

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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KENNETH J. SILVER, et al. :

v.

L.A. FITNESS INTERNATIONAL,  
LLC  
\_\_\_\_\_

JOSHUA VAUGHN

v.

L.A. FITNESS INTERNATIONAL,  
LLC  
\_\_\_\_\_

AMALIA SIBLE

v.

L.A. FITNESS INTERNATIONAL,  
LLC  
\_\_\_\_\_

CIVIL ACTION

Case No. 10-cv-2326-MMB

Case No. 11-cv-2644-MMB

Case No. 13-cv-0255-MMB

FILED  
MICHAEL J. ...

**[REDACTED] ORDER PRELIMINARILY APPROVING THE  
SETTLEMENT, DIRECTING THE ISSUANCE OF NOTICE,  
AND SCHEDULING A SETTLEMENT FAIRNESS HEARING**

**WHEREAS:**

A. Plaintiffs Kenneth J. Silver, Joshua Vaughn, Lori C. Bohn, Sharon N. Lockett, Justin P. Bronzell, and Amalia Sible (collectively, "Plaintiffs") and Defendant L.A. Fitness International, LLC. ("Defendant," "LAF," or "the Company") (collectively, the "Settling Parties") have entered into a National Class Action Settlement and Release dated March 6, 2013 (the "Stipulation") in full and final settlement of each and every Released Claim against LAF, the terms of which are set forth in the Settlement;

B. Plaintiffs have submitted an unopposed motion, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for an Order preliminarily approving the Settlement in accordance with the terms of the Stipulation and directing for notice of the proposed Settlement to be given to the Settlement Classes; and

C. The Court, having read and considered the Stipulation and exhibits thereto, including the proposed: (i) Long Form Notice to the Class; (ii) Summary Notice; and (iii) Proof of Claim; and Plaintiffs' Memorandum in support of their unopposed Motion for Preliminary Approval of the Settlement, and finding that substantial and sufficient grounds exist for entering this Order.

**NOW, THEREFORE, IT IS HEREBY ORDERED:**

1. For purposes of this Order, the Court adopts all defined terms as set forth in the Stipulation. Any inconsistencies between the Stipulation and the Long Form Notice approved herein will be controlled by the language of the Stipulation. A copy of the Stipulation is attached as Exhibit "1" and incorporated herewith.
2. The proposed Settlement, as set forth in the Stipulation, is preliminarily approved as fair, reasonable and adequate.
3. The Court hereby preliminarily certifies this action to proceed as a class action for purposes of the Settlement only, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of a class of all Individuals who cancelled their Monthly Dues Membership Agreement with L.A. Fitness during the Class Period of May 18, 2006 to January 1, 2013 (the "Settlement Class"). The Settlement Class excludes persons who entered into a Monthly Dues Membership Agreement in California. The Settlement Class also excludes the members of the New Jersey Class Action Settlement.

4. The Court hereby preliminary certifies, pursuant to Fed. R. Civ. P. 23(c)(5), for the purposes of the Settlement only, a subclass of all Settlement Class Members: (a) who entered into a Monthly Dues Membership Agreement with L.A. Fitness in any state other than California, Pennsylvania or New Jersey during the Subclass “A” Period<sup>1</sup> for their respective state, and (b) who paid for an additional month of dues via an Electronic Fund Transfer or Credit Card charge (not including the application of prepaid last month dues) after L.A. Fitness received and processed a Notice of Cancellation; and (c) this payment of an additional month of dues was not subsequently refunded (“Subclass A”).

5. The Court hereby preliminary certifies, pursuant to Fed. R. Civ. P. 23(c)(5), for the purposes of the Settlement only, a subclass of all Settlement Class Members: (a) who cancelled their Monthly Dues Membership Agreement with L.A. Fitness and (b) who claim that L.A. Fitness did not timely process their Notice of Cancellation resulting in additional charges for Monthly Dues that were not subsequently refunded (“Subclass B”).

6. The Court preliminarily finds, for settlement purposes only, that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class and Subclasses; (c) the claims of Plaintiffs are typical of the claims of the Settlement Class and

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<sup>1</sup> The Subclass A Period for each state is as follows: **Florida:** March 4, 2007 to January 1, 2013; **Washington:** October 12, 2007 to January 1, 2013; **Texas:** October 17, 2010 to January 1, 2013; **Michigan and Minnesota:** January 1, 2007 to January 1, 2013; **Massachusetts:** January 1, 2009 to January 1, 2013; **Connecticut, District of Columbia, Illinois, Maryland, New York, and Wisconsin:** January 1, 2010 to January 1, 2013; **Georgia, Indiana, Kentucky, Ohio, and Virginia:** January 1, 2011 to January 1, 2013; **Arizona and Oregon:** January 1, 2012 to January 1, 2013.

Subclasses they seek to represent; (d) Plaintiffs and Plaintiffs' Counsel have and will fairly and adequately represent the interests of the Settlement Class and Subclasses; (e) the questions of law and fact common to the members of the Settlement Class and Subclasses predominate over any questions affecting only individual members of these classes; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

7. The Court preliminarily finds and concludes that pursuant to Rule 23 of the Federal Rules of Civil Procedure and for purposes of settlement only, Plaintiffs are adequate representatives of the Settlement Class and Subclasses, and certifies them as representatives for the Settlement Classes.

8. Plaintiffs' Counsel is authorized to act on behalf of the Settlement Class and Subclasses with respect to all acts required by, or which may be undertaken pursuant to, the Stipulation or such other acts that are reasonably necessary to consummate the proposed Settlement set forth in the Stipulation.

9. The Settlement Fairness Hearing shall be held before this Court on June 13, 2013 at 1:30 p.m. at the United States District Court for the Eastern District of Pennsylvania, United States Courthouse, 601 Market Street, Courtroom 3A, Philadelphia, Pennsylvania 19106 ("Settlement Hearing") to determine:

- a. Whether this Action should be finally certified as a class action under Rules 23(a) and (b) of the Federal Rules of Civil Procedure for settlement purposes only;
- b. Whether the proposed Settlement, on the terms and conditions provided for in the Stipulation, is fair, reasonable, and adequate and should be approved;
- c. Whether the Released Claims against Defendant should be dismissed with prejudice as set forth in the Stipulation;

d. Whether the application by Plaintiffs' Counsel for an award of attorney fees and reimbursement of litigation expenses should be approved;

e. The amount of Incentive Payments to Plaintiffs for their efforts as representatives of the Settlement Class and Subclasses; and

f. Such other matters as the Court may deem appropriate.

10. The Court reserves the right to approve the Settlement with or without modification and with or without further notice of any kind. The Court further reserves the right to enter its Order and Final Judgment approving the Stipulation and dismissing the Released Claims against Defendant with prejudice regardless of whether it has awarded attorney fees and litigation expenses and/or Incentive Payments to Plaintiffs.

11. The Court approves the form, substance, and requirements of the Notice of Pendency of Class Action and Proposed Settlement, Settlement Fairness Hearing, and Motion for Attorney Fees and Reimbursement of Litigation Expenses (the "Long Form Notice") and the Summary Notice of the LA Fitness Class Action Settlement (the "Summary Notice") (collectively referred to as the "Settlement Notices"); and the Proof of Claim Form (the "Claim Form"), and finds that the procedures established for publication, mailing, and emailing of such Settlement Notices substantially in the manner and form set forth in ¶¶ 12-13 of this Order meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and constitute the best notice practicable under the circumstances. The Claims Administrator is hereby authorized to issue the Settlement Notices, in substantially their present forms, to members of the Settlement Classes as described in the Stipulation.

12. The Claims Administrator shall, at or before the Settlement Hearing, file with the Court proof of mailing and emailing of the Summary Notice. The Claims Administrator shall

cause the Summary Notice, substantially in the form annexed as Exhibit C to the Stipulation, to be emailed within sixty (60) business days from the date of entry of this Order, to all members of the Settlement Classes for whom Defendant has an email address in its records. Defendant's Counsel shall cause the Summary Notice, to be mailed within sixty (60) business days from the date of entry of this Order, to all members of the Settlement Classes for whom Defendant does not have an email address in its records but for whom Defendant has a mailing address in its records. The date of such initial emailing or mailing shall be referred to as the "Notice Date."

13. On the Notice Date, the Long Form Notice, substantially in the form annexed as Exhibit B to the Stipulation, and Claim Form, substantially in the form annexed as Exhibit A to the Stipulation, shall be published on the web site maintained by the Claims Administrator, as approved herein by the Court, at [www.USGymSettlement.com](http://www.USGymSettlement.com) (the "Settlement Website").

14. To effectuate the provision of notice provided for in ¶¶ 12-13 hereof, and the collection, analysis, and determination of Claim Forms submitted in accordance with the terms of the Long Form Notice, and other actions required by this Order, the Court hereby appoints Gilardi & Co., LLC to serve as the Claims Administrator.

15. Plaintiffs' Counsel shall submit their papers in support of final approval of the Settlement, their application for attorney fees and reimbursement of litigation expenses, and the request for Incentive Payments for Plaintiffs by no later than twenty-eight (28) days before the Settlement Hearing and reply papers, if any, to any objections filed pursuant to ¶ 18 hereof shall be submitted at least seven (7) days before the Settlement Hearing.

16. Class Members shall be bound by all determinations and judgments in this Action, whether favorable or unfavorable, unless such persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. A Class Member wishing

to make such request shall mail the request in written form by first class mail to the address designated in the Long Form Notice, postmarked no later than ninety (90) days after the Notice Date. Such request for exclusion shall clearly indicate the name, address, and telephone number of the person seeking exclusion, that the sender requests to be excluded from the Settlement and must be signed by such person. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court.

17. Class Members requesting exclusion from the Settlement Class and Subclasses shall not be entitled to receive any Settlement Benefits as described in the Stipulation and Long Form Notice.

18. Any Class Member who has not requested exclusion from the Settlement Class and Subclasses may appear at the Settlement Hearing to show cause why the proposed Settlement should or should not be approved as fair, reasonable, and adequate; why the Order and Final Judgment should or should not be entered; why Plaintiffs' Counsel should or should not be awarded attorneys fees and reimbursement of litigation expenses in the amounts sought by Plaintiffs' Counsel with the approval of Plaintiffs; or why Plaintiffs should or should not be awarded Incentive Payments in the amounts sought by Plaintiffs, provided, however, that no Class Member shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, the Order and Final Judgment to be entered approving the same, Plaintiffs' Counsel's application for an award of attorney's fees and payment of expenses, or Plaintiffs' request for Incentive Payments unless, no later than ninety (90) days after the Notice Date, such Class Member has properly and timely served by hand or by first-class mail for receipt by such date

by the counsel listed below written objections and copies of any supporting papers and briefs upon Plaintiffs' Counsel and counsel for Defendant as follows:

Plaintiffs' Counsel:

Sherrie R. Savett, Esq.  
BERGER & MONTAGUE, P.C.  
1622 Locust Street  
Philadelphia, PA 19103

and

Defendants' Counsel:

Jason M. Frank, Esq.  
EAGAN AVENATTI, LLP  
450 Newport Center Drive, Second Floor  
Newport Beach, CA 92660

Any member of the Class may enter an appearance in the Action, at his, her or its own expense, individually or through counsel of his or her own choice. Members of the Class who do not enter an appearance will be represented by Plaintiffs' Counsel. Persons who intend to object to the Settlement, Plaintiffs' Counsel's application for an award of attorneys fees and reimbursement of litigation expenses, or Plaintiffs' request for Incentive Payments, and desire to present evidence at the Settlement Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Hearing.

19. Any Class Member who does not object in the manner prescribed above shall be deemed to have waived such objection and shall be forever foreclosed from making any objection to the fairness, adequacy, or reasonableness of the proposed Settlement, the Order and Final Judgment to be entered approving the Settlement, Plaintiffs' Counsel's application for an award of attorney fees and reimbursement of litigation expenses, or Plaintiffs' request for Incentive Payments.



20. Any response to any objections shall be filed no later than seven (7) days before the Settlement Hearing. Only Class Members shall have any rights with respect to approval of or objection to the Settlement, the application by Plaintiffs' Counsel for an award of attorneys' fees and reimbursement of litigation expenses, Plaintiffs' request for Incentive Payments.

21. In order to be entitled to participate in the Settlement, in the event the Settlement is effected in accordance with all of the terms and conditions set forth in the Stipulation, each Class Member shall take the following actions and are subject to the following conditions:

a. Visit [www.USGymSettlement.com](http://www.USGymSettlement.com) to (1) retrieve the LAF 45-Day Access Pass; (2) submit a claim for a cash payment instead of receiving the LAF 45-Day Access Pass, (if a member of Subclass A); or (3) obtain a Claim Form, substantially in the form annexed as Exhibit A to the Stipulation (if a member of Subclass B), as described in the Long Form Notice. Members of Subclass B wishing to make a claim for a cash payment must execute the Claim Form and submit such form to:

U.S. Gym Settlement, Claims Administrator  
c/o Gilardi & Co., LLC  
P.O. Box 8060, San Rafael, CA 94912-8060

To be valid and accepted, a Claim Form submitted in connection with this Settlement must be postmarked no later than ninety (90) days after the Notice Date. Each Claim Form shall be deemed to have been submitted when postmarked (if properly addressed and mailed by first class mail, postage prepaid). Any Claim Form submitted in any other manner shall be deemed to have been submitted when it was actually received at the address designated above.

b. The Claim Form submitted by each Subclass B Member must satisfy the following conditions: (i) it must be properly completed, signed, and submitted in a timely manner in accordance with the provisions of the preceding subparagraph; (ii) it must be

accompanied by adequate supporting documentation as described in the Long Form Notice; (iii) if the person executing the Claim Form is acting in a representative capacity, a certification of his or her current authority to act on behalf of the Class Member must be included in the Claim Form; and (iv) the Claim Form must be complete and contain no material deletions or modifications of any of the printed matter contained therein, and must be signed under penalty of perjury.

c. As part of the Claim Form, each Subclass B Member shall submit to the jurisdiction of the Court with respect to the claim submitted.

22. Pending final determination of whether the Settlement should be approved, all discovery and all proceedings in the Action are stayed, except for proceedings relating to the Settlement.

23. At or after the Settlement Hearing, the Court will determine whether the motion of Plaintiffs' Counsel for an award of attorneys' fees and reimbursement of out-of-pocket expenses and for Incentive Payments to Plaintiffs for their efforts as representatives of the Settlement Classes should be approved.

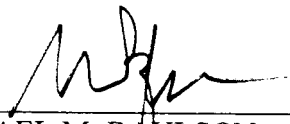
24. All reasonable costs incurred in identifying and notifying members of the Settlement Classes, as well as administering the Settlement and distributing payments under the Settlement, shall be paid as set forth in the Stipulation.

25. If the Settlement is not approved or consummated for any reason whatsoever, the Settlement and all proceedings had in connection therewith shall be without prejudice to the *status quo ante* rights of the parties to the Stipulation, except as otherwise set forth in the Stipulation.

26. The administration of the proposed Settlement and the determination of all disputed questions of law and fact with respect to the validity of any claim or right of any person or entity to participate in the Settlement Benefits shall be under the authority of this Court.

27. Pending final determination of whether the Settlement should be approved, Plaintiffs and all Class Members, and each of them, and anyone who acts or purports to act on their behalf, shall not institute, commence, or prosecute any action that asserts Released Claims against Defendant.

**IT IS SO ORDERED**, this 12<sup>th</sup> day of March, 2013.

  
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MICHAEL M. BAYLSON  
United States District Court Judge