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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CROSSFIT, INC., a Delaware corporation,

Plaintiff,

v.

NATIONAL STRENGTH AND CONDITIONING ASSOCIATION, a Colorado corporation,

Defendant.

CASE NO. 14cv1191-JLS(KSC)

DECLARATION OF PAUL A. SERRITELLA IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE ELEMENT OF FALSITY

Judge: The Honorable Janis L. Sammartino

Hearing date: April 2, 2015 at 1:30 p.m.

Courtroom: 4A

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I, Paul A. Serritella, am an attorney at Latham & Watkins LLP, counsel for Plaintiff CrossFit, Inc. ("CrossFit") in the above-captioned matter. I am admitted to the Bar of the State of New York and am admitted *pro hac vice* to this Court. I am submitting this declaration in support of Plaintiff CrossFit, Inc.'s Motion for Partial Summary Judgment on the Element of Falsity. I have personal and firsthand knowledge of the facts set forth herein either from personal knowledge or on the basis of information that has been provided to me.

1. Attached hereto as Exhibit A is a true and correct copy of an article by Steven T. Devor, *et al.*, entitled "Crossfit-based high intensity power training improves maximal aerobic fitness and body composition," which was published in the Journal of Sports and Conditioning Research in November 2013.

2. Attached hereto as Exhibit B is a true and correct copy of the Defendant's Response to Plaintiff's Special Interrogatories, Set One, dated August 8, 2014.

3. Attached hereto as Exhibit C is a true and correct copy of the Declaration of Michael M. Smith, with exhibits, dated January 16, 2015.

4. Attached hereto as Exhibit D is a true and correct copy of the Declaration of [redacted] and exhibits thereto, dated January 8, 2015.

5. Attached hereto as Exhibit E is a true and correct copy of the Declaration of [redacted], dated November 17, 2014.

6. Attached hereto as Exhibit F is a true and correct copy of the Declaration of [redacted], dated November 13, 2014.

7. Attached hereto as Exhibit G is a true and correct copy of the Declaration of [redacted] and exhibit thereto, dated November 13, 2014.

8. Attached hereto as Exhibit H is a true and correct copy of the Declaration of [redacted] and exhibit thereto, dated November 14, 2014.

9. Attached hereto as Exhibit I is a true and correct copy of the Declaration of [redacted] dated November 13, 2014.

10. Attached hereto as Exhibit J is a true and correct copy of the Declaration of [redacted], dated November 21, 2014.

11. Attached hereto as Exhibit K is a true and correct copy of the Declaration of [redacted], dated October 20, 2014.

12. Attached hereto as Exhibit L is a true and correct copy of the Declaration of [redacted] dated November 17, 2014.

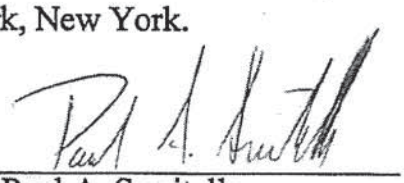
13. Attached hereto as Exhibit M is a true and correct copy of the Declaration of [redacted], dated November 13, 2014.

14. Attached hereto as Exhibit N is a true and correct copy of the Declaration of [redacted], dated November 13, 2014.

15. CrossFit's counsel sought to obtain the declarations of two other participants in the Devor study, [redacted] and [redacted]. [redacted] informed CrossFit's counsel that he was not injured during The Challenge, but he declined to provide a declaration. [redacted] declined to comment.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 30, 2015 in New York, New York.



Paul A. Serritella
(*pro hac vice*)

PROOF OF SERVICE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CROSSFIT, INC., v. NATIONAL STRENGTH AND CONDITIONING ASSOCIATION,

District Court Case No. 14-cv-1191-JLS(KSC)

I, William O. Reckler, hereby certify that I am over the age of eighteen and not a party to the within action; I am employed by Latham & Watkins LLP in the County of New York at 885 Third Avenue, New York, New York 10022.

On January 30, 2015, I caused to be served the document below described as:

DECLARATION OF PAUL A. SERRITELLA IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE ELEMENT OF FALSITY.

The document was served by the following means:

- **BY ELECTRONIC TRANSMISSION VIA NEF:** I hereby certify that I caused the foregoing document to be electronically filed with the Clerk of Court using the CM/ECF system, which sent Notifications of Electronic Filing to the persons at the e-mail addresses listed immediately below. Accordingly, pursuant to the Court's Local Rule 5.4(c), I caused the document to be sent electronically to the persons listed immediately below.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 30, 2015 at New York, New York.

William O. Reckler

SERVICE LIST

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CROSSFIT, INC., v. NATIONAL STRENGTH AND CONDITIONING ASSOCIATION,

District Court Case No. 14-cv-1191-JLS(KSC)

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Exhibit A

Crossfit-based high intensity power training improves maximal aerobic fitness and body composition

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Running head: crossfit training improves aerobic fitness and body composition

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Abstract

The purpose of this study was to examine the effects of a crossfit-based high intensity power training (HIPT) program on aerobic fitness and body composition. Healthy subjects of both genders (23 males, 20 females) spanning all levels of aerobic fitness and body composition completed 10 weeks of HIPT consisting of lifts such as the squat, deadlift, clean, snatch, and overhead press performed as quickly as possible. Additionally, this crossfit-based HIPT program included skill work for the improvement of traditional Olympic lifts and selected gymnastic exercises. Body fat percentage was estimated using whole body plethysmography and maximal aerobic capacity (VO2max) was measured by analyzing expired gasses during a Bruce protocol maximal graded treadmill test. These variables were measured again following 10 weeks of training and compared for significant changes using a paired t-test. Results showed significant (P<0.05) improvements of VO2max in males (43.10±1.40 to 48.96±1.42 ml/kg/min) and females (35.98±1.60 to 40.22±1.62 ml/kg/min) as well as decreased body fat percentage in males (22.2±1.3 to 18.0±1.3) and females (26.6±2.0 to 23.2±2.0). These improvements were significant across all levels of initial fitness. Significant correlations between absolute oxygen consumption and oxygen consumption relative to body weight was found in both men (r=0.83, P<0.001) and women (r=0.94, P<0.001), indicating HIPT improved VO2max scaled to body weight independent of changes to body composition. Our data shows that HIPT significantly improves VO2max and body composition in subjects of both genders across all levels of fitness.

Key words: interval training, aerobic fitness, body composition, crossfit, power training

Introduction

High-intensity interval training (HIIT) has been used as an alternative to traditional endurance training for the improvement of aerobic fitness. HIIT is practical for many individuals due to the minimal time commitment required when compared to traditional continuous endurance training. A relatively new variation of HIIT has recently become popular and incorporates high intensity resistance training using varied, multiple joint movements. This high intensity power training (HIPT) may also offer improvement of aerobic fitness with minimal time commitment compared to traditional aerobic training. HIPT has recently become popular worldwide, however, proponents have made many unsubstantiated claims. HIPT differs from traditional HIIT in that it includes a lack of a prescribed rest period, focus on sustained high power output and use of multiple joint movements.

This crossfit-based, HIPT program utilizes named “workouts of the day” (WOD) in varied time domains. HIPT incorporates functional lifts such as the squat, deadlift, clean, snatch, and overhead press. Additionally, HIPT commonly uses basic gymnastic exercises using rings, hand-stands, and parallel bars. Some workouts are performed for a best time, and others are performed in the “as many rounds as possible” (AMRAP) style using varying time domains, ranging from 10 to 20 minutes. For example, a popular WOD uses 3 sets of 21, 15, and 9 repetitions of barbell front squats with an overhead press, immediately followed by body weight pull-ups. This WOD is performed with the goal of completing the exercises as quickly as possible. In summary, a HIPT training session will often include a random selection of multiple joint exercises and train participants to complete these movements at high resistance as quickly as possible.

The sustained high power output associated with HIPT might serve as a stimulus for positive adaptations of maximal aerobic capacity (VO2max) and body composition. While HIIT has been shown to improve body composition(13) and VO2max(14) in healthy adults, it is not clear if HIPT could offer these same benefits.

To date, there have been no published investigations documenting changes to VO2max or body composition in response to this style of training. Therefore, our aim was to determine if a HIPT training regimen could yield significant improvements to VO2max and body composition in healthy adults. To achieve our aim, we measured maximal aerobic capacity using a Bruce protocol graded exercise test and body composition with whole body plethysmography in healthy adult volunteers before and after a common HIPT training program. We tested the hypothesis that a 10 week HIPT regimen would improve VO2max and body composition in healthy adult volunteers. Furthermore, we hypothesized that improvements of VO2max and body composition would be found across all levels of initial aerobic fitness and body composition, not only in the cohorts of the lowest initial values of these markers.

Methods

Approach to the Problem

This study investigated the effect of a 10 week, crossfit-based, HIPT program on body composition and VO2max in healthy adults. Body composition using air displacement plethysmography and maximal aerobic capacity using a Bruce treadmill graded exercise test were assessed in all subjects in the morning (7:30 AM to 11:30 AM) over a five day period preceding the onset of training. Measurements were obtained following an overnight fast, and subjects refrained from exercise, alcohol, and caffeine for the previous 24 hours. A total of 43 subjects completed the training program and returned for assessment of changes in the dependent variables of body composition and VO2max. All returning subjects were assessed at the same time of day as the pre-training measures over a five day period following the completion of the program.

Subjects

Participants of all levels of aerobic fitness and body composition were recruited from and trained at a Crossfit affiliate (Fit Club, Columbus, OH). Out of the original 54 participants, a total of 43 (23 males, 20 females) fully completed the training program and returned for follow up testing. Of the 11 subjects who dropped out of the training program, two cited time concerns with the remaining nine subjects (16% of total recruited subjects) citing overuse or injury for failing to complete the program and finish follow up testing. Subjects had already been following a "Paleolithic" type diet prior to and following completion of the training protocol. All of the subjects provided written informed consent and all study methods and protocols were approved in advance by the Institutional Review Board at The Ohio State University.

Procedures

Training Program

Subjects participated in a crossfit-based HIPT program using basic gymnastic skills (handstands, ring, and bar exercises) and traditional multiple-joint, functional, resistance exercises (squat, press, deadlift, Olympic lifts) performed as quickly as possible at a high intensity (low repetition, high percentage of 1-RM). All training was performed at a CrossFit affiliate under the supervision of a fellow of the American College of Sports Medicine (ACSM) and an ACSM certified registered clinical exercise physiologist. . The 10-week program was varied so that some exercises were performed for a best time, and others were performed in the "as many rounds as possible" (AMRAP) style in varying time domains ranging from 10 to 20 minutes.

During the strength/skill portion of the exercise session, there was no prescribed recovery time, whereas during the WOD portion of the session, subjects completed all the exercises as quickly as possible with no prescribed rest period. Two representative weeks of the training program are found in Figure 1. Subjects were asked to refrain from all other structured physical activity while participating in this study and they complied with this request, as verified by activity logs. A

complete list of all exercises performed over the 10 weeks is found in Table 6.

Body Composition

Percentage body fat was calculated using the Bod Pod air-displacement plethysmography device (Life Measurements Instruments, Concord, CA), which is shown to be an accurate method for assessing body composition in adults(2). Prior to measurement, the system was calibrated for volume using a cylinder of a known volume (50.1461 L) and for mass using two 10 kg weights. Fasting-state body weight was measured to the nearest 0.1 kg and subjects entered the Bod Pod chamber wearing only a tight fitting swimsuit and swim cap. Body volume measurements were taken in duplicate and repeated if measures were not within 150 mL of each other(7). Body density was calculated as mass/body volume and body fat percentage was calculated by using Siri's formula(12). Body mass index (BMI) was calculated as kg body mass divided by height in meters squared.

Graded Exercise Testing

All subjects performed a maximal treadmill exercise test before and after the training program using the Bruce protocol(4) to determine VO2max. Subjects wore nose clips and breathed into a one-way mouthpiece, which allowed expired gases to be collected in a mixing chamber. Volume of expired air, oxygen consumption, and carbon dioxide production were determined by gas analyzers and a pneumotachometer attached to a calibrated, computerized metabolic cart (Parvomedics, Sandy, UT), which provides accurate and reliable results compared to the Douglas bag method(6). Oxygen consumption values were calculated every 15 s and the two highest consecutive values were averaged to determine absolute maximal oxygen consumption in L/min. Body weight was divided into absolute oxygen consumption to yield a value relative to body mass and is reported as relative VO2max in units of ml of O2/kg of body mass/min. The test was terminated and considered maximal when subjects reached self-determined exhaustion, and was verified by the two of following criteria: (1) plateau in oxygen consumption despite an increase in workload, (2) respiratory exchange ratio greater than 1.1, and (3) rating of perceived exertion of 18-20. Using these parameters have previously shown to be a reliable method of verifying VO2max has been attained, and provides statistically indistinguishable measurements compared to supramaximal testing(8). Metabolic sensors were recalibrated between each exercise test.

Statistical Analyses

Changes of VO2max and body composition from pre- to post-training were tested using a twotailed, paired t-test. These values were tested as an entire group, and also in subsets that were stratified by initial values of aerobic fitness and body composition, respectively. These subsets were based on normative data for the age and gender of each participant(3). Percentile rankings correspond to descriptors as follows: well above average (>90), above average (70-90), average (50-70), below average (30-50), and well below average (10-30). Two-tailed, paired t-tests were then used to test differences between pre- and post-training values of VO2max and body

composition. a forward stepwise multivariate linear regression was performed to identify significant predictors of relative VO2max. The model considered the following variables for inclusion: change in absolute VO2max and body fat. Additionally, a linear regression analysis was performed and Pearson correlation coefficients calculated to determine the contribution of changes in total body weight, lean mass, and absolute oxygen consumption to the observed increase in relative VO2max. Data are reported as mean ± SEM. Statistical analysis was performed using STATA (version 11.1, College Station, TX). Statistical significance was defined a priori as the critical α-level of $P < 0.05$.

Results

Characteristics of subjects who volunteered for the study are presented in Table 1. The mean and SEM of the variables prior to and following training for male subjects are presented in Table 2, and female subjects in Table 3. Following the training program, a significant increase in relative VO2max and decrease in percent body fat were observed. These changes are presented in Figure 2. The differences in relative oxygen consumption and body composition were significant when broken into quantiles of “well below average”, “below average”, “average”, “above average”, and “well above average”, indicating improvement across all initial levels of fitness (Figure 3 and Figure 4).

Improvement in absolute VO2max was found in the well below average, below average, and above average groups (Figure 5). A regression analysis revealed that absolute VO2max and body fat percentage was a significant predictor of the change in relative VO2max in males (P=0.001), but only absolute VO2max was a predictor of relative VO2max in females (Table 4). Furthermore, the improvement of maximal relative aerobic capacity could be explained by an increase in absolute oxygen consumption in males (r=0.83, P=0.001) and females (r=0.94, P=0.001), and was further informed by the correlation of a decrease in body fat in males only (r=0.49, P=0.05). This correlation analysis is presented in Table 5.

Discussion

The aim of this research was to examine the effects of a novel, crossfit-based HIPT program on aerobic fitness and body composition in healthy adults. Results presented here confirm our hypothesis that a 10-week crossfit based HIPT program significantly improves maximal aerobic capacity and body composition in individuals of all fitness levels and genders. The improvement of relative VO2max was strongly mediated by improvement of absolute oxygen consumption in females, and by improvement of absolute oxygen consumption and decreased body fat in males.

While HIIT has previously been shown to improve body composition(13) and VO2max(14) in healthy adults, this is the first investigation showing that similar benefits can be obtained using a crossfit-based HIPT program. Following the HIPT training, body fat percentage dropped by 3.7%, across all individuals, in absolute terms. This reduction corresponds to a pre- to post-

training change of 15.5%. As presented in Figure 4, there were significant declines in body fat percentage for all fitness cohorts. This finding also holds when comparing men and women. Tables 2 and 3 show the results for men and women respectively. Absolute and percentage changes in body fat were similar for both genders. These results indicate a positive role for HIPT in reducing body fat percentage in both genders across all levels of initial fitness. However, given the body composition changes that have been observed in response to a Paleolithic type diet(10), it is impossible to ascribe the entirety of the improvement in body composition in our subjects to HIPT training alone.

The results for oxygen consumption again reveal that quantiles of all initial levels of fitness were improved in response to a HIPT training regimen. Oxygen consumption, as expressed relative to body weight, significantly increased across all groups (Figure 3). Again, men and women attained similar improvements in relative VO2max, 13.6% and 11.8% respectively (Table 2 and Table 3). As commonly understood, improvement of relative VO2max can result from increased absolute oxygen consumption, decreased body weight, or changes in both. Our data indicate that improvement of absolute oxygen consumption is the primary factor in the improvement of relative VO2max, with a small contribution of the reduction of body fat percentage in males only. To our knowledge, this is the first report of improvement of relative and absolute VO2max in response to a crossfit-based HIPT training protocol.

Combining the quantiles to represent men and women, Tables 2 and 3 show a significant increase of absolute VO2max for both genders. These findings show that aerobic benefits can be gained through HIPT, regardless of initial fitness or gender. Past HIIT training has revealed similar improvements in VO2max. Astorino et. al reported more than 6% increase in absolute VO2max, and 5.5% increase in relative VO2max, while Trulik et al reported a 13.4% increase in relative VO2max in response to HIIT. Our finding that improvement of VO2max in subjects who are stratified as well above average is at odds with previous work using a HIIT protocol that finds no improvement of VO2max(5). Even HIIT studies in well trained subjects using hyperoxia have previously failed to find an improvement of oxygen consumption in subjects of comparably high VO2max(9, 11). Compared to HIIT, our results indicate a possible superior role for HIPT in the improvement of maximal aerobic capacity in well-trained subjects. Future studies are needed in this area.

A unique concern with any high intensity training program such as HIPT or other similar programs is the risk of overuse injury. In spite of a deliberate periodization and supervision of our Crossfit-based training program by certified fitness professionals, a notable percentage of our subjects (16%) did not complete the training program and return for follow-up testing. While peer-reviewed evidence of injury rates pertaining to high intensity training programs is sparse, there are emerging reports of increased rates of musculoskeletal and metabolic injury in these programs(1). This may call into question the risk-benefit ratio for such extreme training

programs, as the relatively small aerobic fitness and body composition improvements observed among individuals who are already considered to be “above average” and “well above average” may not be worth the risk of injury and lost training time. Further work in this area is needed to explore how to best realize improvements to health without increasing risk above background levels associated with participation in any non-high intensity based fitness regimen.

In conclusion, we can infer from our data that a crossfit-based HIPT training program can yield meaningful improvements of maximal aerobic capacity and body composition in men and women of all levels of fitness. The improvement of maximal oxygen consumption expressed as a function of body mass was significantly correlated to increased absolute oxygen consumption, indicating HIPT can improve aerobic fitness independent of any concurrent weight loss. While improvements in aerobic fitness are similar to those previously found in HIIT programs, the current HIPT program has demonstrated an increase of maximal oxygen consumption, even in subjects with well-above average VO2max. This increase in VO2max has not previously been documented in response to a HIIT program, indicating HIPT may be a possible strategy for improvement of aerobic fitness in athletes who are considered to be well-above average. Future research is needed to investigate these differences.

Practical Applications

To our knowledge no research on the aerobic benefits of HIPT has been conducted. HIPT focuses on high intensity resistance training using multiple joint exercises, with little to no focus on traditional aerobic activities. In spite of this, our results show that this type of training also provides aerobic and body composition benefits. The increased aerobic capacity of the subjects in our HIPT study were similar to those found in past research(5, 13). Based on the results presented here, individuals of all fitness levels and either gender can realize body composition and aerobic benefits from HIPT. Given that our subjects were following a Paleolithic diet, we cannot relate all of the observed weight loss to HIPT training. However, HIPT and Paleolithic diet in combination could be used to promote positive changes in body composition.

Additionally, these findings could be significant for athletes wishing to improve their aerobic performance. While an aerobic training regimen based is primarily on long slow endurance workouts e.g, (cycling and running for extended periods at moderate intensity < 70% VO2max), we propose that HIPT training could be used as an adjunct to this strategy in light of our findings. Furthermore, HIPT workouts require much less time spent training than traditional aerobic exercise and could serve as a convenient and practical addition to a training regimen focused on improvement of aerobic fitness or body composition in healthy adults.

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	Monday	Tuesday	Wednesday	Thursday	Friday
Strength/Skill	Back squat x5 @ 65% x5 @ 75% x5 @ 85% Weighted/assist pull up x5 @ 65% x5 @ 75% x5 @ 85%	Novice - HS Intermediate - HSPU Advanced - HSW	Deadlift x5 @ 65% x5 @ 75% x5 @ 85% Overhead Press x5 @ 65% x5 @ 75% x5 @ 85%	Rings: pull up and dip One-legged squats	Back Squat x5 @ 65% x5 @ 75% x5 @ 85% Weighted/assist pull up x5 @ 65% x5 @ 75% x5 @ 85%
WOD	*For time:* 50 bodyweight squat 1 flight stairs 100 double under 25 burpees 50 double under 25 burpees 100 double under 1 flight stairs 50 bodyweight squat	*12 min AMRAP:* 7 pull-ups 14 front squat #95 males #65 females 21 push-ups w/ release	*For time:* 30 clean & jerk #135 male #95 female	*For time:* x21 KB swing x21 ring dip x15 KB swing x15 ring dip x9 KB swing #70 KB for males #53 KB for females x9 ring dip	*3 rounds for time:* 1 minute rest between rounds. 5 wide-grip deadlift and high pull 5 squat press #135 for males #95 for females 5 pull-ups

Week #1

	Monday	Tuesday	Wednesday	Thursday	Friday
Strength/Skill	Back squat 5 sets x5 @ 65%	Deadlift 7 sets x2 @ 60%	Bench press 7 sets x3 @ 75%	15 min power cleans #135 male #95 female	Front squat x5 @ 65% x3 @ 75% x1 @ 85%
WOD	*20 min AMRAP:* x5 pull-ups x10 body weight squat x20 double-unders	*10 min AMRAP:* 4 HSPU 8 deadlifts #225 males #135 females 16 KB swing #53 KB for males #35 for females	*4 rounds:* 30 split jumps 10 squat press #95 males #65 females) 20 push-ups	*18 min AMRAP:* 15 box jumps 24" males 20" females 12 overhead presses #115 males #75 females 9 toes-to-bar	*5 rounds for time:* 3 minute rest between rounds. 20 pull-ups 30 push-ups 40 sit-ups 50 air squats

Week #7

Figure 1. Representative sample of HIPT training protocol. AMRAP = as many rounds as possible; double-unders = two jump rope passes per jump; HS = hand stand; HSPU = hand stand push-up; HSW = hand stand walk; KB = kettlebell. Percentages listed as relative to participants' 1-repetition maximum.

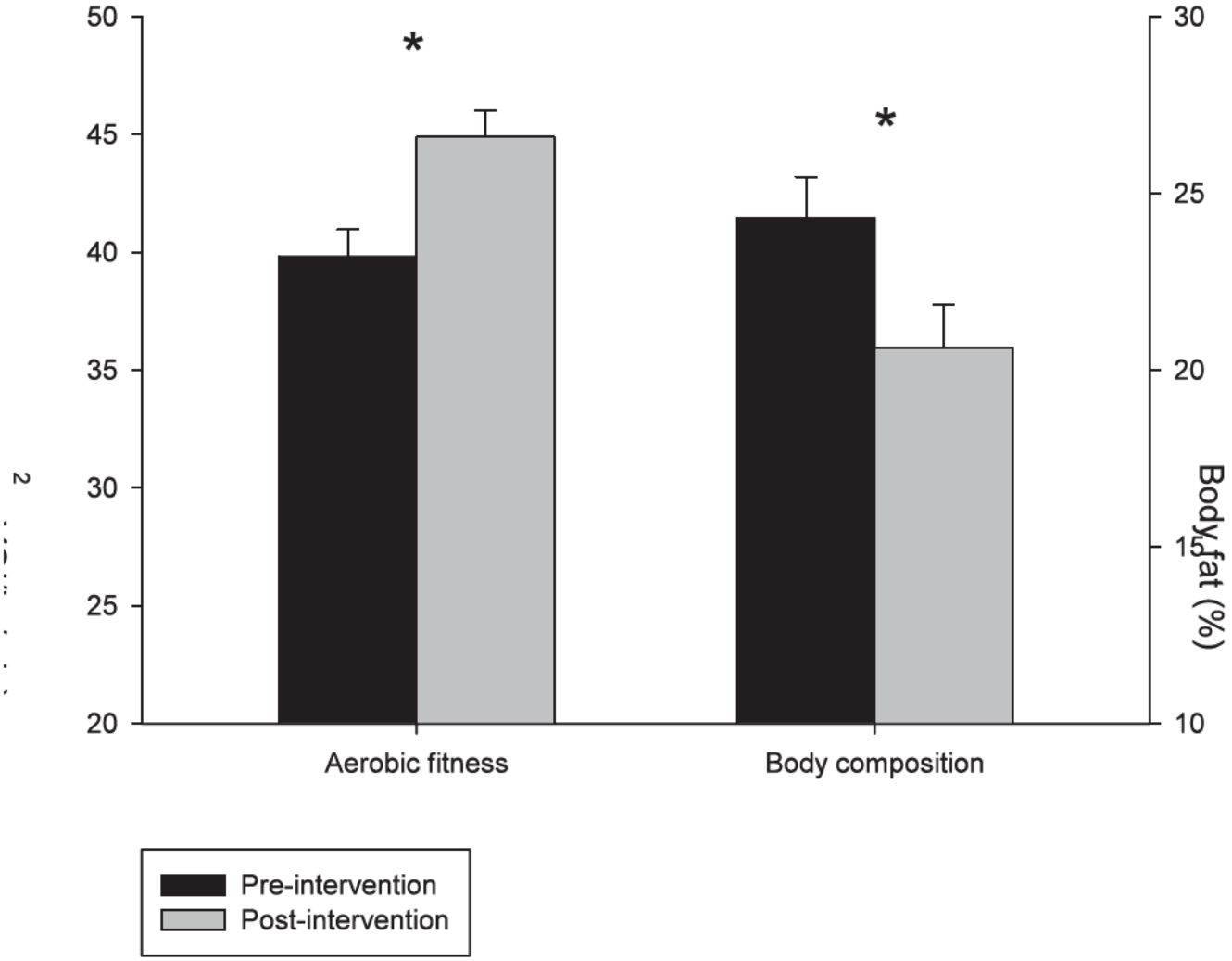

Figure 2. Maximal aerobic fitness and body composition improvements following a 10 week HIPT intervention. Following training, VO2max increased and body fat percentage decreased significantly. * $P < 0.05$.

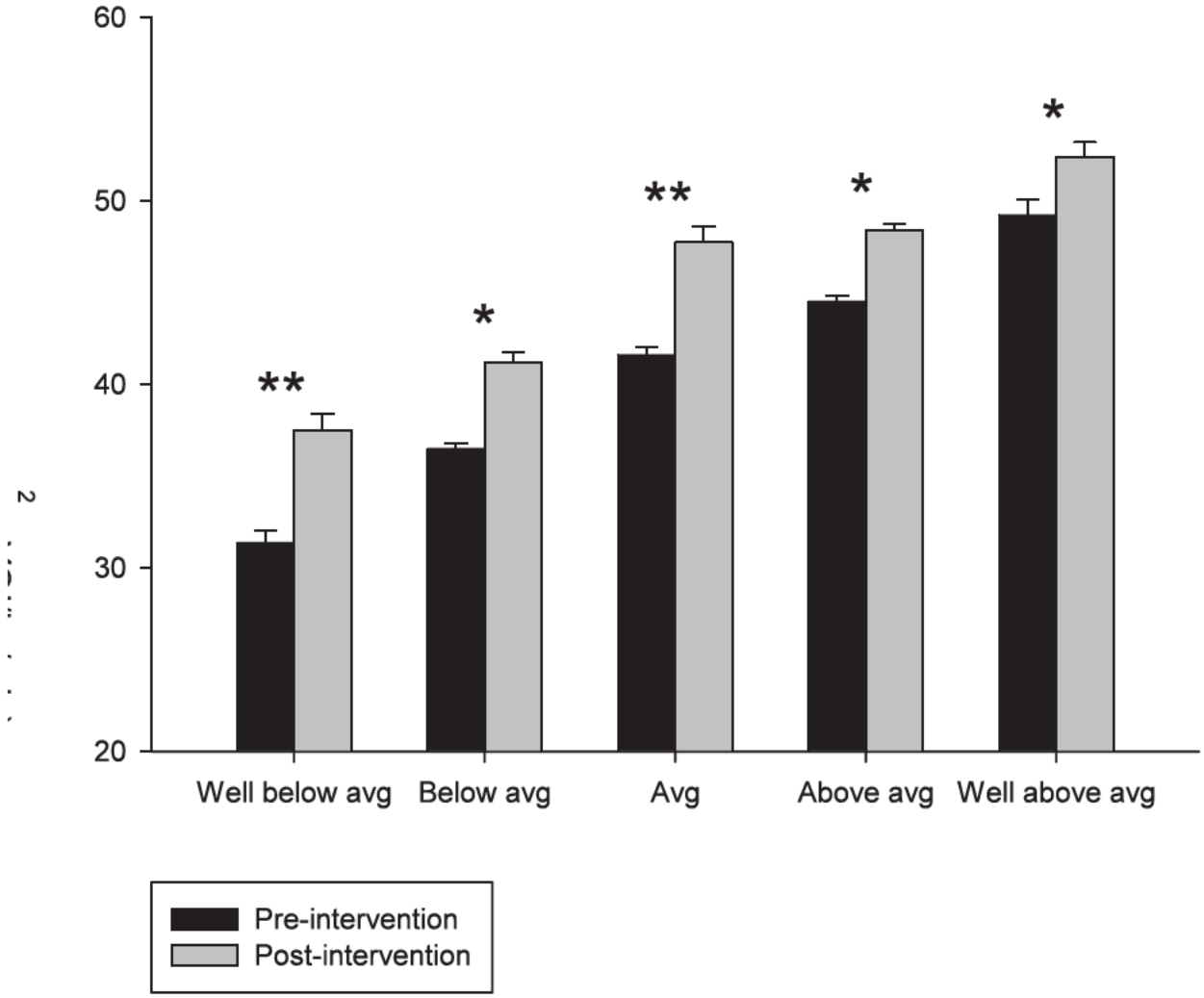

Figure 3. Changes in maximal relative aerobic fitness following a 10 week HIPT intervention. When broken into quantiles of initial aerobic fitness scaled to body weight, a significant increase of VO2max from baseline was observed in all groups. ** $P < 0.01$; * $P < 0.05$.

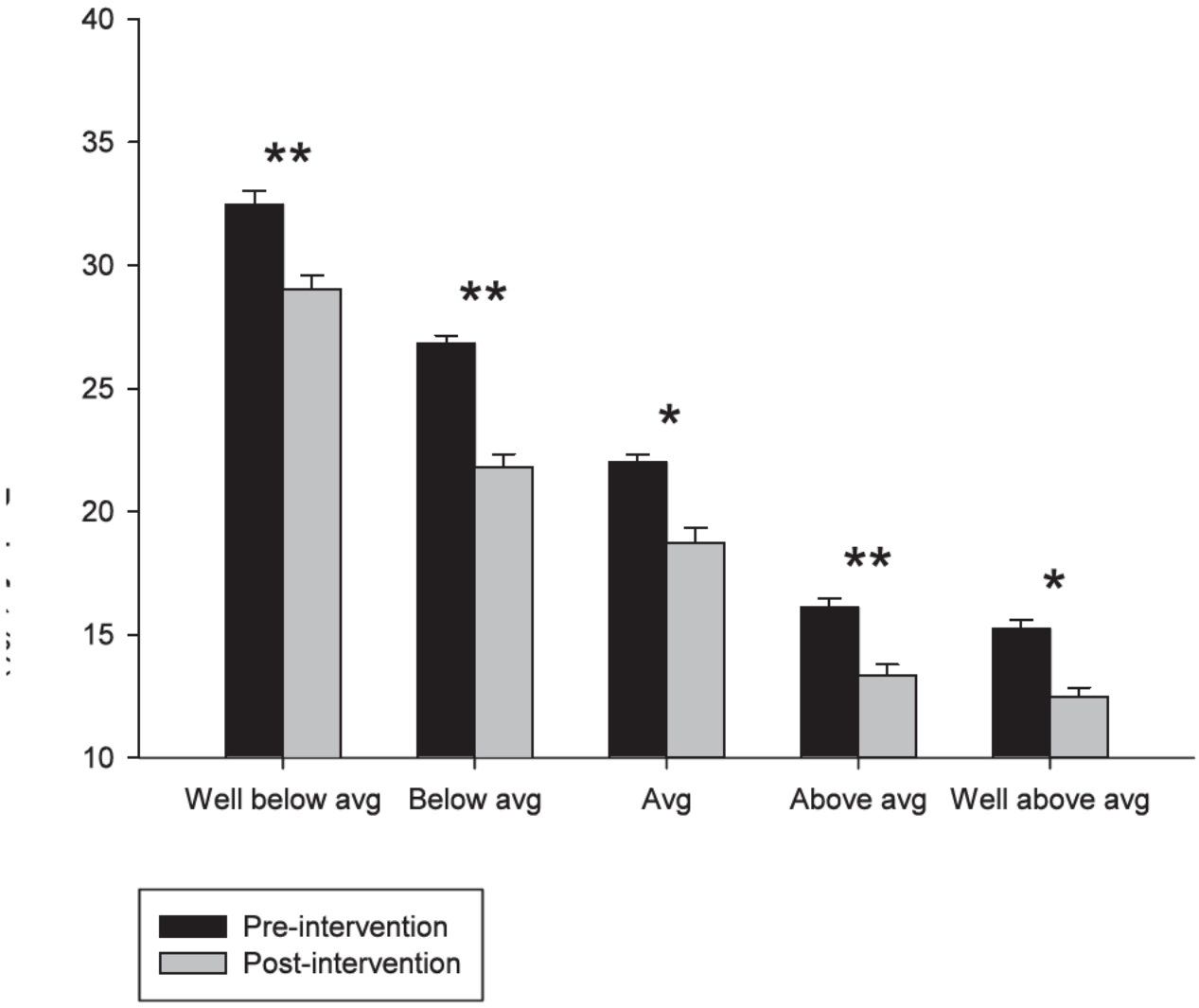

Figure 4. Changes in maximal body composition following a 10 week HIPT intervention. When broken into quantiles of initial body composition, a significant decrease from baseline was observed in all groups. ** $P < 0.01$; * $P < 0.05$.

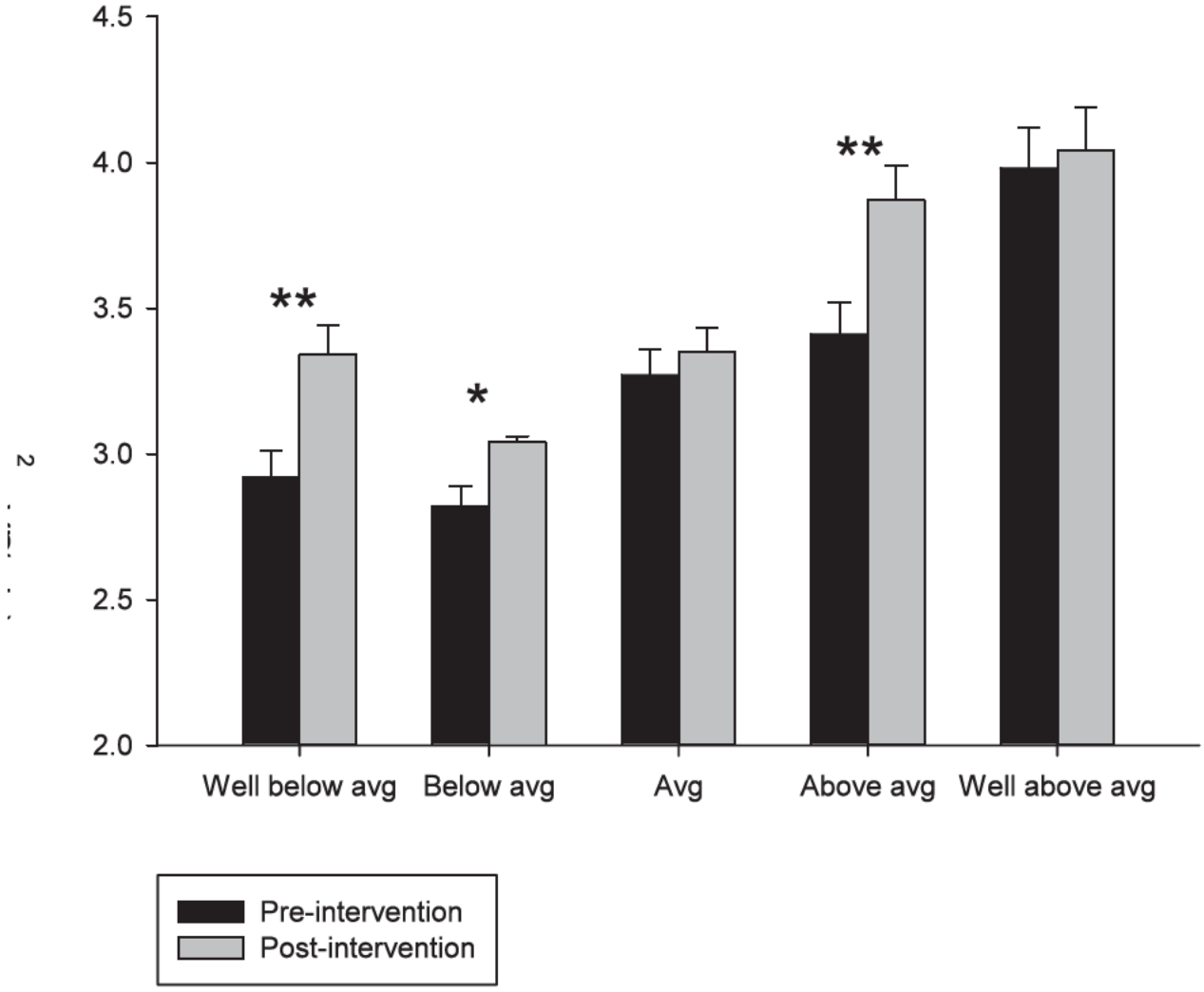

Figure 5. Changes in absolute maximal aerobic fitness following a 10 week HIPT intervention. When broken into quantiles of initial absolute aerobic fitness, a significant increase of VO_2max from baseline was observed the "Well below avg, Below avg, and Above avg" groups. ** $P < 0.01$; * $P < 0.05$.

Table 1. Subject characteristics

	Males (n=23)	Females (n=20)	Range
Age (years)	33.9 ± 1.6	31.2 ± 1.3	21.0 – 48.0
Height (in)	70.6 ± 0.6	64.8 ± 0.6	60.0 – 77.0
Weight (kg)	90.71 ± 2.67	68.02 ± 3.00	44.54 – 118.18
BMI (kg/m^2)	28.1 ± 0.6	25.1 ± 1.1	19.1 – 37.4
Body fat (%)	22.2 ± 1.3	26.6 ± 2.0	10.7 – 46.1
Lean mass (kg)	70.25 ± 1.76	49.00 ± 1.10	36.35 – 82.17
VO_2max (L/min)	3.88 ± 0.13	2.39 ± 0.09	1.47 – 5.12
VO_2max (ml/kg/min)	43.10 ± 1.40	35.98 ± 1.60	20.00 – 58.00

BMI = body mass index; in = inches; kg = kilograms; VO_2max = maximal oxygen consumption. All data are resting values and is presented as mean ± SEM.

Table 2. Adaptations in male subjects following 10 weeks HIPT

	Pre-training	Post-training	*P* value
Weight (kg)	90.71 ± 2.67	87.25 ± 2.58	0.0008
BMI (kg/m^2)	28.1 ± 0.6	27.0 ± 0.6	0.0006
Body fat (%)	22.2 ± 1.3	18.0 ± 1.3	0.000002
Lean mass (kg)	70.25 ± 1.76	71.23 ± 1.87	0.001
VO_2max (L/min)	3.88 ± 0.13	4.23 ± 0.13	0.001
VO_2max (ml/kg/min)	43.10 ± 1.40	48.96 ± 1.42	0.000004

BMI = body mass index; kg = kilograms; VO_2max = maximal oxygen consumption. All data are resting values and is presented as mean ± SEM.

Table 3. Adaptations in female subjects following 10 weeks HIPT

	Pre-training	Post-training	*P* value
Weight (kg)	68.02 ± 3.00	66.23 ± 2.70	0.01
BMI (kg/m^2)	25.1 ± 1.1	24.4 ± 1.0	0.01
Body fat (%)	26.6 ± 2.0	23.2 ± 2.0	0.00008
Lean mass (kg)	49.00 ± 1.1	50.06 ± 1.2	0.01
VO_2max (L/min)	2.39 ± 0.09	2.62 ± 0.1	0.005
VO_2max (ml/kg/min)	35.98 ± 1.60	40.22 ± 1.62	0.0006

BMI = body mass index; kg = kilograms; VO_2max = maximal oxygen consumption. All data are resting values and is presented as mean ± SEM.

Table 4. Multivariate regression analyses model for ΔVO_2max (ml/kg/min)

Gender	Variables	β ± SEM	P	R^2
Male	Δ Absolute VO_2max (L/min)	12.50 ± 1.05	0.001	0.88
	Δ Body fat (%)	-0.67 ± 0.12	0.001	
Female	Δ Absolute VO_2max (L/min)	13.62 ± 1.06	0.001	0.91
	Δ Body fat (%)	-0.32 ± 0.19	0.100	

Model was built using changes of absolute vo2max and body fat against changes in relative VO2max in both genders.

Table 5. Correlation matrix for ΔVO_2max (ml/kg/min)

Gender	Variables	Δ $AbsVO_2max$ (L/min)	ΔLM (kg)	ΔBF (%)	ΔWeight (kg)
Male	ΔVO_2max (ml/kg/min)	0.83**	0.05	-0.49*	-0.24
Female	ΔVO_2max (ml/kg/min)	0.94**	0.05	-0.07	0.01

Δ AbsVO2max = change in absolute VO2max from pre- to post-training values; ΔVO_2max = change in relative VO2max from pre- to post-training values; BF = body fat percentage; LM = lean mass; ** $P<0.001$, * $P<0.05$

Exhibit B

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Attorneys for Defendant ,NATIONAL STRENGTH AND CONDITIONING ASSOCIATION

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CROSSFIT, INC., a Delaware corporation, Plaintiff, v. NATIONAL STRENGTH AND CONDITIONING ASSOCIATION, a Colorado corporation, Defendant.	Case No. 14CV1191 JLS KSC **DEFENDANT'S RESPONSE TO PLAINTIFF'S SPECIAL INTERROGATORIES, SET ONE**

PROPOUNDING PARTY: Plaintiff, CROSSFIT, INC.

RESPONDING PARTY: Defendant, NATIONAL STRENGTH AND CONDITIONING ASSOCIATION

SET NO.: ONE

Defendant, National Strength and Conditioning Association, responds to Special Interrogatories, Set One, propounded by Plaintiff, CrossFit, Inc., as follows:

Investigation and discovery by the defendant are continuing and are not

complete. As discovery proceeds, witnesses, facts and evidence may be discovered which are not set forth herein, but which may have been responsive to an interrogatory. Facts and evidence now known may be imperfectly understood or the relevance of consequences of such facts and evidence may be imperfectly understood, and, accordingly, such facts and evidence may, in good faith, not be included in the following responses.

The defendant reserves the right to refer to, conduct discovery with reference to, or offer into evidence at trial any and all such witnesses, facts and evidence, notwithstanding the absence of reference to such witnesses, facts and evidence in these responses. Finally, because some of these responses may have been ascertained by defendant's attorneys and investigators, defendant may not have personal knowledge of the information from which such responses were derived.

RESPONSES

SPECIAL INTERROGATORY NO. 1:

Identify, describe, and quantify all funding, payment and/or other compensation given by the NSCA and/or the JSCR to any of the Authors, William Kraemer, and/or anyone involved in the editing and/or peer review process of the Devor Article.

RESPONSE TO SPECIAL INTERROGATORY NO. 1:

Objection: This interrogatory seeks information that is irrelevant to any of the claims or defenses asserted in this case and is not reasonably calculated to lead to the discovery of admissible evidence. This interrogatory is also overbroad in terms of scope and unduly burdensome and harassing to Defendant. Furthermore, this interrogatory seek information that is protected by the rights of privacy of the involved individuals.

Subject to and without waiving the foregoing objections, Defendant responds as follows:

Dr. William J. Kraemer entered into a consulting agreement with the Defendant to perform services as Editor-in-Chief for the Journal of Strength and Conditioning Research ("JSCR"). Joan M. Kraemer entered into a consulting agreement with the Defendant to perform services as Managing Editor for the JSCR. Both Dr. Kraemer and Ms. Kraemer are paid fees and reimbursement for expenses pursuant to the agreements. N. Travis Triplett, a Senior Associate Editor for the JSCR, was involved in the editorial process for the Devor Article but was not paid for her services. The reviewers involved in the peer review of the Devor Article and the authors of the Devor Article were not paid any fees or compensation for their involvement in regards to the Devor Article.

SPECIAL INTERROGATORY NO. 2:

Identify and describe all people affiliated with or employed by the NSCA with knowledge of the preparation of the Devor Article, the methodology and/or implementation of the Devor Study, and/or any of the facts, results, and conclusions described in the Devor Article.

RESPONSE TO SPECIAL INTERROGATORY NO. 2:

Objection: This interrogatory is vague, ambiguous and overbroad in terms of scope. This interrogatory is also vague, ambiguous and uncertain with regards to the term "affiliated with" and thus causes the Defendant to speculate as to what is meant by that term.

Subject to and without waiving the foregoing objections, Defendant responds as follows:

To its understanding, Defendant is informed and believes that the Devor Article was submitted as a manuscript to the JSCR. Dr. William J. Kraemer has knowledge of the Devor Article. Joan Kraemer was tasked as the Managing Editor and N. Travis Triplett was tasked as a Senior Associate Editor. Discovery and investigation are continuing and Defendant reserves the right to supplement this response.

SPECIAL INTERROGATORY NO. 3:

Identify and describe all persons or entities involved in editing the Devor Article and the decision to publish the Devor Article.

RESPONSE TO SPECIAL INTERROGATORY NO. 3:

Objection: This interrogatory is vague, overbroad, and unduly burdensome, and furthermore seeks information that is irrelevant to any of the claims and/or defenses in this case and is therefore not reasonably calculated to lead to the discovery of admissible evidence. The interrogatory unreasonably interferes with the peer review process and unnecessarily calls for identifying information as to reviewers involved in regards to the Devor Article and therefore has a chilling effect upon the publication of Defendant's academic journal.

Subject to and without waiving the foregoing objections, Defendant responds as follows:

On behalf of the Defendant's journal, Dr. William J. Kraemer, Joan Kraemer and N. Travis Triplett were involved in the editorial process for the peer review of the Devor Article.

SPECIAL INTERROGATORY NO. 4:

Identify the persons who participated in the Devor Study and your basis for knowing their identities.

RESPONSE TO SPECIAL INTERROGATORY NO. 4:

Objection: This interrogatory is vague and ambiguous with regards to the term "participated."

Subject to and without waiving the foregoing objections, Defendant responds as follows:

Defendant has no information as to the identities of the persons who were the subjects of the Devor Study.

SPECIAL INTERROGATORY NO. 5:

Identify and describe all information in the NSCA's or the JSCR's possession

supporting the conclusion that one or more participants in the Devor Study was injured in the study or failed to complete the study because of overuse or injury.

RESPONSE TO SPECIAL INTERROGATORY NO. 5:

To its understanding, Defendant is aware only of the information cited in the manuscripts submitted by the authors of the Devor Study and the revisions of the manuscripts submitted during the peer review process.

SPECIAL INTERROGATORY NO. 6:

Describe the peer review process used in connection with the Devor Article.

RESPONSE TO SPECIAL INTERROGATORY NO. 6:

Objection: This interrogatory is vague, ambiguous and overbroad in terms of scope. It is unduly burdensome and harassing to Defendant to describe each and every step that is involved with regards to the peer review process utilized by the JSCR.

Subject to and without waiving the foregoing objections, Defendant responds as follows:

To its knowledge, the JSCR utilized the same peer review process employed when manuscripts are presented to the JSCR for consideration as it did when the Devor Study manuscript was submitted. In general, the JSCR utilized a double blind peer review procedure whereby the authors do not know who the reviewers are and the reviewers likewise do not know who the authors are. The editorial staff (Managing Editor and Senior Associate Editor) would know the identities of the authors and reviewers as they are managing the manuscript peer review process. The editorial staff are involved in directing the flow of communication between the corresponding author and the reviewers. During the process, the reviewers provide comments with regards to research methodology and the corresponding author may respond. The reviewers are not involved in data accumulation or verification. Revised papers may be submitted and further reviews occur. Further revisions may be submitted. Ultimately, the manuscript is either accepted or rejected for

publication.

SPECIAL INTERROGATORY NO. 7:

Identify and describe all persons or entities involved in the peer review process of the Devor Article.

RESPONSE TO SPECIAL INTERROGATORY NO. 7:

Defendant incorporates its objections and responses set forth in response to Interrogatory no. 3.

SPECIAL INTERROGATORY NO. 8:

Identify and describe all the standards, policies and procedures used in connection with the peer review process for the JSCR articles, including the selection of reviewers, the process for providing comments to authors, and the criteria by which an article for review is accepted for final publication.

RESPONSE TO SPECIAL INTERROGATORY NO. 8:

Defendant incorporates its objections and responses set forth in response to Interrogatory no. 6. In addition, Defendant refers to the JSCR Instructions to Authors, which will be produced in response to the Demand for Production of Documents.

SPECIAL INTERROGATORY NO. 9:

Identify and describe any questions or complaints you received about the Devor Article, or any consideration given to retracting or revising the Devor Article after it was first published.

RESPONSE TO SPECIAL INTERROGATORY NO. 9:

Objection: This interrogatory is vague and ambiguous with regards to the phrase "questions or complaints."

Subject to and without waiving the foregoing objections, Defendant responds as follows:

Defendant is aware of comments made in the social media, including postings on the Defendant's Facebook site and on Twitter. Furthermore, Defendant is aware

of an email dated May 23, 2013 from Russell Berger to Defendant pertaining to the Devor Article.

SPECIAL INTERROGATORY NO. 10:

Identify and describe all of the standards, policies and procedures the JSCR uses in responding to questions or complaints about a published article, and/or in determining whether to retract or revise an article.

RESPONSE TO SPECIAL INTERROGATORY NO. 10:

Objection: This interrogatory is vague, ambiguous and overbroad in terms of scope. This interrogatory is also irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, Defendant responds as follows:

Defendant refers to the JSCR Instructions to Authors that includes a section on the manuscript clarification process, which will be produced in response to the Demand for Production of Documents.

SPECIAL INTERROGATORY NO. 11:

Identify and describe any allegation, complaint, or concern relating to the actual, suspected, or possible falsification of data in the Devor Study or any other article published by the JSCR.

RESPONSE TO SPECIAL INTERROGATORY NO. 11:

Defendant incorporates its objections and responses set forth in response to Interrogatory no. 9. Furthermore, Defendant refers to the civil lawsuit filed by CrossFit, Inc. in the instant action and the civil lawsuit filed in the State of Ohio by Mitchell Potterf and Ohio Fit Club LLC.

SPECIAL INTERROGATORY NO. 12:

Identify and describe any articles published by the JSCR that have been retracted, in whole or in part, or revised after their initial publication.

RESPONSE TO SPECIAL INTERROGATORY NO. 12:

Objection: This interrogatory seeks information that is irrelevant to the claims and defenses asserted in this action and is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, Defendant responds as follows:

Retraction (1)

- Leone, JE. Muscle dysmorphia symptomatology and extreme drive for muscularity in a 23-year-old woman: a case study. *J Strength Cond Res* 23(3): 988-995, 2009, is being retracted by the Journal for reasons related to oversights by the author that made the information not completely accurate and representative of the subject.

Erratum (15)

- In Lockwood, CM, Moon, JR, Smith, AE, Tobkin, SE, Kendall, KL, Graef, JL, Cramer, JT, and Stout, JR. Low-calorie energy drink improves physiological response to exercise in previously sendentary men: a placebo-controlled efficacy and safety study. *J Strength Cond Res* 24(8): 2227-2238, 2010, errors occurred in Tables 2 and 3. Below are the corrections for Tables 2 and 3 in the above mentioned manuscript that is to be published in the JSCR. These corrections are merely a re-calculation of the percent change score (%Δ) in the far right columns of Tables 2 and 3. Unfortunately, they were initially calculated by dividing the delta score (Δ) by the "POST" value. This is true for all dependent variables listed in Tables 2 and 3. The correct calculation for %Δ is dividing the Δ by the "PRE" value (then multiplying by 100). Below is the correct equation and all of the new numbers (%Δ values) that should replace the far right column.

Table 2
Image Tools

- **Table 3**
Image Tools

Furthermore, there seem to be several oversights for the maximum heart rate (HRmax) variable in Table 3. The mean (average) HRmax values presented in Table 3 are not physiologically relevant. For example, the EX-A group has a mean HRmax value of 193.80 bpm, while the other groups (NEX-A, EX-B, and NEX-B) had HRmax mean values ranging between 85.05 and 89.09 bpm. Although it's feasible that the mean HRmax value for the EX-A group is 194 bpm, it is not possible to have HRmax mean values below 100 bpm for the 3 other groups. Furthermore, the Δ scores and %Δ scores do not reflect the mean differences.
Correct calculation for percent change (%Δ):
(POST - PRE) = Δ
(Δ ÷ PRE) 100 = %Δ

- In Earp, JE, Kraemer, WJ, Newton, RU, Comstock, BA, Fragala, MS, Dunn-Lewis, C, Solomon-Hill, G, Penwell, ZR, Powell, MD, Volek, JS, Denegar, CR, Häkkinen, K, and Maresh, CM. Lower-body muscle structure and its role in jump performance during squat, countermovement, and depth

drop jumps. *J Strength Cond Res* 24: 722-729, 2010, an author was omitted. M. Joseph should have been listed as the second author.

- In Jeans, EA, Foster, C, Porcari, JP, Gibson, M, and Doberstein, S. Translation of exercise testing to exercise prescription using the talk test. *J Strength Cond Res* 25(3): 590-596, 2011, the first author's name should have been spelled as Elizabeth M. Jeanes. The author missed this correction in the galley proof process and regrets the error.

- Hoffman JR, Kraemer WJ, Bhasin S, Storer T, Ratamess NA, Haff GG, Willoughby DS, and Rogol AD. Position stand on androgen and human growth hormone use. *J Strength Cond Res* 23(5 Suppl):S1-S59, 2009.
The reference in the title for the development of portions of Table 2 was inadvertently omitted and should be note as it was adapted from http://www.steroid.com/.

- In McKean, MR, Dunn, PK, and Burkett, JB. The Lumbar and Sacrum Movement Pattern During the Back Squat Exercise. J Strength Cond Res 24: 2731-2741, 2010, a correction is necessary. On page 2739, left hand column, second paragraph, This is supported by Walsh et al. (34), who found that "weightlifting using a squat bar causes athletes to significantly **hyperextend** their lumbar spines" should read This is supported by Walsh et al. (34), who found that "weightlifting using a squat bar causes athletes to significantly **flex** their lumbar spines."
The authors regret this error.

- Maior, AS, Simão, R, Salles, BF, Alexander, JL, Rhea, M, and Nascimento, JHM. Acute cardiovascular response in anabolic androgenic steroid users performing maximal treadmill exercise testing. *J Strength Cond Res* 24(6): 1688-1695, 2010, has been published with values of ΔHR 1min. inverse in the table 2. (U-AAS = 23.5 ± 4.2; N-AAS = 32.1 ± 5.3.

- In DeFreitas, JM, Beck, TW, Stock, MS, Dillon, MA, Sherk, VD, Stout, JR, and Cramer, JT. A comparison of techniques for estimating training-induced changes in muscle cross-sectional area. *J Strength Cond Res* 24(9): 2383-2389, 2010, there is an error in an equation on page 2387. The equation states: CSA = (4.68 × Circumference) - (0.64 × skf_A) - 22.69. However, the equation is incorrect and should read as follows: CSA = (4.68 × Circumference) - (2.09 × skf_A) - 80.99. All of the data that was derived from this equation was performed and presented correctly. It is only the expression of the equation in the Methods section that was incorrect.

- In the article "Optimal Frequency, Displacement, Duration, and Recovery Patterns to Maximize Power Output Following Acute Whole-Body Vibration" which appeared in the January issue, the third author's name was spelled incorrectly. It should have appeared as Daniel H. Serravite.

- Adams, JB, Edwards, D, Serviette, D, Bedient, AB, Huntsman, E, Jacobs, KA, Del Rossi, G, Roos, BA, and Signorile, JF. Optimal frequency, displacement, duration, and recovery patterns to maximize power output following acute whole-body vibration. *J Strength Cond Res* 23: 237-245, 2009.

- In Rahimi, R, Qaderi, M, Faraji, H, and Boroujerdi, SS. Effects of very short rest periods on hormonal responses to resistance exercise in men. *J Strength Cond Res* 24(7): 1851-1859, 2010, there was incorrect data in the abstract. The data should have been listed as age: 22 ± 2 years; weight: 84 ± 8 kg instead of age: 20.37 ± 2.24 years, weight: 65.5 ± 26.70 kg. The author regrets this error.

- In the article "The Impact of Different Warm-Up Protocols on Vertical Jump Performance in Male Collegiate Athletes" that appeared in the January 2008 issue, Figure 1 and Table 1 were not included with the article. These items appear below.

Table 1
Image
Tools

- 

Figure 1
Image Tools

Holt, BW and Lambourne, K. The impact of different warm-up protocols on vertical jump performance in male collegiate athletes. *J Strength Cond Res* 22:226-229, 2008.

- In the article "Changes in Spring-Mass Model Parameters and Energy Cost During Track Running to Exhaustion" that appeared in the May 2008 issue, one of the author's names was spelled incorrectly. It should have appeared as Christine Hanon. We regret any inconvenience this may have caused.
Slawinski, J, Heubert, R, Quievre, J, Billat, V, and Hannon, C. Changes in spring-mass model parameters and energy cost during track running to exhaustion. *J Strength Cond Res* 22:930-936, 2008.

- In Schick, EE, Coburn, JW, Brown, LE, Judelson, DA, Khamoui, AV, Tran, TT, and Uribe, BP. A comparison of muscle activation between a Smith machine and free weight bench press. *J Strength Cond Res*. 24(3): 779-784, 2010, reference 12 was incorrect. On page 784, reference 12 should have read: Marshall, PWM, Murphy, BA. Increased deltoid and abdominal muscle activity during swiss ball bench press. *J Strength Cond Res*. 20:745-750, 2006. The author regrets this error.

- In Szymanski, DJ, Szymanski, JM, Schade, RL, Bradford, TJ, McIntyre, JS, DeRenne, C, and Madsen, NH. The relation between anthropometric and physiological variables and bat velocity of high school baseball players before and after 12 weeks of training. *J Strength Cond Res* 24(11): 2933-2943, 2010, a couple of text errors occurred. On page 2934, line 11, first column it should read "...BV, this does not mean that ...". On page 2935, line 8, first column it should read "...subjects < 18 years...". The author regrets these errors.

- In Sekendiz, B, Cuğ, M, and Korkusuz, F. Effects of Swiss-ball core strength training on strength, endurance, flexibility, and balance in sedentary women. *J Strength Cond Res*. 24(11): 3032-3040, 2010, a text error occurred. All statements including "trunk flexor (lower back)" should read as "trunk flexor (abdominal)" and all statements including "trunk extensor (abdominal)" should read as "trunk extensor (lower back)". Methodology, statistical analyses, and results were performed and presented correctly. The authors regret these errors.

SPECIAL INTERROGATORY NO. 13:

Identify and produce all articles regarding CrossFit that the NSCA has published, plans to publish, or is considering publishing, in the JSCR or any other journal.

RESPONSE TO SPECIAL INTERROGATORY NO. 13:

Objection: This interrogatory is vague, ambiguous and overbroad in terms of scope. Furthermore, this interrogatory is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, Defendant responds as follows:

Defendant refers to the various documents produced in response to the Demand for Production of Documents.

SPECIAL INTERROGATORY NO. 14:

Identify and produce all studies or research regarding CrossFit with which the NSCA or the JSCR has been involved or is currently involved.

RESPONSE TO SPECIAL INTERROGATORY NO. 14:

Objection: This interrogatory is vague, ambiguous and overbroad in terms of scope. Furthermore, this interrogatory is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, Defendant responds as follows:

Defendant refers to the various documents produced in response to the Demand for Production of Documents.

SPECIAL INTERROGATORY NO. 15:

Identify the authors and all persons or entities involved in the articles and studies referenced in Special Interrogatories 11, 12 and 13.

RESPONSE TO SPECIAL INTERROGATORY NO. 15:

Objection: This interrogatory is vague, ambiguous and overbroad in terms of scope. Furthermore, this interrogatory is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, Defendant responds as follows:

Defendant refers to the various documents produced in response to the Demand for Production of Documents.

SPECIAL INTERROGATORY NO. 16:

State the factual basis for each affirmative defense set forth in your Answer (Docket No. 9).

RESPONSE TO SPECIAL INTERROGATORY NO. 16:

Objection: This interrogatory is overbroad in terms of scope, unduly burdensome and harassing to Defendant, and premature at this stage of the proceedings. Defendant asserted affirmative defenses to the complaint as it is allowed to do so under the Federal Rules of Civil Procedure in order to preserve its defenses during the proceedings in this matter, including trial. Discovery has only recently been initiated and as discovery progresses, certain defenses may or may not become applicable. Furthermore, this interrogatory calls for information protected by the attorney work product privilege and may call for information protected by the attorney client privilege. Discovery and investigation are continuing and Defendant reserves the right to supplement this response.

DATED: August 8, 2014

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP

By: _____
Kenneth S. Kawabata
Attorneys for Defendant, NATIONAL STRENGTH AND CONDITIONING ASSOCIATION

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
ATTORNEYS AT LAW

VERIFICATION

DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA

I have read the foregoing **RESPONSE TO PLAINTIFF'S SPECIAL INTERROGATORIES, SET ONE**, and know its contents.

[ ] I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to the matters which are stated on information and belief, and as to those matters I believe them to be true.

[X] I am the Publications Director of NATIONAL STRENGTH AND CONDITIONING ASSOCIATION a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. [X] I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. [ ] The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

[ ] I am one of the attorneys for , a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for an on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing are true.

Executed on Aug 6, 2014, at Colorado Springs, ~~California.~~ Colorado

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Keith Cinea
For NATIONAL STRENGTH AND CONDITIONING ASSOCIATION

Signature

MANNING KASS ELLROD, RAMIREZ, TRESTER LLP

Cross-Fit, Inc. v. National Strength and Conditioning Association
Case No. 14CV1191 JLS KSC

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Diego, State of California. My business address is 550 West C Street, Suite 1900, San Diego, CA 92101.

On August 11, 2014, I served true copies of the following document(s) described as **DEFENDANT'S RESPONSE TO PLAINTIFF'S SPECIAL INTERROGATORIES, SET ONE** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from e-mail address wrd@manningllp.com to the persons at the e-mail addresses listed in the Service List. The document(s) were transmitted at or before 5:00 p.m. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 11, 2014, at San Diego, California.

Wendy Denton

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
ATTORNEYS AT LAW

SERVICE LIST
Cross-Fit, Inc. v. National Strength and Conditioning Association
14CV1191 JLS KSC

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Exhibit C

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CROSSFIT, INC., a Delaware corporation,

Plaintiff,

v.

NATIONAL STRENGTH AND CONDITIONING ASSOCIATION, a Colorado corporation,

Defendant.

CASE NO. 3:14-cv-01191-JLS-KSC

DECLARATION OF MICHAEL M. SMITH

I, Michael M. Smith, hereby declare as follows:

1. I am over the age of 18 years and am not a party to the above-captioned case. I live in Paradise, California. Each of the facts set forth in the following declaration is true to my personal knowledge.

2. From 2010-2012, I was employed as a graduate assistant while studying for my Ph.D. in the Health and Exercise Science department at Ohio State University ("OSU").

3. I am familiar with the above-captioned matter, *CrossFit, Inc. v. National Strength and Conditioning Association*, No. 14-1191 (S.D. Cal.), and this declaration is based upon my personal knowledge and my review of certain documents that OSU produced in response to a third party subpoena in this case.

4. On September 2, 2014, OSU received a third party subpoena from CrossFit, Inc. in the above-captioned case. OSU produced documents in response to that subpoena on October 6, 2014. I was personally involved in gathering and producing those documents.

5. Some of the documents produced by OSU relate to an article written by Steven T. Devor, Michael M. Smith, Allan J. Sommer, and Brooke E. Starkoff,

and published in 2013 by the Journal of Strength & Conditioning Research, entitled "Crossfit-based high intensity power training improves maximal aerobic fitness and body composition." Other documents produced by OSU relate to the study that forms the basis of that article (the "Devor Study"). I was personally involved in conducting the Devor Study.

6. Attached as Exhibit 1 to this declaration is a true and correct copy of a spreadsheet reflecting test data gathered as part of the Devor Study. This spreadsheet contains the data that was collected both before and after the fitness program being studied. The columns bearing the header "Subject" identify by number the study participant whose data is reflected in a given row. The other columns contain the test data collected for the study participants. The spreadsheet contains complete test data collected for 55 individuals before they started the fitness program. It contains complete test data collected for 44 participants after they completed the fitness program. It contains no post-fitness program data for ten participants: Participants Nos. 9, 22, 33, 34, 37, 43, 47, 48, 50, and 54. It contains partial post-fitness program test data for one participant: Participant No. 26, for whom there is data for all post-fitness program tests except one (the "VO2" program test).

7. Attached as Exhibit 2 to this declaration is a true and correct copy of a spreadsheet reflecting the calculations performed using the test data gathered as part of the Devor Study. This spreadsheet is part of a Microsoft Excel workbook that contains multiple spreadsheets showing different calculations performed with the data. The spreadsheet attached as Exhibit 2 provides an overview of the calculations and contains the data that was used to perform those calculations. The left-hand side reflects test data collected before the start of the fitness program being studied for 43 study participants. The right-hand side reflects test data collected for the same 43 participants after they completed the fitness program. While the 43 participants and their test data are listed in numerical order based on

the participants' assigned participant number, the participant numbers are not sequential. The spreadsheet does not contain any test data for Participants Nos. 9, 22, 26, 33, 34, 37, 43, 47, 48, 50, 53 and 54. Below the test data, the spreadsheet shows summary calculations performed on it. The 9th and 10th rows of those calculations show that the calculations were performed on data collected from 23 men and 20 women.

8. These two spreadsheets show that twelve of the individuals from whom data was collected before they participated in the fitness program were not included in the final Study results. Those twelve were Participant Nos. 9, 22, 26, 33, 34, 37, 43, 47, 48, 50, 53 and 54. The Devor Study used all of the data from the remaining 43 participants.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 1/16/, 2015

Paradise, California

Michael M. Smith

EXHIBIT 1

2 kg/ n)	HDL (mg/dL)	Non-HDL (mg/dL)	LDL (mg/dL)	TC (mg/dL)	Trig (mg/dL)	TC/HDL	BF%
1	69	120	110.6	189	47	2.7	25.8
5	43	81	70	124	55	2.9	24
8	39	154	108.8	193	226	4.9	34.1
1	70	77	47.6	147	63	2.1	20.2
9	77	96	87	173	45	2.2	28.6
2	66	115	102.6	181	62	2.7	23.9
0	47	102	87	149	45	3.2	19.1
2	48	82	65.4	130	83	2.7	46.1
1	63	95	74.2	158	104	2.5	26.4
5	90	56	47	146	45	1.6	27.8
8	35	141	129.6	176	54	5	16.1
5	65	188	175	253	65	3.9	14
4	100	42	33	142	45	1.4	25.8
	58	101	91.8	159	46	2.7	18.4
6	54	204	191	258	64	4.7	27.6
7	48	77	66.4	125	53	2.6	23.4
8	88	76	55.6	164	102	1.9	15.6
5	100	88	79	188	45	1.9	14.8
3	67	81	70	148	55	2.2	21.3
7	40	161	130	201	154	5	27
9	56	101	89.6	157	57	2.8	18.8
2	75	82	50.6	157	45	2.1	6
9	76	151	142	227	45	2.9	17
5	43	78	66.4	121	58	2.8	29.8
8	75	106	93.8	181	61	2.4	30.9
1	29	158	130.6	187	137	6.4	29.5
5	45	83	74	128	45	2.8	21.3
7	42	68	59.8	110	51	2.6	16.6
0	67	160	143.6	227	82	3.3	29.3
3	56	172	149.6	228	112	4	23.1
3	56	114	103	170	55	3	18.6
7	66	151	121.6	217	147	3.3	27.1
3	47	92	83	139	45	2.9	26.6
9	44	114	98.6	158	77	3.6	47.2
3	77	81	72	158	45	2	27.7
5	56	127	116	183	52	3.2	29.2
2	66	85	75	151	50	2.3	13.6
6	57	90	74.2	147	79	2.6	10.7
5	100	86	57.4	186	143	1.86	42
2	40	107	94	147	65	3.7	19.1
0	40	157	134.6	197	112	4.9	27
5	36	40	80.8	146	71	4	15.9
7	15	117	108	132	45	8.8	15.7
4	54	127	111	181	80	3.3	32.7
3	70	93	73.6	163	97	2.3	33.5
3	47	80	69	127	55	2.7	12.1
1	83	102	93	185	45	2.2	27.3
9	45	140	131	185	45	2.2	19.5
5	42	141	127.6	183	67	4.3	23.9
3	57	103	92	160	55	2.8	17.4
8	87	54	45	141	45	1.6	37.4
5	75	78	61.6	153	82	2	20.2
3	63	172	145	235	134	3.7	10.1
2	40	94	76.2	134	89	3.4	25.2
1	53	65	56	118	45	2.2	23.2

Post-testing data

Subject	VO2 (ml/kg/min)	HDL (mg/dL)	Non-HDL (mg/dL)	LDL (mg/dL)	TC (mg/dL)	Trig (mg/dL)	TC/HDL	BF%
1	53.8	56	156	144	212	62	3.8	22.2
2	49.6	51	103	89	154	66	3	20
3	31.5	32	163	126	195	184	6.1	33.4
4	47.7	76	98	84	174	70	2.3	17.2
5	44.9	57	100	86	157	67	2.8	22.6
6	45	57	79	91	148	60	2.6	20.1
7	51.9	46	90	80	136	52	2.9	15.2
8	24.3	45	83	62	128	104	2.8	42.3
9								
10	42.2	75	101	86	176	76	2.3	19.7
11	55.9	40	135	126	175	45	4.4	10.9
12	51.9	65	187	171	252	79	3.9	9.8
13	48.3	100	137	116	237	92	2.4	25.5
14	43.4	66	84	71	150	62	2.3	17.6
15	53.6	49	196	179	245	89	5	25.6
16	60	31	81	72	112	45	3.6	11.5
17	31.6	70	133	117	203	84	2.9	15.2
18	44.4	84	66	73	150	45	1.8	13.5
19	44	96	111	92	201	68	2.1	20.8
20	48.5	41	185	163	226	106	5.5	22.7
21	47.3	96	139	124	235	74	2.4	17
22								
23	40.5	47	123	111	170	61	3.6	16
24	44	49	93	73	142	51	2.9	25.2
25	36.9	71	124	111	195	66	2.7	30.2
26		25	169	150	194	93	7.7	29.7
27	46.7	48	69	60	117	45	2.4	16.1
28	46.4	55	70	61	125	45	2.3	12.8
29	36.1	53	142	117	195	127	3.7	28.6
30	48.3	58	269	254	327	80	5.6	18.5
31	53.4	49	111	98	160	67	3.3	12.4
32	41.5	80	154	119	234	180	2.9	23.9
33								
34								
35	38.3	72	73	64	145	45	2	22.3
36	46.5	57	153	144	210	45	3.7	25.2
37								
38	51.7	56	96	81	152	75	1.6	10.4
39	36	26	125	111	150	76	5.8	39.7
40	56.3	48	82	73	130	46	2.7	11.1
41	46.2	44	148	129	192	93	4.4	18.9
42	52	35	116	93	151	111	4.3	14.9
43								
44	23.9	52	134	114	186	100	3.5	29.7
45	38.2	81	134	118	215	85	2.7	28.3
46	58.7	49	100	84	149	85	3	9.3
47								
48								
49	44.1	52	171	157	223	71	4.3	20.4
50								
51	36.3	84	60	49	144	57	1.7	31.7
52	46	72	81	69	153	61	2.1	8.2
53	44.6	55	129	184	249	46	4.5	18.3
54								
55	42.7	82	64	55	146	45	1.8	22.3

EXHIBIT 2

	Subject	Age	VO2	BF%	BMI	Ht	Wt	Gender	HDL	Non-HDL	LDL	TC	Trig	TC/HDL	Lean Mass	ABS VO2		delta wt	
Post	1	29	53.8	22.2	25.54	70	178	M	56	156	144	212	62	3.8	62.95	4.35		10	
	2	32	49.6	20	24.82	71	178	M	51	103	89	154	66	3	64.73	4.01		53	
	3	45	31.5	33.4	31.18	77	263	M	32	163	126	195	184	6.1	79.62	3.77		-3	
	4	26	47.7	17.2	22.30	65	134	F	76	98	84	174	70	2.3	50.43	2.91		6	
	5	35	44.9	22.6	24.29	65	146	F	57	100	86	157	67	2.8	51.37	2.98		11	
	6	24	45	20.1	20.22	68	133	F	57	79	91	148	60	2.6	48.30	2.72		5	
	7	43	51.9	15.2	22.15	69	150	M	46	90	80	136	52	2.9	57.82	3.54		2	
	8	48	24.3	42.3	35.24	67	225	F	45	83	62	128	104	2.8	59.01	2.49		14	
	10	28	42.2	19.7	24.90	67	159	F	75	101	86	176	76	2.3	58.04	3.05		15	
	11	39	55.9	10.9	24.96	71	179	M	40	135	126	175	45	4.4	72.50	4.55		4	
	12	34	51.9	9.8	28.40	66	176	M	65	187	171	252	79	3.9	72.16	4.15		7	
	13	38	48.3	25.5	24.87	62	136	F	100	137	116	237	92	2.4	46.05	2.99		-1	
	14	31	43.4	17.6	19.14	60	98	F	66	84	71	150	62	2.3	36.71	1.93		0	
	15	45	53.6	25.6	26.54	70	185	M	49	196	179	245	89	5	62.56	4.51		6	
	16	31	60	11.5	25.19	76	207	M	31	81	72	112	45	3.6	83.27	5.65		29	
	17	26	31.6	15.2	19.63	65	118	F	70	133	117	203	84	2.9	45.48	1.69		3	
	18	32	44.4	13.5	23.96	67	153	F	84	66	73	150	45	1.8	60.16	3.09		-15	
	19	33	44	20.8	21.63	64	126	F	96	111	92	201	68	2.1	45.36	2.52		3	
	20	37	48.5	22.7	25.69	68	169	M	41	185	163	226	106	5.5	59.38	3.73		11	
	21	29	47.3	17	23.00	64	134	F	96	139	124	235	74	2.4	50.55	2.88		-2	
	23	41	40.5	16	27.66	72	204	M	47	123	111	170	61	3.6	77.89	3.76		-1	
	24	33	44	25.2	25.39	68	167	M	49	93	73	142	51	2.9	56.78	3.34		10	
	25	32	36.9	30.2	28.32	60	145	F	71	124	111	195	66	2.7	46.00	2.43		-2	
	27	30	46.7	16.1	26.52	73	201	M	48	69	60	117	45	2.4	76.65	4.27		10	
	28	36	46.4	12.8	20.68	68	136	F	55	70	61	125	45	2.3	53.91	2.87		2	
	29	32	36.1	28.6	25.66	66	159	F	53	142	117	195	127	3.7	51.60	2.61		3	
	30	32	48.3	18.5	32.10	67	205	M	58	269	254	327	80	5.6	75.94	4.50		5	
	31	29	53.4	12.4	24.82	71	178	M	49	111	98	160	67	3.3	70.88	4.32		6	
	32	31	41.5	23.9	24.12	67	154	F	80	154	119	234	180	2.9	53.27	2.91		4	
	35	26	38.3	22.3	28.41	70	198	M	72	73	64	145	45	2	69.93	3.45		11	
	36	27	46.5	25.2	28.48	72	210	M	57	153	144	210	45	3.7	71.40	4.44		8	
	38	25	51.7	10.4	24.82	71	178	M	56	96	81	152	75	1.6	72.49	4.18		-2	
	39	26	36	39.7	35.54	60	182	F	26	125	111	150	76	5.8	49.88	2.98		8	
	40	29	56.3	11.1	28.84	70	201	M	48	82	73	130	46	2.7	81.22	5.14		11	
	41	24	46.2	18.9	28.76	74	224	M	44	148	129	192	93	4.4	82.57	4.70		22	
	42	48	52	14.9	26.15	68	172	M	35	116	93	151	111	4.3	66.53	4.07		7	
	44	28	23.9	29.7	23.08	66	143	F	52	134	114	186	100	3.5	45.70	1.55		6	
	45	22	38.2	28.3	25.74	64	150	F	81	134	118	215	85	2.7	48.89	2.60		5	
	46	21	58.7	9.3	26.30	68	173	M	49	100	84	149	85	3	71.32	4.62		5	
	49	39	44.1	20.4	22.20	68	146	M	52	171	157	223	71	4.3	52.83	2.93		8	
	51	28	36.3	31.7	25.68	67	164	F	84	60	49	144	57	1.7	50.91	2.71		10	
	52	39	46	8.2	20.42	64	119	F	72	81	69	153	61	2.1	49.66	2.49		4	
	55	42	42.7	22.3	30.21	73	229	M	82	64	55	146	45	1.8	80.88	4.44		0	
	Mean	32.67	44.90	20.44	25.66	67.88	169.42		59.37	119.05	104.58	178.53	75.51	3.21	61.01	3.46		mean	6.930233 3.150106
	MIN	21.00	23.90	8.20	19.14	60	98		26	60	49	112	45	1.60	36.71	1.55		SD	7.155503 3.252501
	25th quartile	28.00	41.00	15.05	23.52	65.50	145.50		48.00	83.50	73.00	148.50	54.50	2.35	50.49	2.79		SEM	1.078733 0.490333
	50th quartile	32.00	46.00	20.00	25.39	68.00	169.00		56.00	111.00	93.00	170.00	68.00	2.90	59.01	3.34			
	75th quartile	37.50	50.65	25.20	27.99	70.50	191.50		72.00	140.50	121.50	206.50	85.00	3.75	71.78	4.29			
	MAX	48.00	60.00	42.30	35.54	77	263		100	269	254	327	184	6.10	83.27	5.65			
	SD	6.95	8.20	7.96	3.70	3.94	34.40		18.15	42.96	40.02	44.12	31.34	1.16	12.67	0.95			
	SEM	1.06	1.25	1.21	0.56	0.60	5.25		2.77	6.55	6.10	6.73	4.78	0.18	1.93	0.15			
	P values		**0.00000000926**	**0.00000000010**	**0.00001482298**		**0.00003064623**		0.53425183451	**0.00513439258**	**0.00437911243**	**0.04717758360**	0.55035999785	**0.02684975529**	**0.20000000000**	**0.00001000000**			
	Males															4.19			
	Females															2.62			

mean 6.93
SD #DIV/0!
SEM

Exhibit D

Facsimile: (212) 751-4864

Attorneys for Plaintiff CrossFit, Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CROSSFIT, INC., a Delaware corporation,

Plaintiff,

v.

NATIONAL STRENGTH AND CONDITIONING ASSOCIATION, a Colorado corporation,

Defendant.

CASE NO. 3:14-cv-01191-JLS-KSC

DECLARATION OF [redacted]

I, [redacted], hereby declare as follows:

1. I am over the age of 18 years and am not a party to the above-captioned case. I live in Columbus, Ohio. Each of the facts set forth in the following declaration is true to my personal knowledge.
2. I work at the Ohio Fit Club, a CrossFit affiliate in Columbus, Ohio. In 2012, I was the study coordinator for a study that researchers from Ohio State University ("OSU") did involving a fitness program at the Ohio Fit Club. The program, referred to as "The Challenge," began on January 16, 2012 and ended in late March.
3. As part of the study, I assigned each individual who participated in the study a unique participant number.
4. Attached as Exhibit 1 to this declaration is a true and correct copy of an email I sent to Michael Smith, one of the OSU researchers, on April 1, 2012. This email contains a list that matches up each participant's name with that person's participant number. The left-hand column lists the study numbers (with the prefix "FC," which stands for "Fit Club"). The right-hand column lists

the corresponding person's name.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 1/8, 2015 ~~2014~~

Columbus, Ohio

[redacted]

ATTORNEYS AT LAW
NEW YORK

CASE NO. 3:14-CV-01191 –JLS-KSC
DECLARATION OF [redacted]

EXHIBIT 1

From: [redacted] [redacted]>
Date: Sun, Apr 1, 2012 at 4:31 AM
Subject: FC Challenge #s
To: Mike Smith <smith.7685@osu.edu>

Here are the numbers to each individual who participated:

Control 1
Control 2
FC01
FC02
FC03
FC04
FC05
FC06
FC07
FC08
FC09
FC10
FC11
FC12
FC13
FC14
FC15
FC16
FC17
FC18
FC19
FC20
FC21
FC22
FC23
FC24
FC25
FC26
FC27 [redacted]

FC28
FC29
FC30
FC31
FC32
FC33
FC34
FC35
FC36
FC37
FC38
FC39
FC40
FC41
FC42
FC43
FC44
FC45
FC46
FC47
FC48
FC49
FC50
FC51
FC52
FC53
FC54
FC55
FC56

Exhibit E

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Attorneys for Plaintiff CrossFit, Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CROSSFIT, INC., a Delaware corporation,

Plaintiff,

v.

NATIONAL STRENGTH AND CONDITIONING ASSOCIATION, a Colorado corporation,

Defendant.

CASE NO. 3:14-cv-01191-JLS-KSC

DECLARATION OF [redacted]

I, [redacted] hereby declare as follows:

1. I am over the age of 18 years and am not a party to the above-captioned case. I live in Columbus, Ohio. Each of the facts set forth in the following declaration is true to my personal knowledge.

2. In January 2012, I began a fitness program at the Ohio Fit Club, a CrossFit affiliate in Columbus, Ohio. The program, referred to as "The Challenge," began on January 16, 2012 and ended in late March.

3. I agreed to participate in a research study in connection with The Challenge. As part of the study, I went to a lab at Ohio State University and underwent testing before The Challenge began. That testing related to my body composition and aerobic capacity.

4. I understand that the study called for participants to undergo the same tests, again at Ohio State University, after completing The Challenge. However, I did not complete The Challenge or participate in the second round of testing because I was suffering from a health condition that was exacerbated by any physical activity. My health condition was not caused by my participation in The Challenge or CrossFit, and in fact predated my involvement with CrossFit.

5. To the best of my recollection, I had no communications with anyone from Ohio State University about my reason for not completing The Challenge or participating in the second round of testing.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on: November 17, 2014

Columbus, Ohio

[redacted]

Exhibit F

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Attorneys for Plaintiff CrossFit, Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CROSSFIT, INC., a Delaware corporation,

Plaintiff,

v.

NATIONAL STRENGTH AND CONDITIONING ASSOCIATION, a Colorado corporation,

Defendant.

CASE NO. 3:14-cv-01191-JLS-KSC

DECLARATION OF [redacted]

I, [redacted] hereby declare as follows:

1. I am over the age of 18 years and am not a party to the above-captioned case. I live in Columbus, Ohio. Each of the facts set forth in the following declaration is true to my personal knowledge.

2. In January 2012, I began a fitness program at the Ohio Fit Club, a CrossFit affiliate in Columbus, Ohio. The program, referred to as "The Challenge," began on January 16, 2012 and ended in late March.

3. I agreed to participate in a research study in connection with The Challenge. As part of the study, I went to a lab at Ohio State University and underwent testing before The Challenge began. That testing related to my body composition and aerobic capacity.

4. I understand that the study called for participants to undergo the same tests, again at Ohio State University, after completing The Challenge. However, I did not complete The Challenge or participate in the second round of testing because I injured my back. I sustained this injury while lifting, but this lifting was not a part of The Challenge. I have remained involved with the Ohio Fit Club and currently exercise there on a regular basis.

5. I do not recall communicating with anyone from Ohio State University about my reason for not completing The Challenge or participating in the second round of testing.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on: 11/13, 2014

Columbus, Ohio

[redacted]

Exhibit G

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Attorneys for Plaintiff CrossFit, Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CROSSFIT, INC., a Delaware corporation,

Plaintiff,

v.

NATIONAL STRENGTH AND CONDITIONING ASSOCIATION, a Colorado corporation,

Defendant.

CASE NO. 3:14-cv-01191-JLS-KSC

DECLARATION OF [redacted]

I [redacted] hereby declare as follows:

1. I am over the age of 18 years and am not a party to the above-captioned case. I live in Columbus, Ohio. Each of the facts set forth in the following declaration is true to my personal knowledge.

2. Starting in January 2012, I participated in a fitness program at the Ohio Fit Club, a CrossFit affiliate in Columbus, Ohio. The program, referred to as "The Challenge," began on January 16, 2012 and ended in late March.

3. I agreed to participate in a research study in connection with The Challenge. As part of the study, I went to a lab at Ohio State University and underwent testing before The Challenge began. That testing related to my body composition and aerobic capacity.

4. After completing The Challenge, I went to a lab at Ohio State University for a second round of testing. Attached hereto as Exhibit 1 is a true and correct copy of the test results I received after participating in the second round of testing on March 23, 2012.

5. I complete The Challenge without suffering any injury, and I did not tell anyone that I suffered "overuse or injury" in connection with, or during the time period of, the Challenge."

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on: 11/13, 2014

Columbus, Ohio

[redacted]

EXHIBIT 1

BOD POD® Body Composition Tracking System Analysis

OHIO STATE UNIVERSITY

SES - BODY COMPOSITION LAB
COLUMBUS, OH

SUBJECT INFORMATION	
NAME	[redacted]
AGE	34
GENDER	Female
HEIGHT	65.5 in
ID_1	
ID_2	
ETHNICITY	General Population
OPERATOR	Mike
TEST DATE	March 23, 2012
TEST NUMBER	2296

BODY COMPOSITION RESULT		
% FAT	13.7	%
% FAT FREE MASS	86.3	%
FAT MASS	19.046	lb
FAT FREE MASS	119.936	lb
BODY MASS	138.982	lb
BODY VOLUME	59.055	L
BODY DENSITY	1.0675	kg/L
THORACIC GAS VOLUME	3.265	L

TEST PROFILE	
DENSITY MODEL	Siri
THORACIC GAS VOLUME MODEL	Predicted

OPERATOR COMMENTS

Body Fat: A certain amount of fat is absolutely necessary for good health. Fat plays an important role in protecting internal organs, providing energy, and regulating hormones. The minimal amount of "essential fat" is approximately 3-5% for men, and 12-15% for women. If too much fat accumulates over time, health may be compromised (see table below).

Fat Free Mass: Fat free mass is everything except fat. It includes muscle, water, bone, and internal organs. Muscle is the "metabolic engine" of the body that burns calories (fat) and plays an important role in maintaining strength and energy. Healthy levels of fat-free mass contribute to physical fitness and may prevent conditions such as osteoporosis.

BOD POD Body Fat Rating Table*

**Applies to adults ages 18 and older. Based on information from the American College of Sports Medicine, the American Council on Exercise, Exercise Physiology (4th Ed.) by McArdle, Katch, and Katch, and various scientific and epidemiological studies.*

	BODY FAT RATING	FEMALE	EXPLANATION
☐	Risky (high body fat)	> 40%	Ask your health care professional about how to safely modify your body composition.
☐	Excess Fat	30.1 - 40%	Indicates an excess accumulation of fat over time.
☐	Moderately Lean	22.1 - 30%	Fat level is generally acceptable for good health.
☐	Lean	18.1 - 22%	Lower body fat levels than many people. This range is generally excellent for health and longevity.
☐	Ultra Lean	15 - 18%	Fat levels often found in elite athletes.
X	Risky (low body fat)	< 15%	Ask your health care professional about how to safely modify your body composition.

ENERGY EXPENDITURE RESULTS

Est. Resting Metabolic Rate (RMR) kcal/day	*Est. Total Energy Expenditure (TEE) kcal/day	Daily Activity Level
1438	1783	Sedentary
	2186	Low Active
	2502	Active
	2977	Very Active
(See RMR Info Sheet for additional info)	*Est. TEE = Est. RMR x Daily Activity Level	

Applies to adults ages 18 and older. Based on information from the Institute of Medicine (2002), Dietary Reference Intakes For Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, And Amino Acids, Part I, pp93-206. Washington, D.C., National Academy of Sciences.

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LIPID TESTING RESULTS
March 23rd, 2012

Subject Information
Name: [redacted]
DOB: 7.20.77
Height:
Weight:

Lipid Panel	Measured	Optimal
High density lipoprotein (HDL)	67	Above 60 mg/dL
Non-HDL cholesterol	83	Below 130 mg/dL
Low density lipoprotein (LDL)	55	Below 130 mg/dL
Total cholesterol (TC)	150	Below 200 mg/dL
Triglycerides	141	Below 150 mg/dL
TC/HDL	2.2	Below 4:1

Total cholesterol

Below 200 mg/dL	Optimal
200-239 mg/dL	Borderline
Above 240 mg/dL	High

High density lipoprotein

Below 40 mg/dL (men) Below 50 mg/dL (women)	Low
50-59 mg/dL	Acceptable
Above 60 mg/dL	Optimal

Low density lipoprotein

Below 70 mg/dL	Optimal (heart disease patient)
100-129 mg/dL	Optimal (normal population)
130-159 mg/dL	Borderline high
160-189 mg/dL	High
Above 190 mg/dL	Very high

Triglycerides

Below 150 mg/dL	Optimal
150-199 mg/dL	Borderline high
200-499 mg/dL	High
Above 500 mg/dL	Very high

Exhibit H

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CROSSFIT, INC., a Delaware corporation,

Plaintiff,

v.

NATIONAL STRENGTH AND CONDITIONING ASSOCIATION, a Colorado corporation,

Defendant.

CASE NO. 3:14-cv-01191-JLS-KSC

DECLARATION OF [redacted]

I, [redacted], hereby declare as follows:

1. I am over the age of 18 years and am not a party to the above-captioned case. My maiden name was [redacted] but it is now [redacted]. I live in Columbus, Ohio. Each of the facts set forth in the following declaration is true to my personal knowledge.

2. Starting in January 2012, I participated in a fitness program at the Ohio Fit Club, a CrossFit affiliate in Columbus, Ohio. The program, referred to as "The Challenge," began on January 16, 2012 and ended in late March.

3. I agreed to participate in a research study in connection with The Challenge. As part of the study, I went to a lab at Ohio State University and underwent testing before The Challenge began. That testing related to my body composition and aerobic capacity.

4. After completing The Challenge, I went to a lab at Ohio State University for a second round of testing. Attached hereto as Exhibit 1 is a true and correct copy of the test results I received after participating in the second round of testing on March 21, 2012.

5. I completed The Challenge without suffering any injury, and I did not tell anyone that I suffered "overuse or injury" in connection with, or during the time period of, the Challenge."

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on: Nov. 14, 2014

Columbus, Ohio

[redacted]

EXHIBIT 1

BOD POD® Body Composition Tracking System Analysis

OHIO STATE UNIVERSITY

SES - BODY COMPOSITION LAB

COLUMBUS, OH

SUBJECT INFORMATION	
NAME	[redacted]
AGE	24
GENDER	Female
HEIGHT	65.0 in
ID_1	
ID_2	
ETHNICITY	General Population
OPERATOR	allan
TEST DATE	March 21, 2012
TEST NUMBER	2276

BODY COMPOSITION RESULT		
% FAT	18.3	%
% FAT FREE MASS	81.7	%
FAT MASS	23.568	lb
FAT FREE MASS	104.978	lb
BODY MASS	128.546	lb
BODY VOLUME	55.167	L
BODY DENSITY	1.0569	kg/L
THORACIC GAS VOLUME	3.188	L

TEST PROFILE	
DENSITY MODEL	Siri
THORACIC GAS VOLUME MODEL	Predicted

OPERATOR COMMENTS

Body Fat: A certain amount of fat is absolutely necessary for good health. Fat plays an important role in protecting internal organs, providing energy, and regulating hormones. The minimal amount of "essential fat" is approximately 3-5% for men, and 12-15% for women. If too much fat accumulates over time, health may be compromised (see table below).

Fat Free Mass: Fat free mass is everything except fat. It includes muscle, water, bone, and internal organs. Muscle is the "metabolic engine" of the body that burns calories (fat) and plays an important role in maintaining strength and energy. Healthy levels of fat-free mass contribute to physical fitness and may prevent conditions such as osteoporosis.

BOD POD Body Fat Rating Table*

**Applies to adults ages 18 and older. Based on information from the American College of Sports Medicine, the American Council on Exercise, Exercise Physiology (4th Ed.) by McArdle, Katch, and Katch, and various scientific and epidemiological studies.*

	BODY FAT RATING	FEMALE	EXPLANATION
	Risky (high body fat)	> 40%	Ask your health care professional about how to safely modify your body composition.
	Excess Fat	30.1 - 40%	Indicates an excess accumulation of fat over time.
	Moderately Lean	22.1 - 30%	Fat level is generally acceptable for good health.
X	Lean	18.1 - 22%	Lower body fat levels than many people. This range is generally excellent for health and longevity.
	Ultra Lean	15 - 18%	Fat levels often found in elite athletes.
	Risky (low body fat)	< 15%	Ask your health care professional about how to safely modify your body composition.

ENERGY EXPENDITURE RESULTS

Est. Resting Metabolic Rate (RMR) kcal/day	*Est. Total Energy Expenditure (TEE) kcal/day	Daily Activity Level
1272	1577	Sedentary
	1933	Low Active
	2213	Active
	2633	Very Active
(See RMR Info Sheet for additional info)	*Est. TEE = Est. RMR x Daily Activity Level	

Applies to adults ages 18 and older. Based on information from the Institute of Medicine (2002), Dietary Reference Intakes For Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, And Amino Acids, Part I, pp93-206. Washington, D.C., National Academy of Sciences.

53

LIPID TESTING RESULTS
March 21st, 2012

Subject Information
Name: [redacted]
DOB: _____
Height: _____
Weight: _____

Lipid Panel	Measured	Optimal
High density lipoprotein (HDL)	55	Above 60 mg/dL
Non-HDL cholesterol	129	Below 130 mg/dL
Low density lipoprotein (LDL)	184	Below 130 mg/dL
Total cholesterol (TC)	249	Below 200 mg/dL
Triglycerides	46	Below 150 mg/dL
TC/HDL	4.5	Below 4:1

Total cholesterol

Below 200 mg/dL	Optimal
200-239 mg/dL	Borderline
Above 240 mg/dL	High

High density lipoprotein

Below 40 mg/dL (men) Below 50 mg/dL (women)	Low
50-59 mg/dL	Acceptable
Above 60 mg/dL	Optimal

Low density lipoprotein

Below 70 mg/dL	Optimal (heart disease patient)
100-129 mg/dL	Optimal (normal population)
130-159 mg/dL	Borderline high
160-189 mg/dL	High
Above 190 mg/dL	Very high

Triglycerides

Below 150 mg/dL	Optimal
150-199 mg/dL	Borderline high
200-499 mg/dL	High
Above 500 mg/dL	Very high

Exhibit I

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Attorneys for Plaintiff CrossFit, Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CROSSFIT, INC., a Delaware corporation,

Plaintiff,

v.

NATIONAL STRENGTH AND CONDITIONING ASSOCIATION, a Colorado corporation,

Defendant.

CASE NO. 3:14-cv-01191-JLS-KSC

DECLARATION OF [redacted]

I, [redacted], hereby declare as follows:

1. I am over the age of 18 years and am not a party to the above-captioned case. I am commonly called by my middle name as either [redacted] or [redacted]. I live in Columbus, Ohio. Each of the facts set forth in the following declaration is true to my personal knowledge.

2. Starting in January 2012, I participated in a fitness program at the Ohio Fit Club, a CrossFit affiliate in Columbus, Ohio. The program, referred to as "The Challenge," began on January 16, 2012 and ended in late March.

3. I agreed to participate in a research study in connection with The Challenge. As part of the study, I went to a lab at Ohio State University and underwent testing before The Challenge began. That testing related to my body composition and aerobic capacity.

4. After completing The Challenge, I went to a lab at Ohio State University for a second round of testing. At this second testing, I underwent a body composition test. However, I did not undergo the test related to aerobic capacity because I had to leave the testing early in order to get to a work meeting on time.

5. My reason for not undergoing the aerobic capacity test during the second round of testing was not "overuse or injury." Moreover, I did not suffer

any injury during The Challenge and I did not tell anyone that the reason I did not undergo the second aerobic capacity test was because of "overuse or injury."

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on: 11/15, 2014

Columbus, Ohio

[redacted]

Exhibit J

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Attorneys for Plaintiff CrossFit, Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CROSSFIT, INC., a Delaware corporation,

Plaintiff,

v.

NATIONAL STRENGTH AND CONDITIONING ASSOCIATION, a Colorado corporation,

Defendant.

CASE NO. 3:14-cv-01191-JLS-KSC

DECLARATION OF [redacted]

I, [redacted], hereby declare as follows:

1. I am over the age of 18 years and am not a party to the above-captioned case. I live in Columbus, Ohio. Each of the facts set forth in the following declaration is true to my personal knowledge.

2. In January 2012, I participated in a fitness program at the Ohio Fit Club, a CrossFit affiliate in Columbus, Ohio. The program, referred to as "The Challenge," began on January 16, 2012 and ended in late March.

3. I agreed to participate in a research study in connection with The Challenge. As part of the study, I went to a lab at Ohio State University and underwent testing before The Challenge began. That testing related to my body composition and aerobic capacity.

4. I understand that the study called for participants to undergo the same tests, again at Ohio State University, after completing The Challenge. However, although I completed The Challenge, I did not participate in the second round of testing because I was unavailable during the times the testing was scheduled due to work and personal commitments.

5. My reason for not participating in the second round of testing was not "overuse or injury." Moreover, I did not suffer any injury during The Challenge and I did not tell anyone that the reason I did not participate in the second round of testing was because of "overuse or injury."

6. I had no communications with anyone from Ohio State University about my reason for not participating in the second round of testing.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on: Nov. 21, 2014

Columbus, Ohio

[redacted]

Exhibit K

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Attorneys for Plaintiff CrossFit, Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CROSSFIT, INC., a Delaware corporation,

Plaintiff,

v.

NATIONAL STRENGTH AND CONDITIONING ASSOCIATION, a Colorado corporation,

Defendant.

CASE NO. 3:14-cv-01191-JLS-KSC

DECLARATION OF [redacted]

I, [redacted], hereby declare as follows:

1. I am over the age of 18 years and am not a party to the above-captioned case. My maiden name was [redacted], but it is now [redacted]. I live in Naples, Florida. Each of the facts set forth in the following declaration is true to my personal knowledge.

2. Starting in January 2012, I participated in a fitness program at the Ohio Fit Club, a CrossFit affiliate in Columbus, Ohio. The program, referred to as "The Challenge," began on January 16, 2012 and ended in late March.

3. I agreed to participate in a research study in connection with The Challenge. As part of the study, I went to a lab at Ohio State University and underwent testing before The Challenge began. That testing related to my body composition and aerobic capacity.

4. I understand that the study called for participants to undergo the same tests, again at Ohio State University, after completing The Challenge. However, I did not participate in the second round of testing because I moved to Florida before the end of The Challenge.

5. My reason for not participating in the second round of testing was not "overuse or injury." Moreover, I did not suffer any injury during The Challenge and I did not tell anyone that the reason I did not participate in the second round of testing was because of "overuse or injury."

6. I had no communications with anyone from Ohio State University about my reason for not participating in the second round of testing.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on: 10-20, 2014

Naples, Florida.

[redacted]

Exhibit L

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Attorneys for Plaintiff CrossFit, Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CROSSFIT, INC., a Delaware corporation,

Plaintiff,

v.

NATIONAL STRENGTH AND CONDITIONING ASSOCIATION, a Colorado corporation,

Defendant.

CASE NO. 3:14-cv-01191-JLS-KSC

DECLARATION OF [redacted]

I, [redacted] hereby declare as follows:

1. I am over the age of 18 years and am not a party to the above-captioned case. I live in Hilliard, Ohio. Each of the facts set forth in the following declaration is true to my personal knowledge.

2. In January 2012, I began a fitness program at the Ohio Fit Club, a CrossFit affiliate in Columbus, Ohio. The program, referred to as "The Challenge," began on January 16, 2012 and ended in late March.

3. I agreed to participate in a research study in connection with The Challenge. As part of the study, I went to a lab at Ohio State University and underwent testing before The Challenge began. That testing related to my body composition and aerobic capacity.

4. I understand that the study called for participants to undergo the same tests, again at Ohio State University, after completing The Challenge. However, I did not complete The Challenge or participate in the second round of testing because I had work-related time commitments that conflicted with completing The Challenge.

5. My reason for not completing The Challenge or participating in the second round of testing was not "overuse or injury." Moreover, I did not suffer any injury during The Challenge and I did not tell anyone that the reason I did not

complete The Challenge or participate in the second round of testing was because of "overuse or injury."

6. I had no communications with anyone from Ohio State University about my reason for not completing The Challenge or participating in the second round of testing.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on: NOV 17, 2014

Columbus, Ohio.

[redacted]

Exhibit M

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Attorneys for Plaintiff CrossFit, Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CROSSFIT, INC., a Delaware corporation,

Plaintiff,

v.

NATIONAL STRENGTH AND CONDITIONING ASSOCIATION, a Colorado corporation,

Defendant.

CASE NO. 3:14-cv-01191-JLS-KSC

DECLARATION OF [redacted]

I, [redacted] hereby declare as follows:

1. I am over the age of 18 years and am not a party to the above-captioned case. I live in Columbus, Ohio. Each of the facts set forth in the following declaration is true to my personal knowledge.

2. I was a coach at the Ohio Fit Club, a CrossFit affiliate in Columbus, Ohio, from January 1, 2012 to April 2014.

3. I understand that a program, referred to as "The Challenge," began at the Ohio Fit Club in January 2012. I also am aware that a research study was done in connection with The Challenge, and that participants in the study went to a lab at Ohio State University and underwent testing before The Challenge began.

4. I did not participate in The Challenge. However, I went to the Ohio State University lab in January 2012 for testing related to my body composition and aerobic capacity because I was interested in how I would perform on those tests.

5. I did not participate in a second round of testing, as I had not been participating in The Challenge, and my curiosity had been satisfied by the first round of testing.

6. My reason for not participating in The Challenge or the second round of testing was not "overuse or injury" and I did not tell anyone that the reason I did not participate in The Challenge or the second round of testing was because of

"overuse or injury." Moreover, I did not suffer any injury during the time period The Challenge took place. In fact, I was training for the CrossFit Regional Games Competition during The Challenge and participated in them in May of 2012.

7. I had no communications with anyone from Ohio State University about my reason for not participating in The Challenge or the second round of testing.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on: NOV 13, 2014

Columbus, Ohio

[redacted]

Exhibit N

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Attorneys for Plaintiff CrossFit, Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CROSSFIT, INC., a Delaware corporation,

Plaintiff,

v.

NATIONAL STRENGTH AND CONDITIONING ASSOCIATION, a Colorado corporation,

Defendant.

CASE NO. 3:14-cv-01191-JLS-KSC

DECLARATION OF [redacted]

I, [redacted] hereby declare as follows:

1. I am over the age of 18 years and am not a party to the above-captioned case. I live in Columbus, Ohio. Each of the facts set forth in the following declaration is true to my personal knowledge.

2. I have been a coach at the Ohio Fit Club, a CrossFit affiliate in Columbus, Ohio since 2010.

3. I understand that a program, referred to as "The Challenge," began at the Ohio Fit Club in January 2012. I also am aware that a research study was done in connection with The Challenge, and that participants in the study went to a lab at Ohio State University and underwent testing before The Challenge began.

4. I did not participate in The Challenge. However, I went to the Ohio State University lab in January 2012 for testing related to my body composition and aerobic capacity because I was interested in how I would perform on those tests.

5. I did not participate in a second round of testing, as I had not been participating in The Challenge, and my curiosity had been satisfied by the first round of testing.

6. My reason for not participating in The Challenge or the second round of testing was not "overuse or injury" and I did not tell anyone that the reason I did not participate in The Challenge or the second round of testing was because of

"overuse or injury." Moreover, I did not suffer any injury during the time period The Challenge took place. In fact, I was training for the CrossFit Regional Games Competition during the time period of The Challenge and participated in them in May of 2012.

7. I had no communications with anyone from Ohio State University about my reason for not participating in The Challenge or the second round of testing.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on: NOV. 13, 2014

Columbus, Ohio

[redacted]