

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION (COLUMBUS)

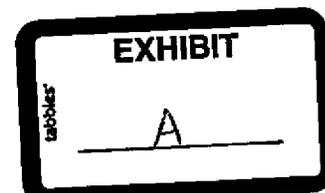
AMBER GASCHO, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	Case No. 2:11-cv-436
	:	
v.	:	Judge Smith
	:	
GLOBAL FITNESS HOLDINGS, LLC,	:	Magistrate Judge King
	:	
Defendant.	:	

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement” or “Agreement”), dated September 12, 2013, is made and entered into by and among Plaintiffs Amber Gascho, Ashley Buckemeyer, Michael Hogan, Edward Lundberg, Terry Troutman, Anthony Meyer, Rita Rose, Julia Cay (fka Julia Snyder), Albert Tartaglia, Michael Bell, Matt Volkerding, and Patrick Cary, individually and on behalf of all members of the Class, and Defendant Global Fitness Holdings, LLC, (formerly d/b/a/ Urban Active Fitness), all of whom are Parties to the Action, as defined in Sections 2.1 and 2.21 below.

1. THE CONDITIONAL NATURE OF THIS SETTLEMENT AGREEMENT

1.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the Action and are made in compromise of disputed claims. Because this Settlement Agreement settles the Action on a class-wide basis, it must receive preliminary and final approval. Accordingly, the Settling Parties enter into this Agreement on a conditional basis. If the Court does not enter the Final Approval Order, the proposed Judgment does not become a Final Judgment for any reason, or the



Effective Date does not occur, this Agreement shall be deemed null and void *ab initio*; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms, and entry of the Agreement shall remain subject to the provisions of Federal Rule of Evidence 408, and any other analogous rules of evidence that are applicable.

1.2 Defendant denies all Plaintiffs' claims as to liability, damages, penalties, interest, fees, restitution, injunctive relief, and all other forms of relief. Defendant also denies the class allegations asserted in the Action, and denies that the claims asserted in the Action could or should be certified other than for settlement purposes. Defendant specifically denies that it has violated any laws, regulations, or guidelines promulgated pursuant to any statute, or any other applicable laws, regulations, or legal requirements, including common law. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendant of any violations or failures to comply with any applicable law. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be admissible as evidence in the Action, or any other action or legal proceeding, in any manner whatsoever, except as necessary in a proceeding to enforce the terms of this Agreement.

2. DEFINITIONS

2.1 "Action" shall mean the above-captioned case, *Amber Gascho*, an individual and on behalf of all others similarly situated, Plaintiff, vs. *Global Fitness Holdings, LLC*, Defendant, United States District Court for the Southern District of Ohio, Case No 2: 11 cv 436. For settlement purposes only, the Third Amended Complaint in the Action consolidates the Action with another lawsuit which alleges similar claims against Defendant filed by Class Counsel in Boone County Circuit Court, Commonwealth of Kentucky, titled *Tartaglia et. al., v. Global Fitness Holdings, LLC*, Case No. 11 CI 1121 (Judge Frolich).

2.2 "Allowed Claimant" shall mean a Class Member who has timely submitted a completed and valid Claim Form executed under penalty of perjury and is confirmed by the Claims Administrator in accordance with this Settlement Agreement.

2.3 "Claim Award" shall mean the amount to be paid to each Class Member who files a claim that is confirmed by the Claims Administrator and survives a challenge, if any, by either or both parties pursuant to Section 10.3-10.5. A Class Member who receives a Claim Award becomes an "Allowed Claimant."

2.4 "Claims Administrator" shall mean the administrator approved by the Court based on agreement of the Parties.

2.5 "Claim Form" shall mean the document substantially in the form attached hereto as Exhibit 1, and includes an electronic submission equivalent.

2.6 "Claim Period Deadline" shall mean sixty (60) days from the mailing of the Notice Postcard.

2.7 "Class Counsel" shall mean William Porter, Thomas McCormick, Kenneth Rubin, and James Lind of Vorys, Sater, Seymour and Pease, LLP., and Mark Landes, Greg Travaglio, and Mark Troutman of Isaac Wiles Burkholder & Teetor, LLC (F/K/A Isaac Brant Ledman & Teetor, LLP).

2.8 "Class Member" shall mean each person who is a member of the Class as defined in Section 6.

2.9 "Class Payment" shall mean the total or aggregate Claim Awards paid by Defendant to all Allowed Claimants and the Class Representative Enhancement Payments set forth in Section 8.

2.10 "Class Period" shall mean January 1, 2006, to October 26, 2012.

2.11 "Class Representatives" shall mean Plaintiffs Amber Gascho, Ashley Buckemeyer, Michael Hogan, Edward Lundberg, Terry Troutman, Anthony Meyer, Rita Rose, Julia Cay (fka Julia Snyder), Albert Tartaglia, Michael Bell, Matt Volkerding, and Patrick Cary.

2.12 "Complaint" shall mean the Third Amended Complaint, attached hereto as Exhibit 2. As part of, and subject to the terms of this Agreement, Defendant consents to the Third Amended Complaint which consolidates the *Gascho* and *Tartaglia* litigations as described in Section 2.1.

2.13 "Court" shall mean the Federal District Court for the Southern District of Ohio, Eastern Division.

2.14 "Defendant's Counsel" shall mean Richard Gurbst of Squire Sanders LLP and David Owen, Brandon McGrath, and Jason Ams of Bingham Greenebaum Doll LLP.

2.15 "Defendant" shall mean Global Fitness Holdings, LLC (formerly d/b/a Urban Active Fitness).

2.16 The "Effective Date" of this Agreement shall be the date when all of the following conditions have occurred:

2.16.1 This Agreement has been signed by all Class Representatives, Class Counsel, Defendant, and Defendant's Counsel;

2.16.2 The Court has entered a Preliminary Approval Order which is generally consistent with Exhibit 3;

2.16.3 The Court-approved Notice Postcard has been duly mailed to each of the Class Members as ordered by the Court;

2.16.4 The Court has entered a final order approving the class settlement ("Final Order") which is generally consistent with Exhibit 4;

2.16.5 The Court has entered a final judgment dismissing the Action with prejudice ("Final Judgment") in a form generally consistent with Exhibit 5;

2.16.6 The Final Order and the Final Judgment entered in the Action have become final because of the expiration of the time for appeals without any appeal having been taken, or, if objections are properly filed with the Court and served on all Counsel and an appeal is timely made of said judgments or orders by any person, the

Final Order and Final Judgment and the order of dismissal with prejudice have been fully and finally affirmed by the highest court to which such appeal is taken.

2.17 "The "FIF Subclass Period" shall mean April 1, 2009, to October 26, 2012.

2.18 "Final Approval Hearing" shall mean the fairness hearing set by the Court for purposes of determining whether to grant final approval to the settlement described herein.

2.19 "Notice" shall mean the document substantially in the form attached hereto as Exhibit 6.

2.20 "Notice Postcard" means the document substantially in the form attached hereto as Exhibit 7.

2.21 "Parties" shall mean the Class Representatives, individually and on behalf of all Class Members, and the Defendant.

2.22 "Preliminary Approval Date" shall mean the date the Court approves the Agreement, and the exhibits thereto, and enters an Order providing for Notice and Postcard Notice to the Class, an opportunity to opt out of the Class, an opportunity to submit timely objections to the settlement, a procedure for submitting claims, and setting a hearing on the fairness of the terms of settlement, including approval of attorneys' fees and costs.

2.23 "Released Claims" shall mean any and all claims, demands, actions, causes of action, rights, offsets, suits, damages (whether general, special, punitive, or multiple), lawsuits, liens, costs, losses, expenses, penalties, or liabilities of any kind whatsoever, for any relief whatsoever, including monetary, injunctive, or declaratory relief, or for reimbursement of attorneys' fees, costs, or expenses, whether known or unknown, whether direct or indirect (whether by assignment or otherwise), whether under federal, state, or local law, whether alleged or not alleged in the Action, whether suspected or unsuspected, whether contingent or vested, which any of the Class Representatives or Class Members have had, now have, or may have in the future

against the Released Parties, and which were raised or which could have been raised in the Action, and which arose during the Class Period and arise out of or are related to the factual allegations or are based on the same factual predicates as alleged in the Action's Third Amended Complaint. This specifically includes any and all claims for breach of contract, unjust enrichment, misrepresentation, and/or violations of consumer protection acts, health spa acts, or prepaid entertainment contract statues resulting from Defendant's sales, communications, contracting, billing, and/or cancellations of any gym or personal training contracts.

2.24 "Released Parties" shall mean Defendant and its past, present or future direct or indirect officers, directors, shareholders, members, managers, employees, agents, principals, heirs, representatives, fiduciaries, assigns, attorneys, accountants, auditors, consultants, both individually and in their official capacities, insurers and reinsurers, employee benefit plans, divisions and its respective successors and/or assigns, predecessors in interest, subsidiaries, affiliates, parents, and attorneys. The term "Released Parties" also expressly includes, but is not limited to, Fitness International, LLC and Fitness & Sports Clubs, LLC d/b/a LA Fitness, and their past, present or future direct or indirect officers, directors, shareholders, members, managers employees, agents, principals, heirs, representatives, fiduciaries, assigns, attorneys, accountants, auditors, consultants, both individually and in their official capacities, insurers and reinsurers, employee benefit plans, divisions, and their respective successors and/or assigns, predecessors in interest, subsidiaries, affiliates, parents, and attorneys.

2.25 "Settlement Administration Costs" shall mean all fees and expenses incurred by the Claims Administrator as a result of the procedures and processes expressly required by this Agreement, as ordered by the Court, and/or as agreed to by the Parties.

2.26 "Settling Parties" shall mean the Defendant and Settling Plaintiffs.

2.27 "Settling Plaintiffs" shall mean all Class Members who do not timely return a signed and valid Opt-Out Request as defined in Section 12.7 to the Claims Administrator.

3. DESCRIPTION OF THE ACTION

3.1 On April 13, 2011, Amber Gascho filed this lawsuit as a proposed class action and alleged violations of Ohio's Consumer Protection Act, Prepaid Entertainment Contract Act, and Fraud. On August 4, 2011, a Second Amended Complaint was filed in this Court combining the *Gascho* litigation with *Lundberg, et al v. Global Fitness Holdings, LLC*, Case No. 2: 11 cv 00329. *Gascho's* Second Amended Complaint alleged as follows: Counts 1, 2, and 3 - violations of Ohio's Consumer Sales Practices Act and Prepaid Entertainment Contract Act; Count 4 - violations of Ohio's Deceptive Trade Practices Act; Count 5 - unjust enrichment; Count 6 - conversion; and Count 7 - breach of contract. Global Fitness denied the allegations and also filed two motions for judgment on the pleadings, which the Court granted in part. Specifically, the Court dismissed the class allegations of Counts 1 and 2, and dismissed Counts 4 and 6 in their entirety.

3.2 Simultaneously with the *Gascho* litigation, on May 13, 2011, Class Counsel filed a proposed class action on behalf of Kentucky members in Boone County Circuit Court, Commonwealth of Kentucky, titled *Tartaglia v. Global Fitness Holdings, LLC*, Case No. 11 CI 1121, and alleged similar claims and causes of action against Defendant. Approximately two months later, Plaintiffs filed a First Amended Complaint adding an additional class representative and clarifying its allegations, which included Count 1 - violations of Kentucky's Consumer Protection Act (KRS 367.110); Count 2 - violations of Kentucky's Health Spa Act (KRS 367.910); Count 3 - unjust enrichment; and Count 4 - breach of contract. Global Fitness denied all the allegations.

3.3 On October 26, 2012, Defendant sold substantially all of its assets in Urban Active to Sports & Fitness Clubs, LLC, doing business as LA Fitness, a

competing health club chain. Since that time, Defendant has not operated any gyms or health clubs in the United States.

3.4 On July 8, 2013, the parties conducted a full-day mediation with William Hartgering, Esq., a JAMS mediation expert from Chicago. An agreement was not reached that day, but as a result of that mediation, and extensive post-mediation negotiation, the parties have reached the settlement agreement memorialized herein.

4. BENEFITS OF THE SETTLEMENT TO THE PROPOSED CLASS

4.1 This Settlement Agreement was entered into after extensive arm's length discussions and negotiations between the Settling Parties, including a full-day mediation with an independent third party mediator. The relief to the Class Members described herein was agreed upon by the Settling Parties prior to the negotiation and agreement as to the attorneys' fees and cost provisions set forth herein.

4.2 Based on their own independent investigations and evaluations, Class Counsel has concluded that settlement with Defendant for the consideration and terms set forth below, considering the representative and average class claim and the risk of loss, is fair, reasonable, and adequate in light of all known facts and circumstances, and is in the best interests of the Class. Class Counsel has also concluded that the total consideration and payment set forth in this Agreement is adequate in light of the uncertainties surrounding the risk of further litigation, and the defenses that Defendant has asserted and could assert.

4.3 Class Counsel has balanced the monetary benefit under the Settlement to the Class against the expenses and length of continued proceedings that would be necessary to prosecute the Action against Defendant through class certification, trial, and possible appeals. Class Counsel has also considered the risk of continued litigation, especially in complex actions such as class actions, as well as the difficulties and delay inherent in such litigation. Therefore, Class Counsel has determined that the settlement set forth in this Agreement is in the best interests of the Class.

5. POSITION OF DEFENDANT

5.1 Defendant specifically and generally denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than Settlement, the Action is not appropriate for class action treatment. Nonetheless, Defendant has concluded that continued litigation would be protracted, expensive, and could lead to uncertain consequences, including but not limited to a risk of an adverse ruling and/or judgment against Defendant, and therefore, it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement. This Settlement Agreement was entered into after extensive arm's length discussions and negotiations, including a full-day mediation. Claim Awards and other relief to Class was agreed upon prior to the negotiation and agreement on the attorneys' fees and cost provisions contained in this Agreement.

5.2 Neither this Agreement, nor any document referred to in it, nor any actions taken pursuant to this Agreement, is or should be construed as an admission by Defendant of any fault, wrongdoing, or liability whatsoever. Nor should the Agreement be construed as an admission that the Class Representatives can serve as adequate class representatives other than for settlement purposes.

6. SETTLEMENT CLASS, SUBCLASSES, AND CLAIM AWARDS

6.1 For settlement purposes only, the Parties agree and jointly request that the Class and Subclasses as set forth below be certified. In addition, the Parties agree that members of the Class and Subclasses who file timely and valid Claim Forms with the Claims Administrator and are confirmed by the Claims Administrator in accordance with this Settlement Agreement, and thereby become "Allowed Claimants," shall recover the Claim Awards set forth below.

6.1.1 The "Class" shall mean all individuals who signed a gym membership or personal training contract with Defendant during the Class Period. The

total number of Class Members is approximately 606,246 persons. Any Class Member who becomes an Allowed Claimant shall receive \$5 in addition to any other Claim Award.

6.1.2 The "FIF Subclass" shall mean all Class Members who paid a \$15 Facility Improvement Fee ("FIF"), Club Administrative Fee ("CAF"), or any other biannual \$15 fee charged by Defendant during the FIF Subclass Period. The total number of FIF Subclass members is approximately 316,721 persons. Any FIF Subclass member who becomes an Allowed Claimant shall receive \$20 in addition to any other Claim Award.

6.1.3 The "Gym Cancel Subclass" shall mean all Class Members who cancelled their gym membership contract during the Class Period. The total number of Gym Cancel Subclass members is approximately 387,177 persons. Any Gym Cancel Subclass member who becomes an Allowed Claimant shall receive \$20 in addition to any other Claim Award.

6.1.4 The "Personal Training Cancel Subclass" shall include all Class Members who cancelled a personal training contract with Defendant during the Class Period. The total number of Personal Training Cancel Subclass members is approximately 64,805 persons. Any Personal Training Cancel Subclass member who becomes an Allowed Claimant shall receive \$30 in addition to any other Claim Award.

6.2 A Class Member may recover a Claim Award under the Class and each Subclass in which he/she qualifies. For example, a Class Member who becomes an Allowed Claimant under all Subclasses will recover \$75. A Class Member may not recover more than once under each Class/Subclass.

7. MINIMUM CLASS PAYMENT

7.1 The minimum payment to be made to the Allowed Claimants and the Class Representatives, in the form of Claim Amounts and Class Representative Enhancement Payments, is one million three hundred thousand (\$1,300,000.00) (the

“Minimum Class Payment”). In the event the total amount of the Class Payment does not equal or exceed the Minimum Class Payment, then any additional monies necessary to reach the Minimum Class Payment shall be divided equally among all Allowed Claimants.

8. CLASS REPRESENTATIVE ENHANCEMENT PAYMENTS

8.1 Each Class Representative must participate as a Class Member by submitting a valid Claim Form and recovering the appropriate Claim Award(s). In addition to those Claim Awards, an enhancement payment to the Class Representatives (“Class Representatives Enhancement Payments”) will, subject to Court approval, be paid by Defendant to the Class Representatives in the aggregate amount of forty thousand dollars (\$40,000.00) for service and assistance to the Class. Such payments shall be applied to the Minimum Class Payment amount set forth in Section 7.1.

8.2 The Class Representatives Enhancement Payments takes into consideration the varied burdens and obligations placed on each Class Representative. For example, some Class Representatives have been required to respond to multiple sets of written discovery and prepare for and be deposed, while other Class Representatives were added to the Action a few months ago and therefore have not been subject to any formal discovery.

8.2.1 Albert Tartaglia and Michael Bell shall each receive \$5,000.00.

8.2.2 Amber Gascho, Ashley Buckemeyer, Michael Hogan, Edward Lundberg, Terry Troutman, Anthony Meyer, Rita Rose, and Julia Cay shall each receive \$3,500.00.

8.2.3 Matt Volkerding and Patrick Cary shall each receive \$1,000.00.

8.3 Because the Enhancement Payments represent payment to the Class Representatives for service to the Class Members, the Claims Administrator will report the Enhancement Payment on a Form 1099, which will be provided to the Class Representatives and to the pertinent taxing authorities as required by law. The Class

Representatives assume full responsibility for paying all taxes, federal and state, due as a result of the Enhancement Payment.

9. ATTORNEYS' FEES AND LITIGATION COSTS

9.1 Class Counsel shall apply for an award of reasonable attorneys' fees and shall also apply for an award of reimbursement of actual litigation costs to be approved by the Court. Combined Class Counsel's total application for payment of reasonable attorneys' fees and reimbursement of actual costs shall not exceed two million three hundred ninety thousand dollars (\$2,390,000.00). Defendant agrees to pay Plaintiffs attorneys' fees and litigation costs as Ordered by the Court, provided that such payment does not exceed two million three hundred ninety thousand dollars (\$2,390,000.00). The Parties further agree that such payments shall have no effect on, and will not reduce, the Class Payment by Defendant as set forth in Sections 6, 7, and 8 above.

9.2 Defendant agrees not to oppose any application or motion by Class Counsel for attorneys' fees and costs as provided above and Defendant agrees to file a Motion and/or Notice with the Court at least twenty-one (21) days prior to the Final Approval Hearing indicating that it does not oppose payment of Class Counsel's fees and costs as set forth above, unless that application or motion by Class Counsel breaches this Settlement Agreement by demanding an Award in excess of two million three hundred ninety thousand dollars (\$2,390,000.00).

9.3 The payment approved by the Court pursuant to this Section, whether in the amount sought by Class Counsel or less as determined by the Court, shall constitute full satisfaction of Defendant's obligations to pay amounts to any person, attorney, or law firm for attorneys' fees, expenses, or costs incurred on behalf of the Class Representatives and/or the Class, and shall relieve the Released Parties from any other claims or liability to any other attorney or law firm for any attorneys' fees, expenses, and/or costs to which any of them may claim to be entitled on behalf of the Class Representatives and/or the Class. Class Counsel further agrees that any

allocation of fees between or among Class Counsel and any other attorney representing the Class Representatives and/or the Class Members shall be the sole responsibility of Class Counsel. An IRS Form 1099 shall be provided to Class Counsel for the total payment made pursuant to this Section.

10. CLAIMS ADMINISTRATOR

10.1 Defendant shall pay the Settlement Administration Costs of the Claim Administrator, and the Parties agree that such payments shall have no effect on, and will not reduce, the Class Payments by Defendant as set forth in Sections 6, 7, and 8 above.

10.2 No fewer than twenty one (21) days after the Claims Period , the Claims Administrator shall provide the Court and all counsel for the Parties with a statement detailing the Settlement Administration Costs. The Parties and their counsel agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration of the terms of this Settlement Agreement.

10.3 The Claims Administrator shall provide to Class Counsel and Defendant's counsel a weekly status report containing the names of the Class Members who have submitted valid Claim Forms, the amount of money to be paid to each Class Member who filed a Claim Form, the names of the Class Members who have submitted incomplete and/or invalid Claim Forms; and the names of the class members who have submitted Opt-Out Requests, objections, and/or Notices of Intent to Appear. In addition, the status report should identify any Class Member who provided Class/Subclass information that was inconsistent with the data provided by Defendant and shall include the status of any determination made by the Claims Administrator pursuant to Section 10.4. The Claims Administrator will further provide, upon request, a copy of each Claim Form or Opt-Out Request.

10.4 The Claims Administrator shall be solely responsible for determining eligibility for, and the amount of, the Claim Awards to be paid to Allowed Claimants. The Claims Administrator's determination shall be conclusive, final, and binding on all Parties and Class Members, provided that the determination is consistent with the terms of this Agreement and withstands a challenge, if any, as described under Section 10.5. All eligibility and Claim Award determinations shall be based on data and information provided by Defendant, Class Counsel, and/or the Class Member. No individual may be deemed to be an Allowed Claimant until and unless the Claims Administrator confirms that the individual requesting a Claims Award qualifies under the terms of the applicable Class and, if applicable, Subclass.

10.5 The actions of the Claims Administrator shall be governed by the terms of this Agreement. In the event that either Defendant's counsel or Class Counsel takes the position that the Claims Administrator is not acting in accordance with the terms of the Agreement, including but not limited a failure by the Claims Administrator to properly confirm eligibility for a Claim Award as set forth under Section 10.4, such party shall meet and confer first with opposing counsel and then, if necessary, with the Claims Administrator or the Court. If any Settling Party believes in good faith after such conferences that the Claims Administrator remains in non-compliance with the terms of this Settlement Agreement, the Settling Party may bring an appropriate motion for ruling on that issue before the Court.

11. PRELIMINARY APPROVAL AND SECURITY

11.1 Promptly after the execution of this Settlement Agreement, Class Counsel shall submit to the Court this Settlement Agreement and the exhibits hereto for preliminary approval by the Court. The Court's preliminary approval of the terms of this Settlement Agreement shall be embodied in an Order that preliminarily approves this settlement as fair, reasonable, adequate, and in the best interests of the Settling Plaintiffs. The Order shall also conditionally certify the Class, approve the Claims

Administrator, provide for the Class Notice and Notice Postcard to be sent and published in the general forms attached as Exhibits 6 and 7, schedule deadlines for the submission of Claim Form and Opt-Out Requests, and also set the date for the Final Approval Hearing.

11.2 Within forty five (45) days of entry of an Order by the Court granting preliminary approval to this Settlement Agreement, Defendant shall deposit one million five hundred thousand (\$1,500,000) into a court-authorized escrow account with Defendant having the option, in its sole discretion, to substitute or replace, at any time, said funds with a Letter of Credit in the same amount if it so chooses, provided that the Court first approves the lending institution and the terms of the Letter of Credit. The purpose of the funds or Letter of Credit described in this Section is to guarantee the availability of funds in excess of the Minimum Class Payment set forth in Section 7.1. Defendant may but is not required to use the funds or letter of credit described in this Section to make the Class Payment set forth in Section 14.1. If Defendant does not use the funds or letter of credit described in this Section to make the Class Payment, then the funds or letter of credit described in this Section shall be immediately released to Defendant upon Defendant's compliance with Section 14.1 of this Agreement.

12. NOTICE, CLAIMS, OPT-OUTS AND OBJECTIONS

12.1 Within fifteen (15) days of the Preliminary Approval Date, Defendant shall provide to Class Counsel and the Claims Administrator an electronic database containing the following information from its records: each Class Member's full name, last known address, last known email address, home club, and status of membership (ongoing or terminated) as of the last day of the Class Period. In addition, Defendant shall include information identifying which Subclasses each Class Member belongs to. The database shall be in a usable format agreed on by the Claims Administrator so it can satisfy its duties in preparing the Notice Postcard and establishing telephone and internet/web capabilities to achieve all responsibilities set forth in this Agreement by the

appropriate deadlines. Defendant, Class Counsel, and the Claims Administrator agree to consult prior to the production date to ensure the format will be reasonably acceptable. The Claims Administrator and Class Counsel shall maintain the data as private and confidential.

12.2 Within thirty (30) days of the Preliminary Approval Date, the Claims Administrator will send via first class mail with address service requested a Notice Postcard to all Class Members. The "Notice Postcard" shall be generally consistent with the form attached as Exhibit 7. The Claims Administrator shall conduct a National Change of Address (NCOV) update before mailing the Notice Postcard. In addition, the Claims Administrator shall also send an email notice to all Class Members. The Claims Administrator will also set up and establish a website and toll free phone number to provide general information, to respond to requests for a Claim Form, and to accept online claims. Immediately after the Notice Postcards are sent, Notice will also be published in newspapers and other publications in each of the cities/metro areas in which Global Fitness operated during the Class Period in the form substantially similar to Exhibit 7. These general publication Notices shall run for a minimum of two consecutive days with one of the two days being the first Sunday after the Notice Postcards were mailed.

12.3 Any Notice Postcard returned to the Claims Administrator as undeliverable before the Claim Period Deadline shall be resent to any forwarding address affixed thereto. The Claims Administrator shall conduct an address search on each Notice Postcard that is returned in the method and for the cost outlined in its Service Agreement and re-mail the Notice Postcard within five (5) days after the Claims Administrator receives notice that the Notice Postcard was undeliverable. For Class Members who are promptly re-mailed a Notice Postcard, the Claim Period Deadline shall not be extended.

12.4 One supplemental email notice (the "Reminder Email ") will be sent to the Class Members who have not filed to become Allowed Claimants or opted out within thirty (30) days of the original mailing of the Notice Postcards. The Reminder Email shall be sent thirty (30) days after the original mailing of the Notice Postcard.

12.5 In order to be timely, Class Members must submit a valid Claim Form executed under penalty of perjury by the Claim Period Deadline. Claim Forms may be requested by phone, in writing, or printed online. Claims may be submitted online or by returning a Claim Form via U.S. Mail. No Claim Form will be considered timely if postmarked after the Claim Period Deadline (if mailed), or if submitted online via website after 11:59 pm EST on the date of the Claim Period Deadline.

12.6 If a Claim Form is timely submitted, but is deficient, the Claims Administrator will return the Claim Form (or, if deemed necessary, a new Claim Form) to the Class Member within five (5) business days of receipt of the Claim Form with a deficiency notice explaining the deficiencies and stating that the Class Member will have seven (7) days from the date of the deficiency notice to correct the deficiencies and resubmit the Claim Form. Each Class Member who has a deficient or incomplete Claim Form returned to such Class Member under this Section shall have an additional seven (7) days to re-submit the Claim Form regardless of the Claims Period Deadline.

12.7 Class Members, except for the Class Representatives, may opt-out of the Settlement by submitting a valid written request to the Claims Administrator (an "Opt-Out Request") indicating that the Class Member wishes to be excluded from the settlement. To be valid, all Opt Out Requests must be timely submitted (postmarked on or before the Claim Period Deadline). In addition, the Opt-Out Request must contain the name, address, and telephone number of the Class Member requesting exclusion, and must be personally signed by the Class Member who seeks to opt out of the terms of this Settlement Agreement. No Class Member may opt out by a request signed by an actual or purported agent or attorney acting on behalf of a group of Class Members. No

Opt-Out Request may be made on behalf of a group of Class Members. Class Members who do not submit a timely and validly executed Opt-Out Request shall be bound by the Settlement, including the release of Released Claims. Class Members who timely submit executed Opt-Out Requests shall have no further role in this Settlement and shall not be bound by this Agreement, and thus they shall not be entitled to any payment as a result of this Settlement and shall not be entitled to, nor permitted to assert, an objection to the Settlement. The Notice Postcard shall advise Class Members of their ability to opt-out of the Settlement and of the consequence thereof. Neither the Parties nor any of their counsel will solicit any Class Member to submit an Opt-Out Request.

12.8 Class Members who timely submit both an Opt-Out Request and a Claim Form shall be sent a letter by the Claims Administrator, requesting clarification of the Class Member's intent. The letter will state that, unless the Class Member clarifies within seven (7) days that he or she intends to opt-out, the Class Member will be deemed to be an Allowed Claimant.

12.9 Class Members, except for the Class Representatives, will have until the Claim Period Deadline within which to file an objection to the Settlement. Only Class Members who have not filed Opt-Out Requests may object to the Settlement. To object, a Class Member must timely file with the Court a written objection and a notice of intent to appear at the Final Approval Hearing, and simultaneously send copies of the written objection and notice of intent to appear to the Parties' Counsel. The filing date of any written objection and notice of intent to appear shall be deemed the exclusive means of determining if an objection is timely. The procedures for submitting an objection will be set forth in the Notice of Settlement and the Preliminary Approval Order. The written objection must state: (a) the full name, address, and telephone number of the person objecting and (b) the basis for the objection. Class Members who fail to make objections in the manner specified in this Section shall be deemed to have

waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Agreement. Neither the Parties nor any of their counsel shall encourage any Class Member to object.

13. FINAL APPROVAL

13.1 The Claims Administrator shall provide Class Counsel and Defendant's Counsel with a declaration containing an accounting no later than twenty one (21) days after the Claims Period Deadline. This declaration and accounting will include, among other things: The names of the Class Members who have submitted timely and valid Claim Forms (i.e. the Allowed Claimants); the amount of money to be paid to each Allowed Claimant and the total Class Payment; the names of the Class Members who have submitted incomplete and/or invalid Claim Forms; and the names of the class members who have submitted Opt-Out Requests, objections, and/or Notices of Intent to Appear. This accounting should also include any remainder or balance to be paid by Defendant to the Claims Administrator and the total amount paid by Defendant to the Claims Administrator in Settlement Administration Costs.

13.2 Prior to the Final Approval Hearing, Plaintiffs will move the Court for entry of the Final Order (and associated entry of Final Judgment): (a) finding the Settlement fair, reasonable, adequate, and in the best interests of the Class Members; (b) confirming that the settlement class and subclasses are certified for settlement purposes only; (c) approving Class Counsel's application for an award of attorneys' fees and costs; (d) approving Class Representatives' application for Enhancement Payments; (e) ordering payment of any remaining Settlement Administration Costs; and (f) dismissing the Action with prejudice and discharging the Defendant from all further liability to Class Counsel and the Settling Plaintiffs with respect to this Settlement Agreement and the Released Claims. The Parties and their counsel shall make all reasonable efforts to secure entry of the Final Order. The proposed Final Order (and

the associated proposed Final Judgment) shall be lodged with the Court no later than seven (7) business days before the Final Approval Hearing.

13.3 Prior to the Final Approval Hearing, Class Counsel shall file a motion seeking approval of attorneys' fees and costs and the proposed Class Representative Enhancement Payments to the Class Representatives as set forth in this Settlement Agreement. Class Representative and Class Counsel agree that they shall be responsible for justifying the amount of the Class Representative Enhancement Payment and attorneys' fees and costs to the Court, and they agree to submit, as appropriate, the necessary materials to support this payment. Defendant will not oppose the amount of the Class Representative Enhancement Payment and attorneys' fees and costs sought, as long as they are consistent with this Agreement. Defendant shall file a statement of non-opposition to the motion described in this Section as well as the motions set forth in Sections 11.1 and 13.2, as long as each is consistent with this Settlement Agreement. If the Court (or any appellate court) awards less than the amount requested for attorneys' fees and/or costs, or less than the amount requested for the Class Representative Enhancement Payment, only the awarded amounts shall be paid and shall constitute satisfaction of the obligations of Defendant under this Agreement.

13.4 If an appeal results in an order materially modifying, setting aside, or vacating any portion of this Settlement Agreement, with the exception of any order that provides for a reduction of the amount of attorneys' fees or costs to be paid to Class Counsel, or the amount of any Enhancement Payment paid to the Class Representatives, each party adversely impacted by the order shall have the absolute right, at its sole discretion, to treat such order as an event permanently preventing Final Approval. To exercise this right, the party must inform the other party and the Claims Administrator, in writing, of the exercise of this right, within ten (10) days of receiving

notice of any order modifying, setting aside, or vacating any portion of this Settlement Agreement.

13.5 If the Settlement Agreement is not approved by the Court substantially in the form agreed to by the Parties, or if this Settlement Agreement is terminated, cancelled, declared void, or fails to become effective in accordance with its terms, or if entry of the Final Order is rendered impossible, or if the Effective Date does not occur, this Agreement (except for those provisions relating to non-admission and denial of liability set forth above) shall be deemed null and void and its terms and provisions shall have no further force and effect with respect to the Parties, including but not limited to the class certification described in Section 6.1. Notwithstanding any other provision of this Agreement, no order of the Court, or modification or reversal on appeal of any order of the Court, reducing the amount of any attorneys' fees or costs to be paid by Defendant to Class Counsel, or reducing the amount of any Class Representative Enhancement Payments to be paid by Defendant to the Class Representatives, shall constitute grounds for cancellation or termination of this Settlement Agreement, or grounds for limiting any other provision of the Final Judgment.

13.6 If this Agreement is terminated or canceled pursuant to its terms, the Parties to this Agreement shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Agreement. In such an event, Defendant shall pay the costs and fees of the Claims Administrator.

14. DISTRIBUTION OF FUNDS BY DEFENDANT

14.1 Seven (7) days after the Effective Date, Defendant shall pay the Court-approved Class Representative Enhancement Payments and the total amount needed to satisfy the Class Payment as calculated by the Claims Administrator, by wiring the funds into a Qualified Settlement Fund ("QSF"), set up and controlled by the Claims Administrator. The QSF shall be a non-interest-bearing account at a federally-insured

bank that is mutually acceptable to the Parties and the Claims Administrator that is FDIC insured for the full amount deposited.

14.2 Within fourteen (14) days of the Effective Date, as defined herein, the Claims Administrator shall issue Claim Awards to Allowed Claimants in the form of a check in the name of the Allowed Claimant, which shall become null and void if not deposited within ninety (90) days of issuance. After ninety (90) days of issuance, funds from undeposited checks will be held by the Claims Administrator; if the Class Member to whom the undeposited check is issued does not contact Class Counsel or the Claims Administrator concerning his or her settlement payment within one-hundred eighty (180) days of issuance, the amount of that Class Member's Claim Award shall be transmitted back to Defendant if the total amount paid on all Claim Awards exceeds the amount set forth in Section 7.1, or, if the total amount paid on all Claim Awards does not exceed the amount set forth in Section 7.1, to the Claims Administrator for distribution pursuant to Section 7.1. The failure by a Class Member to claim or deposit any check issued by the Claims Administrator shall have no effect on that Class Member's release of all Released Claims as set forth herein.

14.3 Within fourteen (14) days of the Effective Date, the Claims Administrator shall also send a check by mail for the Court-approved Class Representative Enhancement Payments to the Class Representatives, in care of Class Counsel.

14.4 Within thirty (30) days of the Effective Date, Defendant shall wire the Court-approved attorneys' fees and costs to Class Counsel and shall wire any remaining Settlement Administration Costs to the Claims Administrator.

14.5 The delivery by Defendant of the funds set forth above shall constitute full and complete discharge of its obligations under this Agreement. No person shall have any claim against the Claims Administrator, Defendant or any of the Released Parties, the Class Representatives, the Class Members, or Class Counsel based on distribution

or payments made substantially in accordance with this Agreement, or further orders of this Court.

15. RELEASE OF CLAIMS

15.1 Upon the Final Approval Date, each Class Representative and each Settling Plaintiff shall be deemed to have fully, finally, and forever jointly and severally released the Released Parties from all Released Claims. In light of the method of notice set forth by this Settlement, and subject to final Court approval, all Settling Plaintiffs shall be bound by this Agreement, and shall release the Released Parties from all Released Claims, even if they never received notice.

15.2 In addition, each Class Representative who receives an Enhancement Payment shall be deemed to have fully, finally, and forever released any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against the Released Parties, of whatever kind and nature, character, and description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, whether known or unknown, and whether anticipated or unanticipated, arising during the Class Period, for any type of relief, including, without limitation, damages, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief. The Class Representatives' Released Claims include, but are not limited to, the Released Claims, as well as any other claims under Federal, State, or local law or common law.

16. MISCELLANEOUS PROVISIONS

16.1 The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Settlement. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other action as may reasonably be necessary to fulfill the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this

Settlement and any other efforts that may become necessary by Court order, or otherwise, to effectuate this Settlement and the terms set forth herein.

16.2 Unless otherwise specifically provided herein, all notices, demands, or other communications to and amongst the Settling Parties given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States certified mail, return receipt requested, and (but not in the alternative) by email, if addressed as follows:

To the Plaintiffs and the Class:

Thomas McCormick
Vorys, Sater, Seymour and Pease, LLP
52 East Gay Street
Columbus, OH 43216
(614) 464-6433
tnmccormick@vorys.com

To Defendant:

J. Darby Turner
Bingham Greenebaum Doll LLP
300 West Vine Street
Suite 1100
Lexington, Kentucky 40507
(859) 231-8500
dturner@bgdlegal.com

16.3 This Agreement may not be changed, altered, or modified, except in writing, signed by the Parties hereto, and approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms or by a writing agreed to by the Settling Parties.

16.4 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

16.5 The Parties agree that it is impossible or impractical to have each Class Member sign this Agreement. It is agreed that, for purposes of seeking approval of the

Class Settlement, this Settlement Agreement may be executed on behalf of the proposed Class by the Class Representatives.

16.6 The Parties may execute this Agreement in counterparts and/or by facsimile, and execution of counterparts shall have the same force and effect as if all Settling Parties had signed the same instrument.

16.7 The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of the Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Agreement. Any action to enforce this Agreement shall be commenced and maintained only in the Court.

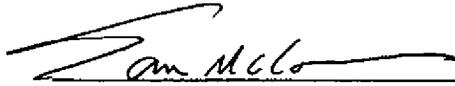
16.8 In the event that one or more of the Settling Parties to this Agreement institutes any legal action, arbitration, or other proceeding to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, the successful party or parties shall be entitled to recover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

16.9 Section titles or captions contained in the Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement, or any provision thereof.

16.10 With respect to themselves, each of the Parties to this Agreement and or their agent or counsel represents, covenants, and warrants that (a) they have full power and authority to enter into and consummate all transactions contemplated by this Agreement and have duly authorized the execution, delivery, and performance of this Agreement and (b) the person executing this Agreement has the full right, power and authority to enter into this Agreement on behalf of the party for whom he/she has executed this Agreement, and the full right, power, and authority to execute any and all

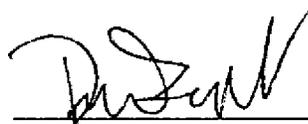
necessary instruments in connection herewith, and to fully bind such party to the terms and obligations of this Agreement.

IN WITNESS WHEREOF, this Settlement Agreement is executed by the Parties and their duly authorized attorneys, as of the date set forth on the first page of this Agreement.



Thomas McCormick
Kenneth Rubin
Vorys, Sater, Seymour and Pease, LLP
52 East Gay Street
Columbus, OH 43216
(614) 464-6433
COUNSEL FOR PLAINTIFFS

Gregory M. Travaglio
Mark H. Troutman
Isaac Wiles Burkholder and Teeter, LLP
Two Miranova Place, Suite 700
Columbus, Ohio 43215
(614) 221-2121
COUNSEL FOR PLAINTIFFS



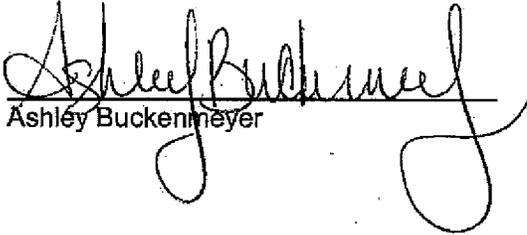
Richard S. Gurbst
Squire Sanders (US) LLP
4900 Key Tower
127 Public Square
Cleveland, OH 44114
United States of America
(216) 479-8607
COUNSEL FOR DEFENDANT

David Owen
Jason Ams
Binham Greenebaum Doll LLP
300 West Vine Street, Suite 1100
Lexington, Kentucky 40507
Phone: (859) 231-8500
COUNSEL FOR DEFENDANT

V. Brandon McGrath
Bingham Greenebaum Doll LLP
2350 First Financial Center
255 East Fifth Street
Cincinnati, Ohio 45202
(513) 455-7600
COUNSEL FOR DEFENDANT

CLASS REPRESENTATIVES

Amber Gascho



Ashley Buckenmeyer

Michael Hogan

Edward Lundberg

Terry Troutman

Anthony Meyer

Rita Rose

Julia Cay (fka Julia Snyder)

Albert Tartaglia

DEFENDANT

Global Fitness Holdings, LLC

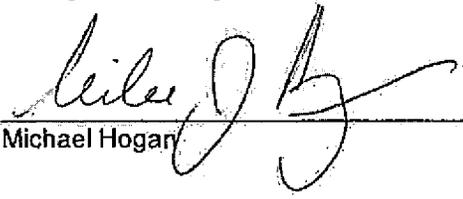
By: _____

Its: _____

CLASS REPRESENTATIVES

Amber Gascho

Ashley Buckenmeyer



Michael Hogarty

Edward Lundberg

Terry Troutman

Anthony Meyer

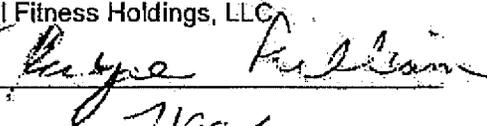
Rita Rose

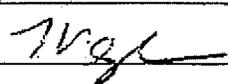
Julia Cay (fka Julia Snyder)

Albert Tartaglia

DEFENDANT

Global Fitness Holdings, LLC

By: 

Its: 

CLASS REPRESENTATIVES

DEFENDANT

Amber Gascho

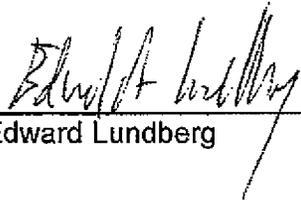
Global Fitness Holdings, LLC

By: _____

Ashley Buckenmeyer

Its: _____

Michael Hogan



Edward Lundberg

Terry Troutman

Anthony Meyer

Rita Rose

Julia Cay (fka Julia Snyder)

Albert Tartaglia

CLASS REPRESENTATIVES

Amber Gascho

Ashley Buckenmeyer

Michael Hogan

Edward Lundberg

Terry E. Troutman

Terry Troutman

Anthony Meyer

Rita Rose

Julia Cay (fka Julia Snyder)

Albert Tartaglia

DEFENDANT

Global Fitness Holdings, LLC

By: _____

Its: _____

CLASS REPRESENTATIVES

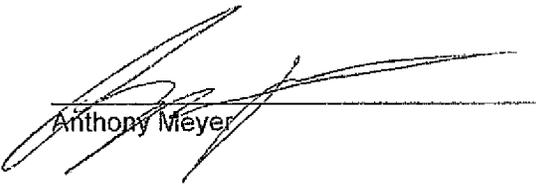
Amber Gascho

Ashley Buckenmeyer

Michael Hogan

Edward Lundberg

Terry Troutman



Anthony Meyer

Rita Rose

Julia Cay (fka Julia Snyder)

Albert Tartaglia

DEFENDANT

Global Fitness Holdings, LLC

By: _____

Its: _____

CLASS REPRESENTATIVES

Amber Gascho

Ashley Buckenmeyer

Michael Hogan

Edward Lundberg

Terry Troutman

Anthony Meyer



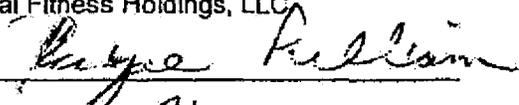
Rita Rose

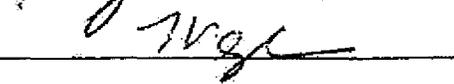
Julia Cay (fka Julia Snyder)

Albert Tartaglia

DEFENDANT

Global Fitness Holdings, LLC

By: 

Its: 

CLASS REPRESENTATIVES

DEFENDANT

Amber Gascho

Global Fitness Holdings, LLC

By: _____

Its: _____

Ashley Buckenmeyer

Michael Hogan

Edward Lundberg

Terry Troutman

Anthony Meyer

Rita Rose



Julia Cay (fka Julia Snyder)

Albert Tartaglia

28

CLASS REPRESENTATIVES

DEFENDANT

Amber Gascho

Global Fitness Holdings, LLC

By: *[Signature]*

Its: *[Signature]*

Ashley Buckenmeyer

Michael Hogan

Edward Lundberg

Terry Troutman

Anthony Meyer

Rita Rose

Julia Cay (fka Julia Snyder)

[Signature]

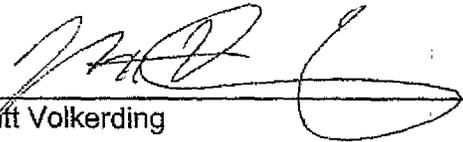
Albert Faraglia


Michael Bell

Matt Volkerding

Patrick Cary

Michael Bell



Matt Volkerding

Patrick Cary

Matt Volkening



Patrick Cary