

# EXHIBIT 1

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

<hr/>		:	
<b>KENNETH J. SILVER, et al.</b>	:		<b>CIVIL ACTION</b>
		:	
v.		:	<b>Case No. 10-cv-2326-MMB</b>
		:	
<b>L.A. FITNESS INTERNATIONAL, LLC</b>		:	
		:	
<hr/>		:	
<b>JOSHUA VAUGHN</b>		:	
		:	<b>Case No. 11-cv-2644-MMB</b>
v.		:	
		:	
<b>L.A. FITNESS INTERNATIONAL, LLC</b>		:	
		:	
<hr/>		:	
<b>AMALIA SIBLE</b>		:	
		:	<b>Case No. 13-cv-0255-MMB</b>
v.		:	
		:	
<b>L.A. FITNESS INTERNATIONAL, LLC</b>		:	
		:	
<hr/>		:	

**NATIONAL CLASS ACTION SETTLEMENT AND RELEASE**

This Settlement Agreement is by and between plaintiffs Joshua Vaughn, Kenneth J. Silver, Lori C. Bohn, Sharon N. Lockett, Justin P. Bronzell and Amalia Sible (“Plaintiffs” or “Class Representatives”) on behalf of themselves and a class of similarly situated persons (the “Settlement Class”), on the one hand, and Fitness International, LLC., formerly L.A. Fitness International, LLC. (“L.A. Fitness”) on the other hand (collectively, the “Parties”), by and through their respective counsel of record. The Class Representatives and L.A. Fitness are desirous of settling their differences and have agreed to the terms set forth in this Settlement Agreement for settlement purposes only.

## 1. DEFINITIONS

As used in this Settlement Agreement, the following terms have the meanings specified below:

1.1. **45 Day Access Pass.** “45 Day Access Pass” means a pass entitling the Class Member, or any other individual to whom the Class Member transfers the pass before it is first used, to access L.A. Fitness health club facilities for a period of 45 consecutive days as if the bearer of the pass were a member, and without the payment of any dues. The bearer of the pass will not be required to enter into any contractual agreement requiring the payment of dues or the provision of a credit card or bank account number, but will be required to sign the standard agreement to abide by the club rules and waiver of liability form signed by members who utilize the health club facilities. The 45 Day Access Pass will be subject to the same time restrictions for club usage as any other club member, and shall be valid at any of L.A. Fitness’ current locations, except a Signature Club location. The 45 day period must be activated by the bearer prior to one year after the date of the initial Final Approval Hearing or such date as is set by Court order; passes not activated within that time shall be void. The pass must be used on consecutive days after activation. A 45 Day Access Pass may not be used for payment of dues owed under a past, current, or future membership agreement with L.A. Fitness. A 45 Day Access Pass is freely transferable and usable by the bearer but may not be advertised for resale.

1.2. **60 Day Access Pass.** “60 Day Access Pass” means a pass entitling the Class Member, or any other individual to whom the Class Member transfers the pass before it is first used, to access L.A. Fitness health club facilities for a period of 60 consecutive days as if the bearer of the pass were a member, and without the payment of any dues. The bearer of the pass will not be required to enter into any contractual agreement requiring the payment of dues or the provision of a credit

card or bank account number, but will be required to sign the standard agreement to abide by the club rules and waiver of liability form signed by members who utilize the health club facilities. The 60 Day Access Pass will be subject to the same time restrictions for club usage as any other club member, and shall be valid at any of L.A. Fitness' current locations, except a Signature Club location. The 60 day period must be activated by the bearer prior to one year after the date of the initial Final Approval Hearing or such date as is set by Court order; passes not activated within that time shall be void. The pass must be used on consecutive days after activation. A 60 Day Access Pass may not be used for payment of dues owed under a past, current, or future membership agreement with L.A. Fitness. A 60 Day Access Pass is freely transferable and usable by the bearer but may not be advertised for resale.

1.3. **Approved Claim(s).** "Approved Claim(s)" means that the Claims Administrator has determined that an Individual who submitted a Claim is, in fact, a Class Member entitled to receive a particular benefit under this Settlement.

1.4. **Claim.** "Claim" shall mean a request to obtain the benefits of the Settlement.

1.5. **Claim Form.** "Claim Form" shall mean the form attached hereto as Exhibit "A" that shall request the information necessary for a Class Member to submit a written Claim. Class Members will be able to submit a written Claim by mailing a completed Claim Form to the Claims Administrator at U.S. Gym Settlement, Claims Administrator c/o Gilardi & Co., LLC P.O. Box 8060, San Rafael, CA 94912-8060.

1.6. **Claims Administrator.** "Claims Administrator" means the independent third party administrator appointed by the Court to administer the settlement process. The Parties have agreed to the appointment of Gilardi & Co.,

LLC, 3301 Kerner Blvd., San Rafael, CA 94901, or an administrator mutually agreed to by the Parties and approved by the Court.

1.7. **Claims Period.** “Claims Period” shall mean the ninety (90) day period in which Class Members must submit a Claim in order for the Claim to be valid. The Claims Period shall commence and expire on the dates set forth in the Preliminary Approval Order.

1.8. **Class Counsel.** “Class Counsel” means Sherrie R. Savett, Michael T. Fantini and Eric Lechtzin of Berger & Montague, P.C. located at 1622 Locust Street, Philadelphia, PA 19103

1.9. **Class Member.** “Class Member” means an Individual who falls within the definition of the Settlement Class.

1.10. **Class Period.** “Class Period” means May 18, 2006 to January 1, 2013.

1.11. **Class Representatives.** “Class Representatives” refer to plaintiffs Joshua Vaughn, Kenneth J. Silver, Lori C. Bohn, Sharon N. Lockett, Justin P. Bronzell and Amalia Sible.

1.12. **Counsel for Defendant or Counsel for L.A. Fitness.** “Counsel for Defendant” or “Counsel for L.A. Fitness” refers to Jason M. Frank, Esq. of the law firm of Eagan Avenatti, LLP, 450 Newport Center Drive, Second Floor, Newport Beach, CA 92660.

1.13. **Court.** “Court” means the United States District Court the Eastern District of Pennsylvania.

1.14. **Effective Date.** “Effective Date” means the date upon which the Final Approval Order and Judgment is Final.

1.15. **Final.** “Final” means all of the following have occurred: (a) All Parties through their duly-authorized representatives have executed this Agreement; (b) the Court has entered the Final Approval Order and Judgment; and

(c) if, and only if, a Class Member objects to approval of the Settlement, or the Settlement is attacked by way of intervention, then Final means the date by which an appeal must be filed without any appeals being taken, or, if appeals or requests for review have been taken, after orders affirming the Judgment or denying review or the Judgment otherwise becoming final with any appeal being dismissed or otherwise terminated. Any proceedings, order, or appeal, or petition for a writ of certiorari that pertains solely to claims administration, and/or application for attorneys' fees, costs or expenses, shall not in any way delay or preclude the Judgment from becoming Final.

1.16. **Final Approval Hearing.** "Final Approval Hearing" means the hearing where the Court will determine whether to grant final approval of the Settlement.

1.17. **Final Approval Order and Judgment.** "Final Approval Order and Judgment" shall mean the Order that gives Final Approval of this Settlement Agreement, and provides for the orderly performance and enforcement of the terms and conditions of this Settlement Agreement, which Order shall be in substantially the same form as is agreed to by the Parties.

1.18. **Individual.** "Individual" means a natural person, and does not include a corporation or any other non-natural person.

1.19. **L.A. Fitness.** "L.A. Fitness" means Fitness International, LLC., formerly L.A. Fitness International, LLC, and all of its current or former parent corporations, subsidiaries, related and affiliated companies and entities, officers, directors, agents, representatives, attorneys, insurers, predecessors, successors, assignees, employees, and all individuals or entities acting by, through, under, or in concert with any of them.

1.20. **Long Form Notice.** "Long Form Notice" means the complete form of notice available to Class Members on the Settlement Website or upon request.

A copy of the proposed Long Form Notice, subject to agreed revisions, is attached hereto as Exhibit “B.” The Long Form Notice will advise the Class that LA Fitness’ current cancellation policy includes: (i) permitting members to cancel in-person at their local gyms on Mondays through Fridays between 9:00am and 5:00pm with an Operations Manager; (ii) if a member’s cancellation is processed at the local club, LA Fitness will provide the member with a written or email receipt of the cancellation; and (iii) members who cancel their monthly memberships by way of a written notice mailed to the company’s Irvine, California P.O. Box will receive an emailed receipt of cancellation if the members’ email address is available. The parties understand that L.A. Fitness has the right to change its cancellation policies at any time, and nothing in this Settlement Agreement in any way limits these rights.

1.21. **Monthly Dues Amount.** “Monthly Dues Amount” means the amount of money regularly charged to a Class Member each month during his or her Monthly Dues Membership.

1.22. **Monthly Dues Membership or Monthly Dues Membership Agreement.** “Monthly Dues Membership” or “Monthly Dues Membership Agreement” means any contract with L.A. Fitness allowing the member to access one or more L.A. Fitness health clubs in exchange for the member’s agreement to, *inter alia*, pay dues on a monthly basis and pre-pay first and last month dues upon enrollment. Monthly Dues Memberships include Family Add-On memberships where the primary member is subject to a Monthly Dues Membership Agreement. However, Monthly Dues Memberships do not include membership agreements that expire after a fixed term even if the dues were paid on a monthly basis.

1.23. **New Jersey Class Action Settlement.** “New Jersey Class Action Settlement” refers to the Class Action Settlement in Martina v. L.A. Fitness International, LLC, Civil Action No. 2:12-cv-02063, currently pending in the United States District Court for the District of New Jersey. The New Jersey Class Action Settlement includes: (a) all Individuals who entered into a Fitness Service Agreement in the State of New Jersey with L.A. Fitness during the period February 28, 2006 until March 31, 2012; and (b) all Individuals who entered into a Monthly Dues Membership with L.A. Fitness in the State of New Jersey during the period February 28, 2006 until March 31, 2012, and who paid for an additional month of dues *after* L.A. Fitness received and processed Notice of Cancellation (in addition to the application of pre-paid last month dues), and the payment of an additional month of dues was not subsequently refunded.

1.24. **Notice.** “Notice” means the Long Form Notice and Summary Notice which collectively comprise the notice to the Class Members and summary of the terms of the Settlement and claims process.

1.25. **Notice of Cancellation.** “Notice of Cancellation” means a member’s request for cancellation of his or her Monthly Dues Membership made pursuant to the terms of the Monthly Dues Membership Agreement.

1.26. **Objection/Exclusion Deadline Date.** “Objection/Exclusion Deadline Date” means the deadline in which Class Members must submit Objections to this Settlement or Requests for Exclusion subject to the terms set forth in the Preliminary Approval Order. The Parties will recommend that the Objection/Exclusion Deadline be set for ninety (90) days after the date the Summary Notice is first emailed or mailed to Class Members.

1.27. **Parties.** “Parties” means the Class Representatives and L.A. Fitness.

1.28. **Preliminary Approval Order.** “Preliminary Approval Order” means the order conditionally certifying the Settlement Classes for settlement purposes



only, preliminarily approving the terms and conditions of this Settlement Agreement, including but not limited to the manner and timing of providing Notice to the Settlement Classes, the time period and procedures for opting out of the Settlement Classes or objecting to the Settlement, and setting the date for the Final Approval Hearing.

1.29. **Released Claims.** “Released Claims” means and includes all allegations, causes of action, liabilities, damages, demands, rights or equitable, legal or administrative relief, of any basis or source, whether known or unknown, that were, have been or could have been, now, in the past, or in the future, asserted or alleged in, or that relate to the Settled Actions including, but not limited to any and all allegations and claims asserted in the complaints and any amended complaints filed in the Settled Actions, as well as any claims relating to: (a) whether L.A. Fitness’ practice of charging Class Members prepaid last month’s dues or any other dues after notice of cancellation violates any laws of the States of Pennsylvania, Florida, Washington, Texas, Arizona, Connecticut, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, New York, Ohio, Oregon, Virginia, Wisconsin, the District of Columbia, the United States or common law; (b) whether L.A. Fitness’ Monthly Dues Membership Agreement forms violate any laws of States of Pennsylvania, Florida, Washington, Texas, Arizona, Connecticut, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, Ohio, Oregon, Virginia, Wisconsin, the District of Columbia, the United States or common law; and (c) whether any of the other L.A. Fitness practices or membership terms identified in the complaints or amended complaints filed in the Settled Actions violate any laws of the State of States of Pennsylvania, Florida, Washington, Texas, Arizona, Connecticut, Georgia, Illinois, Indiana, Kentucky, Maryland,

Massachusetts, Michigan, Minnesota, New Jersey, New York, Ohio, Oregon, Virginia, Wisconsin, the District of Columbia, the United States or common law.

1.30. **Request for Exclusion.** “Request for Exclusion” shall mean a request to be excluded from the Settlement Class, which complies with the requirements set forth in Section 5.5 of this Settlement Agreement.

1.31. **Settlement or Settlement Agreement.** “Settlement” or “Settlement Agreement” means the terms and conditions of this document entitled “National Class Action Settlement Agreement and Release.”

1.32. **Settled Actions.** “Settled Actions” collectively means (a) the Class Action Complaint, Bilgram v. L.A. Fitness International, LLC, Civil Action No. 2:10-cv-02326, filed May 18, 2010 in the United States District Court Eastern District of Pennsylvania, (b) the Second Amended Complaint, Boeynams v. L.A. Fitness International, LLC, Civil Action No. 2:10-cv-02326, filed on January 31, 2011 in the United States District Court Eastern District of Pennsylvania, (c) the Class Action Complaint, Vaughn v. L.A. Fitness International, LLC, originally Civil Action NO. 8:00-cv-00457 and filed in the United States District Court Middle District of Florida, and later transferred and consolidated on August 18, 2011, and currently pending as Civil Action No. 10-2326 in the United States District Court for the Eastern District of Pennsylvania, (d) the Third Amended and Consolidated Class Action Complaint, Silver v. L.A. Fitness International, LLC, Civil Action No. 10-cv-2326, filed October 12, 2011, in the United States District Court for the Eastern District of Pennsylvania, and (e) the Class Action Complaint, Sible v. L.A. Fitness International, LLC, Civil Action No. 4:12-cv-660, filed on October 17, 2012 in the United States District Court for the Eastern District of Texas Sherman Division, and later transferred to the United States District Court for the Eastern District of Pennsylvania on January 14, 2013.

1.33. **Settlement Check.** “Settlement Check” means the check for the monetary benefits that certain members of Subclass A and Subclass B can request as part of this Settlement.

1.34. **Settlement Class.** “Settlement Class” means 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 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. This Settlement Class will be certified for settlement purposes only subject to Court approval.

1.35. **Settling Parties.** “Settling Parties” means collectively the Class Representatives, L.A. Fitness and any Class Member who does not timely and properly Request Exclusion from the Settlement Class.

1.36. **Settlement Website.** “Settlement Website” shall mean the website created and maintained by the Claims Administrator that shall contain a copy of the Notice, the Settlement Agreement, the Preliminary Approval Order, and any other orders entered related to the Settlement, the complaints filed in the Settled Actions, and information on how to Request Exclusion from the Class or file Objections to the Settlement. Class Members will also be able to obtain their applicable benefits on the Settlement Website using a Unique ID Code that will be provided in the Summary Notice. The address of the Settlement Website shall be [www.USGymSettlement.com](http://www.USGymSettlement.com).

1.37. **Subclass “A”.** “Subclass “A”” means all Class Members who (a) 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 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. Class Members will be notified if they are a member of Subclass “A” in their Summary Notice.

1.38. **Subclass “A” Member List.** “Subclass “A” Member List” means the list of Subclass “A” members that will be compiled by L.A. Fitness from its records for the Claims Administrator. The Subclass “A” Member List will include the Class Member’s name, contact information and the amount of money the Class Member can request as an alternative to the 45-Day Access Pass.

1.39. **Subclass “A” Period.** “Subclass “A” Period” means the state-specific time periods during which a Class Member is required to have entered into a Monthly Dues Membership Agreement in order to qualify for the monetary benefits available to Subclass A. The Subclass “A” Period is based on each state’s applicable statute of limitations. Class Members will be notified if they are a member of Subclass “A” in their Summary Notice. The Subclass “A” Period for each state is set forth below:

- (i) **Arizona:** January 1, 2012 to January 1, 2013.
- (ii) **Connecticut:** January 1, 2010 to January 1, 2013.
- (iii) **District of Columbia:** January 1, 2010 to January 1, 2013.
- (iv) **Florida:** March 4, 2007 to January 1, 2013
- (v) **Georgia:** January 1, 2011 to January 1, 2013.
- (vi) **Illinois:** January 1, 2010 to January 1, 2013.
- (vii) **Indiana:** January 1, 2011 to January 1, 2013.
- (viii) **Kentucky:** January 1, 2011 to January 1, 2013.
- (ix) **Maryland:** January 1, 2010 to January 1, 2013.
- (x) **Massachusetts:** January 1, 2009 to January 1, 2013.
- (xi) **Michigan:** January 1, 2007 to January 1, 2013.

- (xii) **Minnesota:** January 1, 2007 to January 1, 2013.
- (xiii) **New York:** January 1, 2010 to January 1, 2013.
- (xiv) **Ohio:** January 1, 2011 to January 1, 2013.
- (xv) **Oregon:** January 1, 2012 to January 1, 2013.
- (xvi) **Texas:** October 17, 2010 to January 1, 2013.
- (xvii) **Virginia:** January 1, 2011 to January 1, 2013.
- (xviii) **Washington:** October 12, 2007 to January 1, 2013.
- (xix) **Wisconsin:** January 1, 2010 to January 1, 2013.

1.40. **Subclass “B”.** “Subclass “B”” means all 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.

1.41. **Summary Notice.** “Summary Notice” means the email and post-card notices of this Settlement that will be sent to the Class Members. A separate Summary Notice will be sent to the Members of Subclass “A”. A copy of the proposed Summary Notice, subject to agreed revisions, is attached hereto as Exhibit “C.”

1.42. **“Unique ID Code”** means the unique identification number that will be separately assigned to each Class Member. The Unique ID Code will be provided in the Summary Notice. Class Members will be able to input their Unique ID Code, online, at the Settlement Website in order to select their applicable benefits under this Settlement.

## 2. RECITALS

2.1 **Purpose of the Settlement.** The purpose of this Settlement is to forever settle and compromise any and all claims, disputes, and controversies that were raised against L.A. Fitness in the Settled Actions.

2.2 **Settlement Efforts.** On or about November 12, 2012, the Parties engaged in full-day private mediation before the Honorable Layne R. Phillips (Ret.). Thereafter, the parties engaged in further settlement discussions resulting in the current Settlement.

2.3 **Plaintiffs' Reasons for Entering into the Settlement.** Class Counsel and the Class Representatives believe that the claims asserted in the Settled Actions have merit. Class Counsel and the Class Representatives, however, recognize the uncertain outcome and the risk of any litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such litigation. Class Counsel and the Class Representatives are also mindful of the inherent problems of proof and defenses to the claims asserted in the Settled Actions, including the defenses asserted by L.A. Fitness and the potential obstacles to class certification. In light of the above, Class Counsel and the Class Representatives believe that the Settlement set forth in this Settlement Agreement confers substantial benefits upon the Settlement Classes and each of the Class Members and is in the best interest of the Settlement Classes and each of the Class Members.

2.4 **L.A. Fitness' Reasons for Entering into the Settlement.** L.A. Fitness denies, and continues to deny, liability for any of the claims asserted in the Settled Actions. L.A. Fitness, however, desires to settle the Settled Actions, on the terms and conditions set forth in this Settlement Agreement, in order to: (a) avoid the burden, expense, and uncertainty of continuing to litigate the Settled Actions; (b) avoid the diversion of its resources and personnel required by continuing to

litigate the Settled Actions; and (c) put to rest any and all claims that are, or could have been, brought or asserted in the Settled Actions, or any similar litigation, in this Court or any other court's jurisdiction, which are based upon any of the facts, circumstances, or conduct alleged in the Settled Actions. L.A. Fitness has, therefore, determined it is desirable and beneficial that the Settled Actions be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. This Settlement Agreement is based on the express understanding that L.A. Fitness is agreeing to class certification for settlement purposes only, and that nothing contained in this Settlement shall be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of L.A. Fitness, and L.A. Fitness continues to deny liability therefor.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth in this Settlement Agreement, as well as the good and valuable consideration provided for herein, the Settling Parties hereby agree to a full and complete settlement of the Settled Actions on the following terms and conditions:

### **3. TERMS OF SETTLEMENT**

3.1. **Benefits to Settlement Class.** Members of the Settlement Class will be entitled to automatically receive a 45 Day Access Pass (which has a monetary value of \$45) by registering for the pass on the Settlement Website.

3.2. **Benefits to Subclass "A".** As an alternative to the 45 Day Access Pass, members of Subclass "A" will be entitled to submit a Claim for a cash payment equal to one-third (1/3) of the additional one month of dues they paid (via an Electronic Fund Transfer or Credit Card charge) after L.A. Fitness received the Class Member's written notice of cancellation so long as that payment was not subsequently refunded. Members of Subclass "A" will have the option to choose either this cash payment or the 45-Day Access Pass on the Settlement Website.

3.3. **Benefits to Subclass “B”:** Members of Subclass B may submit a Claim for the following benefits if they can satisfy the criteria set forth below:

3.3.1 **Written Proof of Mailing:** Members of Subclass “B” may submit a Claim for a monetary payment equivalent to one-hundred percent (100%) of all dues paid and collected after the date of the mailing of the Notice of Cancellation for up to one year after the mailing (not including the application of pre-paid last month dues), less any refunds already provided, so long as the Class Member can satisfy the following criteria:

- (i) The Class Member mailed his or her Notice of Cancellation via certified or registered mail or other form of mailing that provides written proof of mailing; and
- (ii) The Class Member provides written proof of such mailing with their Claim – meaning a certified or registered mail receipt signed by an L.A. Fitness agent, or a FedEx, DHL, USPS or UPS tracking number that indicates such receipt.

3.3.2 **Written Proof that a Class Member Printed a Notice of Cancellation Form and Notified L.A. Fitness about their Cancellation.**

Members of Subclass B may submit a Claim for a monetary payment equivalent to fifty percent (50%) of all dues paid and collected more than sixty (60) days after the date of the printing of the Notice of Cancellation form for up to one year after the printing (not including the application of pre-paid last month dues), less any refunds already provided, so long as the Class Member can satisfy the following criteria:

- (i) The Class Member printed a Notice of Cancellation form from L.A. Fitness’ website or obtained a printed Notice of Cancellation form from a L.A. Fitness club (such that L.A.



Fitness' records indicate that a Notice of Cancellation was printed); and

- (ii) The Class Member subsequently paid for monthly dues more than sixty (60) days after the print date; and
- (iii) The Class Member subsequently notified L.A. Fitness that his or her Notice of Cancellation was not processed (by either directly contacting L.A. Fitness as reflected in its records including its Member Notes or by contacting a third party governmental or consumer agency such as the Better Business Bureau); and
- (iv) The Class Member did not use the health club facilities more than sixty (60) days after printing a Notice of Cancellation form.

If L.A. Fitness' records do not contain a Class member complaint (oral or written) made to LA Fitness or to a third party, then a Class Member who submitted a complaint to a third party will be requested to provide written proof of that complaint with their Claim.

**3.3.3 No Recorded Proof:** All other members of Subclass "B" who submit a Claim stating under oath that they mailed a Notice of Cancellation that was not processed, will receive a 60 Day Access Pass (which has a monetary value of approximately \$60) as an alternative to the 45 Day Access Pass provided to all Class Members.

**3.4. Therapeutic Remedies.** L.A. Fitness will agree to revise its Membership Agreement to clearly state that any form of written Notice of Cancellation is permitted, and that the notice should include sufficient information to identify the member. The Membership Agreement will recommend that the

notice should include the member's name, barcode number, address, telephone number and email address.

3.5. **Releases.** As part of the consideration for this Settlement Agreement, upon entry of the Final Approval Order and Judgment, it is agreed that the Class Representatives and all Class Members who have not timely and properly Requested Exclusion from the Settlement Class shall be deemed to have jointly and severally provided full and complete releases of any and all Released Claims.

Also, upon the Effective Date, LA Fitness shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Class Representatives, each and all of the Settlement Class Members, and Class Counsel from all claims, based upon or arising out of the institution, prosecution, assertion, settlement or resolution of the Settled Actions or the Released Claims, except for enforcement of the Settlement Agreement.

3.6. **Attorneys' Fees and Costs.** The Parties negotiated over attorneys' fees and costs only after reaching agreement upon all other material terms of this Settlement Agreement. Pursuant to this Settlement Agreement, L.A. Fitness agrees that it will pay One Million Four Hundred Thousand Dollars (\$1,400,000) to Berger & Montague, P.C., Class Counsel, for attorneys' fees and costs subject to Court approval. Within ten (10) days after entry of the Final Approval Order and Judgment by the Court, Defendant shall place the \$1.4 million for attorneys' fees and costs into an interest bearing escrow account at an independent financial institution to be designated by Berger & Montague, P.C. The Claims Administrator will serve as the escrow agent and will open and control the account. Such funds shall be released and paid to Berger & Montague, P.C. within ten (10) days after the Effective Date. Class Counsel shall not have access to or control of the funds until released by LA Fitness within ten (10) days after the Effective Date

as set forth above. If the Final Approval Order and Judgment is not affirmed on appeal in its entirety and in all respects, and the Settlement is rejected or vacated in its entirety, then the funds will be returned to Defendant within the (10) days after the issuance of the appellate court's mandate. If the amount of attorneys' fees and costs is reduced by the District or Appellate Court, the Class Counsel shall only be entitled to the reduced amount, with the remaining funds to be returned to Defendant.

Berger & Montague, P.C. shall have the sole authority to decide whether or not to allocate the court-awarded attorneys' fees and costs amongst other plaintiffs' counsel in a manner in which it, in good faith and in its sole discretion, believes reflects the contributions of such counsel to the prosecution and settlement of this action.

The effectiveness of this Settlement will not be conditioned upon or delayed by the Court's failure to approve Class Counsel's application for attorneys' fees or costs in any amount. The Parties agree that the amount of the attorneys' fee and cost award is not a part of the substantive terms of this Settlement and will be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement.

**3.7. Incentive Payments to the Class Representatives.** The Parties negotiated over incentive payments only after reaching agreement upon all other material terms of this Settlement Agreement. Pursuant to this Settlement Agreement, L.A. Fitness agrees that it will pay an incentive award in the amount of Three Thousand Dollars (\$3000) to each of the Class Representatives subject to Court approval. Such Incentive Payment shall be in addition to any Settlement benefits for which the Class Representatives qualify. Any incentive payment awarded by the Court shall be paid by L.A. Fitness no later than fifteen (15) days after the Effective Date, by wiring or sending a check for said amount to an

account to be designated by Class Counsel. The effectiveness of this Settlement will not be conditioned upon or delayed by the Court's failure to approve any incentive payment to the Class Representative in any amount.

3.8. **Costs of Notice and Claims Administration.** All costs and expenses of notice and claims processing and administration provided for in this Settlement Agreement shall be paid by L.A. Fitness.

3.9. **Dismissal with Prejudice.** The entry of Final Approval Order and Judgment in the Settled Actions shall contain a provision to dismiss the Settled Actions and all Class Member's Released Claims with prejudice reserving jurisdiction only for the enforcement of this Settlement.

#### 4. NOTICE PLAN

4.1. **Settlement Class Member Mailing List.** No later than fifty (50) days after the Preliminary Approval Order is entered, L.A. Fitness shall provide a electronic list or database of the Class Members. This list or database shall include each Class Member's name, mailing address, e-mail address (where available), member identification number and telephone number.

4.2. **Subclass "A" Member List.** No later than fifty (50) days after the Preliminary Approval Order is entered, L.A. Fitness shall provide a separate electronic list or database of the members of Subclass "A". This list or database shall include each Class Member's name, mailing address, e-mail address (where available), member identification number and telephone number, as well as the amount of each member's Monthly Dues, and the amount each member of Subclass "A" is entitled to as monetary compensation under this Settlement Agreement (i.e., 1/3 of one month of dues).

4.3. **Notice.** A Summary Notice with relevant information for the Settlement Class shall be sent to all Class Members via electronic mail, where an e-mail address is available. A separate Summary Notice will be sent to the members of Subclass “A.” If someone is a member of Subclass “A”, they will only receive the Summary Notice for Subclass “A”, as opposed to two notices. If L.A. Fitness’ records do not contain an e-mail address or if an e-mail notice is returned as undeliverable, then the Summary Notice will be sent on a post-card via first-class mail to the applicable Class Members. The Claims Administrator shall format, address, print and email the Summary Notice.

Summary Notices that are required to be mailed shall be mailed by first class United States mail, postage prepaid, to the last known address of each Settlement Class member. The Claims Administrator will update the addresses of those Settlement Class members by means of the National Change of Address Databank (NCOA) maintained by the U.S. Postal Service prior to the initial mailing of the Summary Notice and shall update the addresses by other reasonable methods available to the Administrator after receipt of returned undeliverable mailed Summary Notices, reasonable methods include the use of social security numbers, telephone numbers and databases such as Accurint, Westlaw and other databases, and the Preliminary Approval Order shall expressly permit the use of such databases.

4.4. **Content of Notice.** The Summary Notice shall contain the content included in Exhibit “C” to this Settlement Agreement. The Summary Notice will describe the benefits available to the Class Members, instruction on how to exclude themselves from the Settlement and how to object to the Settlement. The Summary Notice for Subclass “A” will also indicate the specific monetary amount they are entitled to as members of Subclass “A” as an alternative to the 45 Day Access Pass. The email Summary Notice will contain a link to the Settlement

Website. The mailed Summary Notice shall include the address for the Settlement Website. The Summary Notice shall also contain a toll-free telephone number with an Interactive Voice Response (IVR) system that Class Members may contact for additional information, submit a change of address or request a copy of the Settlement Agreement.

4.5. **Notice Plan is the Best and Most Fair and Reasonable Notice Practicable under the Circumstances.** Subject to Court approval, the Parties have agreed that providing direct e-mail and mailed notice to the Class Members from L.A. Fitness' records in the manner described herein is the best and most fair and reasonable notice practicable under the circumstances.

4.6. **Timing of the Notice.** The Claims Administrator will email and mail the Summary Notice no later than ten (10) days after receipt of the Class Member List from L.A. Fitness.

4.7. **CAFA Notice.** The Claims Administrator shall serve notice of this Settlement to appropriate state and federal officials pursuant to the Class Action Fairness Act ("CAFA") at 28 U.S.C. § 1715 no later than thirty (30) days after the entry of the Preliminary Approval Order. The Claims Administrator shall be responsible for drafting and preparing the notice in conformity with 28 U.S.C. § 1715, and with identifying the appropriate state and federal officials to notify.

4.8. **Settlement Website.** The Claims Administrator shall post copies of the Summary Notice, the Long Form Notice, the Claim Form, the complaints in the Settled Actions, the Preliminary Approval Order and the Settlement Agreement on the Settlement Website. The Settlement Website will also contain instructions on how Class Members can select and obtain their applicable benefits, as well as instructions on how Class Members can Request Exclusion from the Class or file Objections. The Claims Administrator shall begin operating the Settlement Website within 24 hours after entry of Preliminary Approval order and shall

maintain and not take down the Settlement Website until the Effective Date. The Claims Administrator shall also mail copies of the Settlement Agreement and Claim Form, at no charge, to any potential Class Member who requests such information by writing to the Claims Administrator at U.S. Gym Settlement, Claims Administrator, c/o Gilardi & Co., LLC, P.O. Box 8060, San Rafael, CA 94912-8060, or by calling the Claims Administrator, toll-free, at 1-800-XXX-XXXX

## **5. CLAIM PROCESS**

**5.1. Appointment of Claims Administrator.** The Parties agree that the Court should appoint Gilardi & Co., LLC, 3301 Kerner Blvd., San Rafael, CA 94901 as the Claims Administrator.

**5.2. Duties of the Claims Administrator.** The Claims Administrator will be responsible for:

- (a) Obtaining the Class Member List from L.A. Fitness;
- (b) Obtaining the list of Subclass “A” members from L.A. Fitness;
- (c) E-Mailing the Summary Notice to all Class Members, or sending the Summary Notice via first class mail when L.A. Fitness’ records do not contain an e-mail address or when an e-mail is returned use undeliverable;
- (d) Creating and maintaining the Settlement Website;
- (e) Creating and maintaining an automated toll-free number that potential Class Members can contact in order to request a copy of the Settlement Agreement, their Unique ID Code and/or the Claim Form;
- (f) Mailing copies of the Summary Notice, Long Form Notice, Settlement Agreement and/or Claim Form, free of charge, to any potential Class Member who contacts the Claims Administrator by mail or the toll-free number and requests such documents;

(g) Tracking the number of Settlement Checks requested by members of Subclass “A”;

(h) Receiving and tracking any Requests for Exclusion from the Class;

(i) Notifying the Parties of Requests for Exclusion and Objections;

(j) Receiving and keeping track of Claims from members of Subclass “B”;

(k) Reviewing Claims from members of Subclass “B” and determining what benefits, if any, they are qualified to receive under Section 3.3;

(l) Notifying L.A. Fitness of Claims for the benefits under Section 3.3.1 and 3.3.2 from members of Subclass “B” on a weekly basis, so that L.A. Fitness can provide any records or review necessary for the Claims Administrator to determine whether to Approve the Claim;

(m) Contacting members of Subclass “B” who submitted Claims for the benefits under Section 3.3.1 and 3.3.2 in the event the Class Member needs to provide additional information in order to substantiate his or her Claim;

(n) Contacting members of Subclass “B” who submit an Approved Claim for the 60 Day Access Pass and providing them with a new Unique ID Code that enables them to sign up for a 60 Day Access Pass on the Settlement Website;

(o) Notifying the Parties of and resolving any disputes regarding Claims by Class Members;

(p) Ensuring that L.A. Fitness provides a check or funds via wire transfer to the Claims Administrator in the total amount owed to the members of Subclass “A” and Subclass “B” who submitted Approved Claims for Settlement Checks within fifteen (15) days after the Effective Date;

(q) Mailing Settlement Checks to the members of Subclass “A” and Subclass “B” who submitted Approved Claims; and



(r) Keeping track of whether any Settlement Checks are not cashed by their expiration date.

**5.3 Additional Duties of the Claims Administrator.** The Claims Administrator shall also provide to Class Counsel and Defendant's counsel one or more declarations stating that the Notice was deposited in the United States Mail and/or emailed in accordance with the terms of the Preliminary Approval Order along with statistics on:

- How many Notices were emailed/mailed successfully;
- How many were returned as undeliverable; and
- How many were re-mailed/re-emailed successfully.

The Claims Administrator shall also provide to Class Counsel and Defendant's counsel a declaration which shall state the number and identity of Class Members who the Claims Administrator has determined to have submitted a valid and timely Request for Exclusion (opt-out).

In addition, the Claims Administrator shall: (a) deliver to Class Counsel and to Defendants' counsel copies of any and all Requests for Exclusion that have been received by the Claims Administrator and provide the Claims Administrator's determinations as to whether each Request for Exclusion was timely received; (b) remove all class members who have successfully excluded themselves from the settlement from the class member database; and (c) notify in writing any Class Member for whom the Claims Administrator has determined that a Request For Exclusion received from the Class Member was not timely received. This information shall also be stated in the declaration(s) referred to within.

No later than seven (7) days after the Objection/Exclusion Deadline Date the Class Administrator shall provide all Counsel with a list of Settlement Class

Members who have timely requested exclusion from the Settlement Class and an affidavit to be filed with the court with all of the final statistics set forth above.

**5.3. Claims Period.** The Claims Period will last for ninety (90) days, and will commence on the date the Notice is sent, as set forth in the Preliminary Approval Order. Class Members will be required to submit their Claims by expiration of the Claims Period. A Claim submitted by mail will be timely if it has a postmark date within the Claims Period.

**5.4. Obtaining the Applicable Benefits for Settlement Class and Subclass “A”.** Class Members will be provided with a Unique ID Code in their Summary Notice. Class Members can also obtain their Unique ID Code by contacting the Claims Administrator, who will verify that the individual is a Class Member from the list provided by L.A. Fitness. In the Summary Notice, Class Members will be instructed to visit the Settlement Website and input their Unique ID Code in order to sign up for their 45 Day Access Pass. If the Individual is a member of Subclass “A”, the Settlement Website will offer the member a choice between the 45 Day Access Pass or a Settlement Check (equal to 1/3 of one month of dues). If a member of Subclass “A” selects a Settlement Check, the Claims Administrator will keep track of such requests and will mail the Settlement Check to the Class Member within the time required under this Settlement. If a Class Member is signing up for a 45 Day Access Pass, then the Class Member will be automatically directed to a special page on L.A. Fitness’ website in which the bearer can complete on-line the standard contract forms for the 45 Day Access Pass. Class Members will be able to sign up for the 45 Day Access Pass on the Settlement Website for up to one year after the date the Summary Notice is sent.

**5.4. Obtaining the Applicable benefits for Subclass “B”.** Members of Subclass “B” will be required to complete a Claim Form under oath. A copy of the Claim Form is attached as Exhibit “A.” In addition, Members of Subclass “B” will

be required to provide any additional documents necessary in order to qualify for the monetary benefits available under this Settlement as set forth in Sections 3.3.1 and 3.3.2. The Claims Administrator will provide L.A. Fitness with a list of Individuals submitting a Claim under Sections 3.3.1 and 3.3.2, so L.A. Fitness can verify from its own records or review whether the Individual qualifies for the benefits under Sections 3.3.1 and 3.3.2. L.A. Fitness will provide such records to the Claims Administrator, who will be the final Arbiter for determining whether a Claim should be Approved. If the Individual needs to submit additional information, then the Claims Administrator will contact the Individual and request the information. If the information is not mailed by the end of the Claims Period, then the Claim will be denied. If a Class Member submits an Approved Claim for the 60 Day Access Pass available under Section 3.3.3 (by submitted a completed Claim Form stating under oath that they mailed a Notice of Cancellation that was not processed), then the Claims Administrator will contact the Class Member and provide them with a new Unique ID Code that they can use on the Settlement Website to sign up for the 60 Day Access Pass. Such Class Member's old Unique ID Code will be deactivated so they cannot sign up for both a 45 Day Access Pass and a 60 Day Access Pass.

**5.5. Requests for Exclusion.** Class Members may choose to opt out of the Settlement Class to which they are a member under such procedures as may be adopted by the Court, which shall be reflected in the Preliminary Approval Order and the Class Notice. The Parties shall recommend to the Court the following procedures for opting out. Class Members who wish to exclude themselves from this Settlement must mail to the Claims Administrator a written statement opting out of this settlement which must include: (a) the Settlement Class member's name and address, and (b) a statement that the Settlement Class member wishes to be excluded from the Settlement Class in the Settled Actions. Such notice must be

received by the Claims Administrator no later than 5:00 pm on Objection/Exclusion Deadline Date as set forth in the Preliminary Approval Order and in the Class Notice. Any such Class Member who serves notice of their desire to opt out of the Settlement will receive no compensation pursuant to this Settlement Agreement and shall not release any claims. Every Settlement Class Member who does not timely opt out shall be deemed a Settlement Class Member and subject to the terms and Releases in this Settlement Agreement.

**5.6. Objections to Settlement.** The Parties shall recommend to the Court the following procedures for objecting to the Settlement. Any member of the Settlement Classes who does not submit a valid Request for Exclusion may object to the Settlement, the Motion for Attorneys' Fees, Costs or Incentive Awards, and/or the proposed Final Settlement Order and Judgment. Any member of the Settlement Class wishing to file such an objection shall by the Objection/Exclusion Deadline Date, either on their own or through an attorney hired at their own expense, file with the Court and serve on Class Counsel and counsel for L.A. Fitness, in writing their intent to object to one or more of the terms of this Agreement or the Final Approval Order. Such written statement or notice must be filed with the Court and served on Class Counsel and Defendant's counsel no later than 5:00 pm on the Objection/Exclusion Deadline Date. Any such notice of objections shall include a:

- Statement of each objection being made;
- Description of the facts and legal basis for each objection;
- Statement of whether the objector intends to appear at the Fairness Hearing;
- List of witnesses whom the objector may call by live testimony, oral deposition testimony or affidavit during the Fairness Hearing; and

- List of exhibits which the objector may offer during the Fairness Hearing, along with copies of all of the exhibits.

Settlement Class Members who fail to file and serve timely written objections or notice of intention to appear and object in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to this Settlement.

**5.7. Claims Administrator's Report of Number of checks issued and cashed.** No later than thirty (30) days after the expiration of the Claims Period, the Claims Administrator shall submit to the Class Counsel and Counsel for Defendant, a list the amounts due to each Class Member pursuant to this Settlement Agreement. No later than thirty (30) days after the expiration date of the Settlement Checks, the Claims Administrator shall submit to the Class Counsel and Counsel for Defendant, an accounting of the number of Settlement Checks cashed, uncashed and the balance in the settlement fund.

**5.8. Entry of Final Settlement Order and Judgment.** At the Fairness Hearing, the Parties will request that the Court, among other things, enter the Final Settlement Order and Judgment, in which the Court will: (a) approve the Settlement Agreement as fair, reasonable, adequate, and binding on all members of the Settlement Class; (b) enter the Final Settlement Order and Judgment in accordance with the terms of this Settlement Agreement; (c) determine the amount and approve the payment of attorneys' fees and costs; (d) determine the amount of any incentive payments to award to the Class Representatives; and (e) provide for the dismissal of the Settled Actions with prejudice and for the Release of all Released Claims against L.A. Fitness by the Class Representatives and all Class Members who have not submitted valid and timely Requests for Exclusion from the Settlement Classes.

**5.9. Payment of Monetary Benefits to Membership Agreement Class.**

Within seven (7) days after the Effective Date, L.A. Fitness shall provide to the Claims Administrator, via wire or check, the total amount owed to the members of Subclass “A” and Subclass “B” who submitted Approved Claims. The Claims Administrator shall then mail the individual amounts owed to the applicable Class Members within five (5) days after receiving the amount from L.A. Fitness.

**5.10. Uncashed Checks.** Checks mailed by the Claims Administrator shall be valid for one year. Any checks not cashed within that time shall be treated as uncashed checks under the Class Member’s respective state’s Unclaimed Property Laws, and the Claims Administrator (or the parties) shall seek an order from the Court directing escheatment of those uncashed checks or otherwise disposing of the uncashed checks if escheatment is not legally available.

**6. RELEASES**

**6.1. Release.** Upon the Effective Date, and by not electing to be excluded from the Class, the Class Representatives and each of the members of the Settlement Class shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against L.A. Fitness

**6.2. Waiver of Unknown Released Claims.** It is the desire of the Settling Parties to fully, finally, and forever settle, compromise, and discharge all of the Class Representatives’ and the Class Members’ Released Claims which were or which could have been asserted in this action against L.A. Fitness, whether known or unknown. As a consequence, the Class Representatives and each Class Member may hereafter discover facts in addition to or different from those which he or she now knows or believes to be true with respect to the subject matter of the Released Claims, but the Class Representatives and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully,

finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which then exist, or heretofore have existed upon any theory of law or equity now existing, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Class Representatives acknowledge, and each Class Member shall be deemed by operation of the Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this Release is a part.

## **7. DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

**7.1. Motion for Preliminary Approval.** The Parties shall submit this Settlement Agreement to the Court in support of a Motion for Preliminary Approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this Settlement Agreement, the Parties shall apply to the Court for the entry of a Preliminary Approval Order which will:

(a) Preliminarily certify the Settlement Class and Subclass “A” and Subclass “B” for settlement purposes only;

(b) Preliminarily approve the Settlement as fair, reasonable, and adequate;

(c) Preliminarily approve the appointment of Class Counsel for settlement purposes only;

(d) Preliminarily approve Joshua Vaughn, Kenneth J. Silver, Lori C. Bohn, Sharon N. Lockett, Justin P. Bronzell and Amalia Sible as the Class Representatives for settlement purposes only;

(e) Approve as to form and content the proposed Notice substantially in the form attached hereto as Exhibits “B” and “C”;

(f) Approve the manner of providing Notice to the Class as described in Section 4 of this Settlement Agreement and finding that this manner of notice constitutes the best notice practicable under the circumstances, and constitutes valid, due, and sufficient notice to all Class Members in accordance with federal laws and the Constitution of the U.S.;

(g) Appoint Gilardi & Co., LLC as the Claims Administrator, or another administrator mutually agreed to by the Parties;

(h) Schedule the Fairness Hearing to be held by the Court to determine:

(1) Whether the proposed Settlement should be finally approved as fair, reasonable, and adequate;

(2) Whether the Final Judgment approving the Settlement and dismissing the Settled Actions on the merits and with prejudice should be entered;

(3) Whether Class Counsel's application for an award of attorneys' fees and costs should be approved; and

(4) Whether the incentive awards to the Class Representatives should be approved;

(i) Provide that the Fairness Hearing may be continued and adjourned by the Court without further notice to the Class;

(j) Order that Notice to the Class, in the manner described in Section 4 of this Settlement Agreement, be disseminated;

(k) Approve the procedure for Class Members to file Requests for Exclusion from the Class, substantially in the manner set forth in Section 5.5 of this Settlement Agreement, and setting a deadline for Class Members to exclude themselves from the Class;

(l) Provide that Class Members who do not file valid and timely Requests for Exclusion from the Class will be bound by the Final Judgment dismissing the



Settled Actions on the merits and with prejudice, and releasing all claims set forth in the Settlement and Release; and

(m) Declare the date on which the Court preliminarily approves the Settlement as the date that the Settlement is deemed filed.

## **8. DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL**

8.1. **Proposed Final Judgment.** Following final approval by the Court of the Settlement, Class Counsel will submit a proposed Final Judgment:

- (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;
- (b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of costs;
- (c) Approving the Class Representatives' incentive awards;
- (d) Certifying the Settlement Class and Subclass "A" and Subclass "B" for settlement purposes only;
- (e) Dismissing the Settled Actions with prejudice reserving jurisdiction only for enforcement of the Settlement and any breach thereof
- (f) Permanently barring all Class Members (other than those who timely filed Requests for Exclusion) from prosecuting against L.A. Fitness any and all Released Claims; and
- (g) Permanently barring the Class Representatives from prosecuting against Defendants any and all Released Claims.

## 9. MISCELLANEOUS PROVISIONS

9.1. **No Publicity.** Except as provided below, or with the prior written consent of the other Party, neither the Parties nor their attorneys or agents shall initiate comments about the Settlement to the media. However, in response to an unsolicited request for comment on the Settlement by a member of the media, the Parties may discuss the terms of the Settlement, and should say words to the effect that they are pleased with it. The Parties agree not to say anything derogatory about LA Fitness or the Settlement. In no event shall Class Counsel or their agents state or imply to any person that the Settlement represents an acknowledgement by L.A. Fitness of any wrongdoing or liability in this or any other matter. Nothing in this provision shall be interpreted to limit representations that the Parties or their attorneys may make to the Court to assist it in its evaluation of the proposed Settlement; nor shall this provision prohibit Class Counsel from having attorney-client communication directly with a Settlement Class Member or Settlement Class Members once appointed as Class Counsel, including postings of the Settlement on Class Counsels' law firm(s) website(s). A Party may list the Settlement in its marketing materials, including its law firm's website or resume, etc., so long as Plaintiffs do not separately highlight this Settlement. If a Party is required by a valid, enforceable subpoena or government information request to disclose the Settlement or information about the Settlement, such Party shall provide reasonable prior notice (to the extent permitted by applicable law) to the other Party to allow the other Party to seek to prevent such disclosure. A party may also provide necessary and accurate information about the Settlement to its shareholders or other persons or entities as required by securities laws or other applicable laws or regulations.

9.2. **Voiding the Agreement.** If this Settlement is not approved, the Settlement and all related papers including the Motion for Preliminary Approval shall not be used nor be admissible in any subsequent proceedings either in this Court or in any other Court or forum. If there is any reduction in the attorneys' fee or cost award or incentive award, such reduction may be appealed but is not a basis for rendering the entire Settlement voidable or unenforceable.

9.3. **Parties' Authority.** The respective signatories to the Settlement represent that they are fully authorized to enter into this Settlement and bind the respective Parties to its terms and conditions.

9.4. **Mutual Full Cooperation.** The Parties agree to cooperate fully with each other to accomplish the terms of this Settlement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate the terms of this Settlement. As soon as practicable after execution of this Settlement, Class Counsel shall, with the assistance and cooperation of Defendants and their counsel, take all necessary steps to secure the Court's Final Judgment.

9.5. **No Prior Assignments.** The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

9.6. **No Admission.** Nothing contained in this Settlement shall be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of L.A. Fitness, and L.A. Fitness denies liability therefor. Each of the Parties has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses. This Settlement is a settlement document and shall be inadmissible in evidence in any proceeding, except an action or proceeding to approve, interpret, or enforce its terms.

9.7. **Enforcement Actions.** In the event that one or more of the Parties institutes any legal action, arbitration, or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties' reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

9.8. **Notices.** Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after emailing and mailing by U.S. registered or certified mail, return receipt requested, addressed as follows:

- (a) To the Class:  
Sherrie R. Savett, Esq.  
Berger & Montague, P.C.  
1622 Locust Street  
Philadelphia, PA 19103  
Email Address: [ssavett@bm.net](mailto:ssavett@bm.net)
- (b) To L.A. Fitness:

Jason M. Frank, Esq.  
Eagan Avenatti, LLP  
450 Newport Center Dr., Second Floor,  
Newport Beach, California 92660  
Email Address: jfrank@eaganavenatti.com

9.9. **Construction.** The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive arm's-length negotiations between the Parties and that this Settlement shall not be construed in favor of or against any Party by reason of the extent to which any Party's counsel participated in the drafting of this Settlement.

9.10. **Captions and Interpretations.** Section titles or captions contained in this Settlement are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision. Each term of this Settlement is contractual and not merely a recital.

9.11. **Modification.** This Settlement may not be changed, altered, or modified, except in writing and signed by the Parties, and approved by the Court. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties. Additionally, if the Court indicates that the Settlement will not be approved unless certain changes are made, the Parties will attempt in good faith to reach agreement to those changes prior to withdrawing from this agreement. However, if no such agreement can be reached within 60 days, then Plaintiffs or Defendant may terminate this Agreement. If this Agreement is terminated under such circumstances, Plaintiffs, Defendant, and each of the Settlement Class Members shall be deemed to be in the same position as existed prior to its execution, with the same status quo ante rights and interests as they may have had absent the entry by Defendant and Plaintiffs into this Agreement and all other understandings and agreements between the Parties and

their respective counsel relating to the settlement shall be deemed to be null and void and of no force and effect. Upon termination under this paragraph, the Parties will jointly notify the Court of the need to decide class certification as a contested motion.

9.12. **Integration Clause.** This Settlement contains the entire agreement between the Parties relating to the resolution of the Settled Actions, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged in this Settlement. No rights under this Settlement may be waived except in writing.

9.13. **Binding on Assigns.** This Settlement shall be binding upon and inure to the benefit of the Parties and the Class Members and their respective heirs, trustees, executors, administrators, successors, and assigns.

9.14. **Class Counsel Signatories.** It is agreed that, because the Class Members are so numerous, it is impossible or impractical to have each Class Member execute this Settlement. The Notice will advise all Class Members of the binding nature of the Release. Excepting only the Class Members who timely submit a Request for Exclusion, the Notice shall have the same force and effect as if this Settlement were executed by each Class Member with regard to the Released Claims.

9.15. **Counterparts.** This Settlement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties.

9.16. **Waiver of Right of Appeal.** The Parties agree to waive any appeals of the Final Judgment except as to the award of Class Counsel's fees and costs.

9.17. **Class Certification.** The Parties agree that the stipulation of Class Certification is for settlement purposes only and, if for any reason the settlement is not approved, the Stipulation will be of no force or effect. The Parties agree that certification for settlement purposes is in no way an admission that class certification is proper and that evidence of this stipulation for settlement purposes only will not be deemed admissible in this or any other proceeding.

9.18. **Governing Law.** Any disputes governing this Settlement Agreement shall be submitted to the Honorable Judge Baylson of the United States District Court for the Eastern District of Pennsylvania.

9.19. **Continuing Jurisdiction.** The Court shall retain jurisdiction over the interpretation and implementation of this Settlement Agreement, as well as any and all matters arising out of, or related to, the interpretation or implementation of the Settlement or Settlement Agreement.

9.20. **Venue.** Any and all actions or disputes arising out of this Settlement Agreement, including without limitation the enforcement, interpretation, breach, or attempted rescission of this Settlement Agreement, shall be brought exclusively in this Court.

9.21. **Waiver.** Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Settlement Agreement shall not be deemed a waiver of any of the provisions of this Settlement Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Settlement Agreement.

9.22. **Conflicts.** In the event of conflict between this Settlement Agreement and any other document prepared pursuant to the Settlement, the terms of the Settlement Agreement supersede and control.

9.23. **Singular/Plural.** The plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be.

9.24. **Reasonable Extensions of Time.** Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of this Settlement.

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed:

DATED: March 6, 2013



\_\_\_\_\_  
Sherrie R. Savett, Esq.  
On Behalf of the Plaintiffs, Joshua Vaughn,  
Kenneth J. Silver, Lori C. Bohn, Sharon N.  
Lockett, Justin P. Bronzell and Amalia Sible  
and the Settlement Classes

DATED: March 6, 2013

L.A. Fitness International, LLC

By 

Its: SVP, Legal