

FILED
Superior Court of California
County of Los Angeles

09/09/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: A. He Deputy

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

CHARLES SAN NICOLAS, an individual,
NATHAN KLIPFEL, an individual, on behalf of
themselves, in their representative capacity on
behalf of the State of California, and on behalf
of all persons similarly situated,

Plaintiffs,

vs.

WEST COVINA CORPORATE FITNESS,
INC., et al,

Defendants.

CASE NO.: BC616304 [consolidated with
CASE NO.. BC665577; related to CASE
NOS. 20STCV07368 and 20STCV27502]

[Complaint filed April 8, 2016; before
Honorable Stuart M. Rice, Dept. SS-1]

**~~AMENDED [PROPOSED]~~ ORDER
GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT,
ATTORNEY FEE AWARD, COST
AWARD, AND CLASS
REPRESENTATIVE ENHANCEMENT**

Date: September 6, 2022
Time: 10:30 a.m.
Dept.: SS-1

~~AMENDED [PROPOSED]~~ ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT

1 This matter came on for hearing on September 6, 2022, at 10:30 a.m. in Department SS-1
2 of the above-captioned court on Plaintiffs' Motion for Final Approval of Class Action
3 Settlement, Attorney Fee Award, Cost Award, and Class Representative Enhancement, upon the
4 terms and conditions set forth in the Stipulation of Class Action Settlement and Release of
5 Claims (the "Settlement Agreement") between Plaintiffs Charles San Nicolas, Nathan Klipfel,
6 David Price, and Peter Contreras (collectively, "Plaintiffs") and Defendants Gym Management
7 Services, Inc., Gold's Gym SoCal aka Gold's Gym SoCal Group, Angel Banos, William Banos,
8 West Covina Corporate Fitness, Inc., Muscle Head, Inc., Muscle Bound, Inc., LA Corporate
9 Fitness, Inc., Thousand Oaks Corporate Fitness, Inc., Simi Valley Corporate Fitness, Inc., Culver
10 City Corporate Fitness, Inc., Fullerton Corporate Fitness, Inc., Valencia Corporate Fitness, Inc.,
11 Santa Anita Corporate Fitness, Inc., Montclair Corporate Fitness, Inc., Santa Barbara Corporate
12 Fitness, Inc., Anaheim Corporate Fitness, Inc., Glendale Corporate Fitness, Inc., Santa Ana
13 Corporate Fitness, Inc., and Gym Management Services, Inc. (collectively, "Defendants").

14 The Court, having fully reviewed the Motion for Final Approval for Class Action
15 Settlement, the Memorandum of Points and Authorities, Declarations, and Exhibits filed in
16 support thereof, the Settlement Agreement, and the Declarations of Plaintiffs previously filed in
17 support of the Motion for Preliminary Approval of Class Action Settlement, and considered the
18 argument of Counsel, the law, and good cause appearing therefore, Plaintiffs' motion is hereby
19 **GRANTED** and **IT IS ORDERED** that:¹

- 20 1. The Court hereby GRANTS final approval of the Settlement Agreement
21 incorporated in full by this reference and made a part of this Order Granting Final
22 Approval, appears to be within the range of reasonableness of a settlement which
23 is ultimately given final approval by this Court.
- 24 2. This Court has jurisdiction over the subject matter of this litigation and over all
25 Parties to this litigation, including all Class Members.

26
27
28 ¹ All defined terms contained herein shall have the same meanings as those set forth in the
Stipulation of Class Action Settlement and Release of Claims (the "Settlement Agreement").

- 1 3. The Court finds that the Notice of Pendency of PAGA and Class Action
2 Settlement (the “Notice Packet”) provided to the Settlement Class Members
3 constituted the best notice practicable under the circumstances, was in full
4 compliance with the laws of the State of California and the requirements of due
5 process. The Court further finds that the Notice Packet fully and accurately
6 informed the Settlement Class Members of all material elements of the proposed
7 Settlement, of each Settlement Class member’s right to participate, request
8 exclusion from or object to the Settlement.
- 9 4. One Settlement Class Member opted out, and zero Settlement Class Members
10 objected to the Settlement.
- 11 5. The Court does hereby finally approves the Settlement as being fair, just,
12 reasonable and adequate pursuant to California Rules of Court, Rule 3.769(d) and
13 Section 382 of the California Code of Civil Procedure in that: (a) the proposed
14 Settlement Class is ascertainable and so numerous that joinder of all members of
15 the Settlement Class is impracticable; (b) common questions of law and fact
16 predominate, and there is a well-defined community of interest among members
17 of the proposed Settlement Class, and each of them, with respect to the subject
18 matter-of the litigation; (c) the claims of the Named Plaintiffs are typical of the
19 claims of the members of the proposed Settlement Class; (d) the Named Plaintiffs
20 have and will fairly and adequately protect the interests of the proposed
21 Settlement Class; (e) a class action is superior to other available methods for
22 an efficient adjudication of this controversy in the context of settlement; and (f)
23 Class Counsel is qualified to serve as counsel for the proposed Named Plaintiffs,
24 as class representatives and Settlement Class, and will adequately protect their
25 interests.
- 26 6. It appears to the Court that the Settlement Fund is fair and reasonable to the
27 Settlement Class when balanced against the probable outcome of further litigation
28

1 relating to maintaining class certification, liability and damages issues and
2 potential appeals. It further appears that significant investigation, research, and
3 litigation has been conducted such that counsel for the Parties at this time are able
4 to reasonably evaluate their respective positions. It further appears that
5 settlement at this time will avoid substantial costs, delays, and risks that would be
6 presented by further prosecution of this consolidated litigation. It further appears
7 that the Settlement has been reached as a result of the intensive, serious, and non-
8 collusive negotiations between the Parties.

- 9 7. Solely for the purposes of the Settlement, a Settlement Class is hereby finally
10 certified pursuant to California Code of Civil Procedure section 382 as follows:

11 “all non-exempt employees who are or previously were employed by
12 defendants West Covina Corporate Fitness, Inc., Muscle Head, Inc.
13 (“North Hollywood”), Muscle Bound, Inc. (“Hollywood”), LA Corporate
14 Fitness, Inc. (“Downtown LA”), Thousand Oaks Corporate Fitness, Inc.,
15 Simi Valley Corporate Fitness, Inc., Culver City Corporate Fitness, Inc.,
16 Fullerton Corporate Fitness, Inc., Valencia Corporate Fitness, Inc., Santa
17 Anita Corporate Fitness, Inc. (“Arcadia”), Montclair Corporate Fitness,
18 Inc., Santa Barbara Corporate Fitness, Inc. (“Downtown, Uptown, and
19 Goleta Gyms”), Anaheim Corporate Fitness, Inc., Glendale Corporate
20 Fitness, Inc., Santa Ana Corporate Fitness, Inc., and/or Gym Management
21 Services, Inc. during the period of April 25, 2015 to the Preliminary
22 Approval Date and were paid by the hour and/or by session.”

23 Within the Class is a “Settlement Employee Subclass” defined as:

24 “all Settlement Class Members who were (a) Affected by Defendants’
25 Meal Break and Rest Period Policies; (b) Cell Phone Policies, and/or (c)
26 Affected by Defendants’ Reporting Time Policies.”

- 27 8. Solely for the purposes of the Settlement, the Court does hereby finally approves
28 Scott Vick, Esq. of Vick Law Group, APC and Kyle R. Nordrehaug, Esq. of
Blumenthal Nordrehaug Bhowmik De Blouw, LLP as Class Counsel and
Plaintiffs Charles San Nicolas and Nathan Klipfel as Class Representatives.
9. The Court does hereby finally approve the appointment of CPT Group (the
“Settlement Administrator”) as the Parties’ Settlement Administrator for
settlement purposes.

- 1 10. Defendants are to provide the funding for the full amount of the Settlement Fund,
2 totaling one million dollars, \$1,000,000, in an interest-bearing account opened
3 and maintained by the Settlement Administrator. The funding is to be provided
4 within five (5) Court days of the Effective Date. The “Effective Date” is defined
5 as (a) the day sixty (60) days after the entry of Final Judgment and Order finally
6 approving the Settlement, if no motions for reconsideration and no appeals or
7 other efforts to obtain review have been filed, or (b) in the event that a motion for
8 reconsideration, an appeal, or other effort to obtain review of the Final Judgment
9 and Order finally approving the Settlement, the date sixty (60) days after such
10 reconsideration, appeal, or review has been finally concluded and is no longer
11 subject to review, whether by appeal, petition for review, or otherwise and the
12 Settlement has not been materially modified.
- 13 11. The following will be paid out of the Settlement Fund: the sum of the Individual
14 Settlement Payments, the Class Representative Enhancements, the Class Counsel
15 Awards, the Settlement Administration Costs, the civil penalties under the Private
16 Attorney General Act of 2004 (“PAGA”) to the California Labor and Workforce
17 Development Agency (“LWDA”), and any payroll taxes (including both the
18 employers’ and the employees’ share).
- 19 12. Within fifteen calendar days after the funding of the Settlement Fund, the
20 Settlement Administrator shall calculate the individual payments to each
21 Settlement Class member and mail the Individual Settlement Payments by regular
22 First Class U.S. Mail to the Settlement Class Members’ last known address.
- 23 13. Any checks issued to Settlement Class Members shall remain valid and negotiable
24 for one hundred and eighty (180) calendar days from their issuance.
- 25 14. The Parties shall report to the Court, at a date no less than 300 days after Final
26 Judgment, the total amount actually paid to class members pursuant to California
27 Civil Procedure Code Section 384(b). After the report is received, the Court shall
28

1 amend the judgment to direct Defendants to pay the sum of the unpaid residue or
2 unclaimed or abandoned class member funds, plus any interest that has accrued
3 thereon, to Legal Aid at Work, or any other cy-pres organization as agreed upon
4 by the Parties and in compliance with California Civil Procedure Code Section
5 384(b).

6 15. The Court hereby awards \$380,000 in attorneys' fees to Class Counsel (two-thirds
7 of the award shall be payable to Vick Law Group, APC ("VLG"), and the
8 remaining one-third of the award shall be payable as seventy-five percent to
9 Blumenthal Nordrehaug Bhowmik De Blouw LLP ("Blumenthal") and twenty-
10 five percent payable to the Law Offices of Mauro Fiore, Jr., A.P.C.

11 16. The Court hereby awards \$23,792.48 in actual and reasonable litigation costs to
12 VLG.

13 17. The Court hereby awards \$11,000.00 in actual and reasonable litigation costs to
14 Blumenthal.

15 18. The Court hereby awards \$7,500.00 each to Plaintiffs Charles San Nicolas,
16 Nathan Klipfel, David Price, and Peter Contreras. (Settlement Agreement ¶ 62).

17 19. The Court hereby approves payment of settlement administration costs to the
18 Settlement Agreement of \$30,000 as authorized under the Settlement Agreement
19 and which was preliminarily approved by order of the Court dated June 8, 2022.

20 20. The Court hereby approves an award of \$80,000 for civil penalties under PAGA,
21 \$60,000 of which will be paid to the LWDA.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

1 21. The Court hereby directs to distribute the following from the Settlement Fund: the
2 sum of the Individual Settlement Payments, the Class Representative
3 Enhancements, the Class Counsel Awards, the Settlement Administration Costs,
4 and any payroll taxes (including both the employers' and the employees' share) in
5 accordance with the Settlement Agreement and/or this Order.

6 **IT IS SO ORDERED.**

7
8 DATED: September 9, 2022



A handwritten signature in black ink, appearing to read "Stuart M. Rice", is written over the seal.

9 Stuart M. Rice / Judge
10 Hon. Stuart M. Rice
11 Judge of the Superior Court of California