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16 Attorneys for All Named Defendants

17 UNITED STATES DISTRICT COURT  
 18 CENTRAL DISTRICT OF CALIFORNIA

19 ICON HEALTH & FITNESS, INC, a  
 20 Delaware corporation,

21 Plaintiff,

22 vs.

23 TOTAL BODY EXPERTS, LLC, a  
 California Limited Liability Company;  
 24 MARC ERICKSON, an individual;  
 25 JERRELL ALLRED, an individual;  
 and JOHN DOES 1-XX,

26 Defendants.

Case No. 2:16-cv-00302-R-FFM

**STIPULATION AND JUDGMENT  
 OF PERMANENT INJUNCTION**

Pursuant to the stipulation of Plaintiff ICON Health & Fitness, Inc. (“ICON”) and Defendants Total Body Experts, LLC, Marc Erickson, and Jerrell Allred (collectively, “Defendants”), as set forth below, the Court sitting without a jury and without trial, a jury and trial having been duly waived, IT IS HEREBY ORDERED ADJUDGED AND DECREED THAT:

1. This Court has jurisdiction over the parties to this action and the subject matter of this action pursuant to 15 U.S.C. Section 1121 and 28 U.S.C. Sections 1331, 1338(a) and 1367.

2. ICON is the owner of the exclusive right to use various trademarks in connection with its products distributed in interstate and foreign commerce. ICON’s trademarks include the following trademarks registered with the United States Patent and Trademark Office (the “PTO”):

Mark	No.	Issued	Goods & Services
PRO FORM	1,346,441	7/2/1985	Exercising Apparatus-Namely, Rowing Machines and Multiple Purpose Exercising Machines.
<b>ProForm</b>	1,525,754	2/21/1989	Clothing, namely shorts, pants, shirts, tops, sweat pants and jackets.
PRO FORM	1,718,385	9/22/1992	Exercising apparatus; namely, stepping machines, striding machines, and stationary cycles.
<b>PRO-FORM</b>	2,944,885	4/26/2005	Clothing, namely, t-shirts, long sleeve t-shirts, tank tops, jackets, shorts, sport tops.
PRO-FORM	4,665,905	1/6/2015	Elliptical exercise machines; Exercise balls; Exercise doorway gym bars; Exercise machines; Exercise weights; Manually-operated exercise equipment; Physical fitness equipment, namely, treadmills, ellipticals, stationary exercise bicycles, stepping machines; Vibrating apparatus used in fitness and exercise programs to stimulate muscles and increase strength and physical performance; Wrist and ankle weights for exercise; Yoga mats.



1 The foregoing trademarks shall be referred to herein as the “PRO FORM Marks.”

2 3. ICON also has a license from the Société du Tour de France (the  
3 “Société”) to use the following trademarks (the “TOUR DE FRANCE Marks”) on  
4 ICON’s stationary cycles:

5 LE TOUR DE FRANCE (standard character mark)



9 4. ICON owns the copyrights (the “Copyrights”) in, and Certificates of  
10 Copyright Registration for, the following two images, known as Stationary Bike  
11 Outdoors (Reg. No VA 1-996-979) and Stationary Bike Indoors (Reg. No VA 1-996-  
12 980) (the “ICON Images”):



1           5. Defendants created, used, and operated, or participated in the creation,  
2 use, and/or operation of, a certain website (the “Website”) at the domain name  
3 www.letourdefrancebike.com (the “Domain Name”). True and correct screen shots of  
4 the Website are attached hereto as Exhibit A. Defendants have taken down the  
5 Website, and it is no longer available to the public online.

6           6. Defendants Total Body Experts, LLC, Marc Erickson, and Jerrell Allred,  
7 any and all affiliated companies, and their agents, employees, successors and assigns,  
8 and all other persons in active concert or participation with any of them, who have  
9 received actual notice of this by personal service or otherwise, in accordance with  
10 Fed. R. Civ. P. Rule 65(d)(2), are permanently enjoined and restrained from:

11           (a) Operating or otherwise making available online the Website, whether at  
12 the Domain Name or at any other domain name;

13           (b) Using the PRO FORM Marks or the TOUR DE FRANCE Marks in  
14 connection with the sale, offering for sale, advertising, promotion, or distribution of  
15 any goods or services, except with the prior written consent of ICON (for the PRO  
16 FORM Marks) or the Société (for the TOUR DE FRANCE Mark) and in compliance  
17 with all of the terms and conditions of such consent.

18           (c) Making use of any of the PRO FORM Marks, the TOUR DE FRANCE  
19 Marks, or any other confusingly similar variation of either of them, in the source code  
20 of any Internet website, in an attempt to (i) make such website appear higher in the  
21 search results of Internet users who enter any of such marks as search terms in any  
22 search engine or (ii) divert Internet traffic to such website.

23           (d) Registering or using any Internet domain name that contains any of the  
24 PRO FORM Marks, the TOUR DE FRANCE Mark, or any other confusingly similar  
25 variation of either of them.  
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1 (e) Copying, reproducing, preparing derivative works of, distributing copies  
2 of, or publicly displaying either of the ICON Images or any derivative work prepared  
3 using either of them or any other image taken from an ICON website or known or  
4 understood to belong to ICON.

5 (f) Falsely indicating on any website, or in any other advertising medium,  
6 that any negative or unfavorable statement or review about any of ICON's PRO  
7 FORM products appears on a website, when it does not in fact appear on such website.

8 (g) Making false or misleading statements about any of ICON's PRO FORM  
9 products on any website or in any other advertising medium.

10 (h) Stating or implying on any website or in any other advertising medium  
11 that any purchaser or user of any of ICON's PRO FORM products has made a  
12 negative or unfavorable statement about such product that was not in fact made.

13 (i) Manufacturing, manipulating, or aggregating reviews of any ICON PRO  
14 FORM product or group of products to give the false impression that such product(s)  
15 has/have lower reviewer product ratings or lower average reviewer products rating  
16 than it or they actually have.

17 7. Any of the acts described in subparagraphs (a) through (i) of Paragraph  
18 6 above will cause damage to ICON, and such damage may be difficult to quantify in  
19 economic terms. If any such acts are committed by Defendant Total Body Experts,  
20 LLC, Marc Erickson, and/or Jerrell Allred, or any other person(s) enjoined herein, the  
21 party or parties that committed such act(s) shall pay to ICON liquidated damages in  
22 the amount of Five Thousand Dollars (US\$5,000) for each such act, or such greater  
23 amount as may be proven by the evidence or provided by statute, plus ICON's  
24 investigative expenses, costs, and attorney's fees, which amount of liquidated  
25 damages is a reasonable estimate of the damage that will be caused to ICON by each  
26 such act.

27 8. This Court shall have continuing jurisdiction to enforce this judgment.  
28



1  
2 SO STIPULATED AND AGREED:

3 DATED this 10<sup>th</sup> day of November, 2016.

4  
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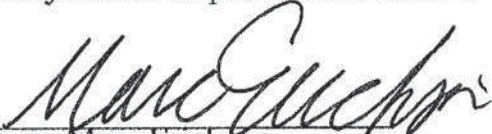
Attorneys for All Named Defendants



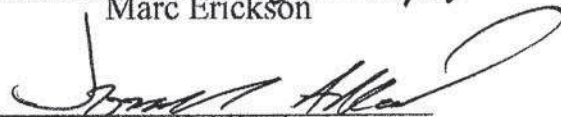
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I have read the foregoing [Proposed] Stipulation and Judgment of Permanent Injunction and understand its contents. CONSENT IS HEREBY GIVEN to the entry of the proposed Final Judgment of Permanent Injunction as provided for above.


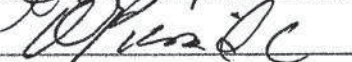
DATED: November 10, 2016

  
\_\_\_\_\_  
Marc Erickson

DATED: November 10, 2016

  
\_\_\_\_\_  
Jerrell Allred

DATED: November 10, 2016

Total Body Experts, LLC  
By:   
\_\_\_\_\_  
Its:   
\_\_\_\_\_



# **EXHIBIT A**

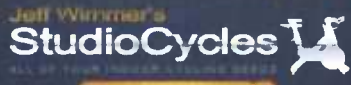


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## Review: ProForm Le Tour de France Bike Generation 2 Indoor Cycle

[[The First Step to "Fillin the Outdoors (inside?)"]]

[[No reviews]]

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Review by **Wino** ★ ★ ★ ★

When I first read about the ProForm Tour De France Generation 2 indoor cycle, as a **Swimming instructor** and avid cyclist, I was stoked! This was the first bike that actually seemed as if it could incorporate the traditional road bike's abilities but of course, the most and best of indoor. With the

**THEIR PROFORM**

Winners Don't Ride ProForm!

I bet for those who's monitoring... I NEVER should have bought a ProForm!

11%

ProForm does NOT participate in the ConsumerAffairs accreditation program [Learn More](#)

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**CONSUMER AFFAIRS UNACCREDITED**

**PRO-FORM**

Overall Satisfaction Rating

★

Based on 45 ratings out of 52 reviews

[show rating distribution](#)

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**Consumer Complaints & Reviews**

Von of Collegeville, PA on Feb. 12, 2015

Satisfaction Rating ★

Placed order... not rec'd order... no one to contact. If I try to call Icon/ProForm, no one picks the phone (I held the call for 20 minutes once). Their online form needs a serial number to be entered for any complaints (I have not received the product so don't have it to enter). I am just frustrated with their service and won't recommend this company to anyone.

11%