knowledge of the information set forth in paragraphs 5-13, Perfect Fitness did not report to the Commission until December 20, 2010. By that time, Perfect Fitness was aware of at least forty-five (45) specific complaints of injury due to handle breakage and had received over two thousand (2,000) requests for replacement of the Subject Products.

15. Although Perfect Fitness had obtained sufficient information to reasonably support the conclusion that the Subject Products contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, Perfect Fitness failed to inform the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. § 2064(b)(3) and (4). In failing to inform the Commission immediately of the defect or advising that the defect involved the Subject Products, Perfect Fitness knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), as the term “knowingly” is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

16. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Perfect Fitness is subject to civil penalties for its knowing failure to report, as required under section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

RESPONSE OF PERFECT FITNESS

17. Perfect Fitness denies the allegations of Staff that the Subject Products contain a defect which could create a substantial product hazard or create an unreasonable risk of serious injury or death, and denies that it knowingly violated the reporting requirements of Section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

AGREEMENT OF THE PARTIES

18. Under the CPSA, the Commission has jurisdiction over this matter and over Perfect Fitness.

19. In settlement of Staff's allegations, Perfect Fitness shall pay a civil penalty in the amount of four hundred twenty five thousand dollars (\$425,000.00) within twenty (20) calendar days of receiving service of the Commission's final Order accepting the Agreement. The payment shall be made electronically to the CPSC via www.pay.gov.

20. The parties enter into this Agreement for settlement purposes only. The Agreement does not constitute an admission by Perfect Fitness or a determination by the Commission that Perfect Fitness violated the CPSA's reporting requirements.

21. Upon provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register* in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the

Agreement shall be deemed finally accepted on the 16th calendar day after the date it is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

22. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Perfect Fitness knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (a) an administrative or judicial hearing; (b) judicial review or other challenge or contest of the Commission's actions; (c) a determination by the Commission of whether Perfect Fitness failed to comply with the CPSA and the underlying regulations; (d) a statement of findings of fact and conclusions of law; and (e) any claims under the Equal Access to Justice Act.

23. The Commission may publicize the terms of the Agreement and the Order.

24. The Agreement and the Order shall apply to, and be binding upon, Perfect Fitness and each of its successors and/or assigns until the obligations described in Paragraph 19 have been fulfilled to the satisfaction of the Commission.

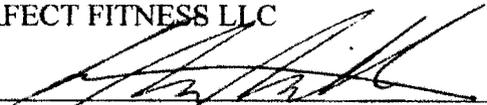
25. The Commission issues the Order under the provisions of the CPSA, and a violation of the Order may subject Perfect Fitness and each of its successors and/or assigns to appropriate legal action until the obligations described in Paragraph 19 have been fulfilled to the satisfaction of the Commission.

26. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict the terms of the Agreement and the Order. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto, executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

27. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Perfect Fitness agree that severing the provision materially affects the purpose of the Agreement and Order.

PERFECT FITNESS LLC

Dated: 28 JUL 11

By: 
Alden Mills, Chief Executive Officer
Perfect Fitness
1750 Bridgeway
Suite A100
Sausalito, California 94965

Dated: _____

By: _____
Mark Friedman, President
Perfect Fitness
1750 Bridgeway
Suite A100
Sausalito, California 94965

Dated: _____

By: _____
Paul Rubin, Esq.
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037
Counsel for Perfect Fitness

U.S. CONSUMER PRODUCT SAFETY
COMMISSION STAFF

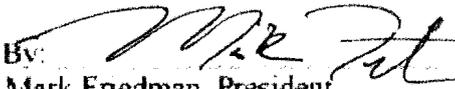
Cheryl A. Falvey
General Counsel

Mary B. Murphy
Assistant General Counsel

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PERFECT FITNESS LLC

Dated _____ By: _____
Alden Mills, Chief Executive Officer
Perfect Fitness
1750 Bridgeway
Suite A100
Sausalito, California 94965

Dated **28 July 2011** By: 
Mark Friedman, President
Perfect Fitness
1750 Bridgeway
Suite A100
Sausalito, California 94965

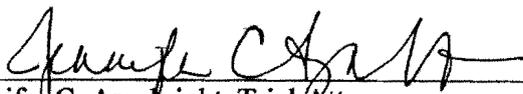
Dated 7/29/11 By: 
Paul Rubin, Esq.
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037
Counsel for Perfect Fitness

U.S. CONSUMER PRODUCT SAFETY
COMMISSION STAFF

Cheryl A. Falvey
General Counsel

Mary B. Murphy
Assistant General Counsel

Dated: 8/04/11

By: 
Jennifer C. Argabright, Trial Attorney
Division of Compliance
Office of the General Counsel

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

In the Matter of:)
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PERFECT FITNESS)
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CPSC Docket No.: 11-C0009

ORDER

Upon consideration of the Settlement Agreement entered into between Perfect Fitness and the U.S. Consumer Product Safety Commission (“Commission”) staff, and the Commission having jurisdiction over the subject matter and over Perfect Fitness, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

ORDERED that the Settlement Agreement be, and is, hereby, accepted; and it is

FURTHER ORDERED, that Perfect Fitness shall pay a civil penalty in the amount of four hundred and twenty-five thousand dollars (\$425,000.00) within twenty (20) days of service of the Commission’s final Order accepting the Settlement Agreement upon counsel for Perfect Fitness identified in the Settlement Agreement. The payment shall be made electronically to the CPSC via www.pay.gov. Upon the failure of Perfect Fitness to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Perfect Fitness at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b).

(continued on next page)

Provisionally accepted and provisional Order issued on the 8th day of August, 2011.

BY ORDER OF THE COMMISSION:



Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission