

CLASS ACTION SETTLEMENT AGREEMENT

This Stipulation of Class Action Settlement and Release of Claims is made and entered into between plaintiffs Charles San Nicolas and Nathan Klipfel, acting in their individual capacities, on behalf of the Settlement Class, and in private attorney general capacities, and David Price and Peter Contreras acting in their individual capacities ("Plaintiffs"), and defendants West Covina Corporate Fitness, Inc., Muscle Head, Inc. ("North Hollywood"), Muscle Bound, Inc. ("Hollywood"), LA Corporate Fitness, Inc. ("Downtown LA"), Thousand Oaks Corporate Fitness, Inc., Simi Valley Corporate Fitness, Inc., Culver City Corporate Fitness, Inc., Fullerton Corporate Fitness, Inc., Valencia Corporate Fitness, Inc., Santa Anita Corporate Fitness, Inc. ("Arcadia"), Montclair Corporate Fitness, Inc., Santa Barbara Corporate Fitness, Inc. ("Downtown, Uptown, and Goleta Gyms"), Anaheim Corporate Fitness, Inc., Glendale Corporate Fitness, Inc., Santa Ana Corporate Fitness, Inc., and Gym Management Services, Inc., Angel Banos, and William Banos (collectively, "Defendants") (collectively "Parties"). This settlement resolves the "Actions," as defined below.

I. DEFINITIONS

1. "Actions" means the actions entitled *San Nicolas v. West Covina Corporate Fitness, Inc.*, Superior Court of California, County of Los Angeles Case No. BC616304 and the action entitled *Klipfel v. Gym Management Services, Inc. et al.*, Superior Court of California, County of Los Angeles Case No. BC665577.
2. "Arbitration Actions" means the arbitration proceeding entitled *Price v. West Covina Corporate Fitness, Inc.*, AAA Case No. 01-18-0002-4496 and the arbitration proceeding entitled *Contreras v. West Covina Corporate Fitness, Inc.*, AAA Case No. 01-18-0002-4494.
3. "Agreement" or "Settlement" means this Stipulation of Class Action Settlement and Release of Claims.
4. "Aggrieved Employees" means all non-exempt employees who are or previously were employed by defendants West Covina Corporate Fitness, Inc., Muscle Head, Inc. ("North Hollywood"), Muscle Bound, Inc. ("Hollywood"), LA Corporate Fitness, Inc. ("Downtown LA"), Thousand Oaks Corporate Fitness, Inc., Simi Valley Corporate Fitness, Inc., Culver City Corporate Fitness, Inc.,

Fullerton Corporate Fitness, Inc., Valencia Corporate Fitness, Inc., Santa Anita Corporate Fitness, Inc. ("Arcadia"), Montclair Corporate Fitness, Inc., Santa Barbara Corporate Fitness, Inc. ("Downtown, Uptown, and Goleta Gyms"), Anaheim Corporate Fitness, Inc., Glendale Corporate Fitness, Inc., Santa Ana Corporate Fitness, Inc., and/or Gym Management Services, Inc. during the period of April 25, 2015 to the Preliminary Approval Date and were paid by the hour and/or by session. The Aggrieved Employees are estimated to consist of 4,100 individuals.

5. "Class Counsel" means and refers to the law firms of Blumenthal Nordrehaug Bhowmik De Blouw LLP, Law Offices of Mauro Fiore, Jr., A.P.C, and the Vick Law Group, APC.

6. "Class Counsel Award" means the attorneys' fees, expenses, and costs awarded to Class Counsel by the Court to resolve all past and future litigation fees, costs and expenses necessary to prosecute, settle, and administer the Actions, to be paid from the Settlement Fund.

7. "Class Data" means, for each individual Settlement Class Member, means the spreadsheet containing the list of Aggrieved Employees with their social security numbers, last known addresses, and their dates of employment and/or pay periods worked as an Aggrieved Employee during the Class Period. The Class Data shall also indicate which Class Members whose last position held was Personal Trainer.

8. "Class Period" means the period from April 25, 2015 up to the Preliminary Approval Date.

9. "Class Representative Enhancement" means the amount that the Court authorizes to be paid to Plaintiffs, in addition to Individual Settlement Payment, in recognition of efforts and risks in assisting with the prosecution of the Actions and in exchange for executing the General Releases provided herein.

10. "Class Representatives" means the Plaintiffs in their capacity as the representatives of the Settlement Class Members.

11. "Court" means the judge or judges of the Los Angeles County Superior Court presiding over the *San Nicolas v. West Covina Corporate Fitness, Inc.* action, Superior Court of California,

County of Los Angeles Case No. BC616304; and the *Klipfel v. Gym Management Services, Inc. et al.* action, Superior Court of California, County of Los Angeles Case No. BC665577.

12. “Defendants” means the “Defendants,” as defined above.

13. “Effective Date” means the date of final approval if no objections are filed to the Settlement. If objections are filed and overruled, and no appeal is taken of the final approval order, then the effective date of final approval shall be sixty-five (65) days after the Court enters final approval and judgment. If an appeal is taken from the Court’s overruling of objections to the Settlement, then the effective date of final approval shall be twenty (20) days after the appeal is withdrawn or after an appellate decision affirming the final approval decision becomes final. No money will be distributed unless and until the Effective Date occurs and appeals, if any, are exhausted. If an appeal is filed, Defendants shall deposit the Settlement Fund with the Settlement Administrator in an interest-bearing, escrow account, pursuant to the payment schedule in this Agreement. The money shall not be distributed by the Settlement Administrator until order of the Court or stipulation of the parties. Defendants will receive any interest earned from the escrow account.

14. “Final Approval Date” means the date on which the Court enters an order granting final approval of the Settlement.

15. “Individual Settlement Payment” means the amount payable from the Net Settlement Amount to each Settlement Class Member.

16. “Settlement Fund” means the sum of the Individual Settlement Payments, the Class Representative Enhancements, the Class Counsel Award, the PAGA LWDA Payment, any payroll taxes (including both the employer’s and the employees’ share), and the Settlement Administration Costs, up to a maximum of One Million Dollars (\$1,000,000.00).

17. “Net Settlement Amount” or “NSA” means the Settlement Fund, less Class Counsel Award, Class Representative Enhancements, PAGA LWDA Payment, any payroll taxes (including the employers’ and employees’ share) and Settlement Administration Costs.

18. “Notice Packet” means the Notice of Proposed Class Action Settlement And Class Action Settlement Hearing in a form substantially similar to the form attached hereto as Exhibit 1.

19. "LWDA" means the California Labor and Workforce Development Agency.
20. "Opt-Out Period" means the 45-day period after the Settlement Administrator mails the Notice Packet to Settlement Class Members.
21. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code §§ 2698 *et seq.*
22. "PAGA LWDA Payment" shall be the total portion of Private Attorney General Act of 2004 ("PAGA") payment to be paid to the Labor and Workforce Development Agency ("LWDA").
23. "Parties" means Plaintiffs and Defendants, collectively, and "Party" shall mean either Plaintiffs or Defendants, individually.
24. "Preliminary Approval Date" means the date on which the Court enters an order granting preliminary approval of the Settlement.
25. "Released Class Claims" means, as of the date the Defendant fund the full Settlement Amount of one million dollars (\$1,000,000), Defendants and the Released Parties shall receive a limited release from the Participating Class Members of all claims alleged or which could have been alleged in the operative complaint in the Action that occurred during the Class Period and a release of all PAGA claims alleged in the operative complaint in the Action which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period and PAGA claims outside the PAGA Period ("Released Class Claims").

The Parties agree that the judgment, and limited release of claims provided herein, shall have *res judicata* effect. The definition of Released Class Claims – which include limitations and exclusions – shall not be limited in any way by the possibility that Plaintiffs or Class Members may discover new facts or legal theories or legal arguments not alleged in the operative pleadings in the Action but which might serve as an alternative basis for pursuing the same claims, causes of action, or legal theories of relief falling within the definition of Released Claims.

Notwithstanding the foregoing, the Individual Named Plaintiffs (Charles San Nicolas, Nathan Klipfel, David Price, and Peter Contraras) shall provide a full mutual general release and completely release each Defendant and all of their respective employers, officers, directors, members, employees, attorneys, heirs, spouses, successors, agents, representatives, subsidiaries, parent companies, affiliates, related companies, LLCs, DBAs, controlled companies, and predecessor companies (collectively, the “Individual Named Plaintiffs’ Releases”), of and from any and all known and unknown claims, causes of action, damages, interest, costs, and attorneys’ fees, except for the obligations set forth herein.

In turn, the Defendants shall completely release the Individual Named Plaintiffs and all of their respective employers, officers, directors, members, employees, attorneys, heirs, spouses, successors, agents, representatives, subsidiaries, parent companies, affiliates, related companies, LLCs, DBAs, controlled companies, and predecessor companies (collectively, the “Plaintiffs’ Releases”), of and from any and all known and unknown claims, causes of action, damages, interest, costs, and attorneys’ fees, except for the obligations set forth herein.

26. “Released Parties” means Defendants and all of its present, future, and former parent companies, subsidiaries, related or affiliated companies, shareholders, owners, employees, officers, directors, attorneys, agents, insurers, re-insurers, fiduciaries, predecessors, successors, and assigns, and any individual or entity which could be jointly liable.

27. “Response Deadline” means the date forty-five (45) calendar days after the Settlement Administrator mails Notice Packets to Settlement Class Members and the last date on which Settlement Class Members may submit Objections to the Settlement or Requests for Exclusion from the Settlement.

28. “Settlement” means the disposition of the Actions pursuant to this Agreement.

29. “Settlement Administrator” means CPT Group, or any other claims administrator approved by the Court.

30. “Settlement Class Members” or “Settlement Class” or “Class Members” means and consists of all “Aggrieved Employees,” as defined above.

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

32. “Individual Claims” all claims alleged or which could have been alleged in the operative complaint in the Action, that occurred during the Class Period and a release of all PAGA claims alleged in the operative complaint in the Action which occurred during the PAGA Period, including claims under any applicable California Industrial Welfare Commission Order (wage, overtime, penalties, premium pay, meal and rest breaks, and other matters); and claims under California Labor Code Sections 201, 202, 203, 204, 223, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2698, 2699, 2802, claims for civil penalties under the Private Attorneys General Act, Labor Code sections 2699 et seq., and claims for violations of California Business & Professions Code § 17200 et seq. (unfair business practices)

II. RECITALS

33. On April 8, 2016, plaintiff Charles San Nicolas filed a complaint in the Superior Court of California, County of Los Angeles which asserted five causes of action for individual and class claims for Labor Code violations.

34. On June 3, 2016, plaintiff Charles San Nicolas filed a First Amended Complaint adding a cause of action under the Private Attorney General Act of 2004 (the “PAGA”).

35. On October 21, 2016, Defendants filed a Motion to Compel Arbitration and Dismiss Class Claims. On January 27, 2017, plaintiff Charles San Nicolas and defendant West Covina Corporate Fitness, Inc. filed a Joint Stipulation to Stay Litigation Pending United States Supreme Court Ruling in *Morris v. Ernst & Young, LLP*, 834 F.3d 975 (9th Cir. 2016). On February 3, 2017, the Los Angeles Superior Court granted the Joint Stipulation to Stay Litigation.

36. On June 19, 2017, plaintiff Nathan Klipfel filed a complaint against Defendants consisting of one cause of action under PAGA in the Superior Court of California, County of Los Angeles.

37. On January 31, 2018, while the litigation stay was in place, Plaintiffs filed a Second Amended Complaint in the *San Nicholas* action adding named plaintiffs Peter Contreras and David Price.

38. On July 6, 2018, in the *San Nicholas* action, the parties stipulated to (1) dismiss the putative class allegations without prejudice, (2) dismiss the individual claims of plaintiff Charles San Nicolas without prejudice, (3) allow plaintiff Charles San Nicolas to proceed in the Superior Court of California, County of Los Angeles on behalf of the State of California, as a private attorney general with respect to the claim for Civil Penalties pursuant to Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1194, 1198, 2802 and the Applicable Wage Order, and (4) dismiss the individual claims of plaintiffs Peter Contreras and David Price without prejudice to proceed in separate individual arbitrations.

39. On June 22, 2018, plaintiff David Price filed a Demand for Arbitration with the American Arbitration Association entitled *Price v. West Covina Corporate Fitness, Inc.*, AAA Case No. 01-18-0002-4496. On June 22, 2018, plaintiff Peter Contreras filed a Demand for Arbitration with the American Arbitration Association entitled *Contreras v. West Covina Corporate Fitness, Inc.*, AAA Case No. 01-18-0002-4494.

40. On October 3, 2018, plaintiff Nathan Klipfel and the 16 of the Defendants mediated the *Klipfel* action before JAMS mediator Hon. Ronald Sabraw (Ret.) in San Jose, California. With no settlement at the end of the day, Judge Sabraw sent a mediator's proposal several days later for \$1,150,000. Defendants accepted; plaintiff did not.

41. On January 15, 2019, plaintiff Charles San Nicolas engaged in a mediation session in the *San Nicholas* action before mediator Hon. William C. Pate (Ret.), which led to a settlement. Defendants agreed to settle, but only if Plaintiff San Nicolas amend his complaint to add all of the additional 15 defendants from the Klipfel Action and settle both actions for \$775,000.

42. On February 4, 2019, plaintiff Charles San Nicolas filed and served a Third Amended Complaint in the *San Nicholas* action designating defendants in the complaint initially named by fictitious Doe defendants by their true names as follows: Doe 1 - Muscle Head, Inc. ("North

Hollywood”), Doe 2 - Muscle Bound, Inc. (“Hollywood”), Doe 3 - LA Corporate Fitness, Inc. (“Downtown LA”), Doe 4 - Thousand Oaks Corporate Fitness, Inc., Doe 5 - Simi Valley Corporate Fitness, Inc., Doe 6- Culver City Corporate Fitness, Inc., Doe 7 - Fullerton Corporate Fitness, Inc., Doe 8 - Valencia Corporate Fitness, Inc., Doe 9 - Santa Anita Corporate Fitness, Inc. (“Arcadia”), Doe 10 - Montclair Corporate Fitness, Inc., Doe 11 - Santa Barbara Corporate Fitness, Inc. (“Downtown, Uptown, and Goleta Gyms”), Doe 12 - Anaheim Corporate Fitness, Inc., Doe 13 - Glendale Corporate Fitness, Inc., Doe 14 - Santa Ana Corporate Fitness, Inc., and Doe 15 - Gym Management Services, Inc.

43. Plaintiff Nathan Klipfel in the related Action, *Klipfel v. Gym Management Services, Inc. et al.*, Case No. BC665577 was granted leave to oppose the settlement in the *San Nicholas* action and filed opposition papers. Plaintiff Nathan Klipfel also sought intervention from the California Labor Workforce Development Agency (the “LWDA”).

44. On April 9, 2019, the California Labor Workforce Development Agency (“LWDA”) issued a “Notice of Commencement of Investigation” which, during the investigatory period, provided the LWDA exclusive jurisdiction over the PAGA claims and prohibited aggrieved employees from proceeding with a civil action. On April 24, 2019, this Court stayed the *San Nicholas* action for the duration of the LWDA’s investigation.

45. On August 5, 2019, the LWDA notified Plaintiffs and Defendants that it was extending the time to investigate. Although the LWDA investigation is now closed, during the period it was open, and at the LWDA’s suggestion, all of the parties discussed a global resolution. Defendants increased their global settlement offer from an aggregate of \$775,000 to \$1,150,000. Plaintiff Charles San Nicolas and Proposed Intervenor Plaintiff Nathan Klipfel agreed to the \$1,150,000 increased settlement. Plaintiffs’ counsel in the two related actions (the *San Nicolas* action and the *Klipfel* action) have also agreed to the allocation of settlement proceeds and attorney’s fees and costs.

46. In June 2020, the Parties notified the Court that in light of the effects of COVID 19 on Defendants’ business, Defendants had requested that Plaintiffs’ counsel reduce and restructure the settlement (to include and settle class action allegations), slightly reduce the settlement amount, and

permit two payments. After some continued negotiation, the parties, through counsel, agreed on a settlement amount of \$1 million payable in two installments.

47. The parties also stipulated to the filing of the Fourth Amended Class Action Complaint, a copy of which is attached hereto as Exhibit "A."

48. On April 6, 2021, pursuant to Court order, Plaintiffs filed and served the Fourth Amended and Consolidated Class Action Complaint.

49. As a result of this settlement, the Parties have agreed to fully and finally resolve the Released Claims as to Plaintiff Charles San Nicolas, Plaintiff Nathan Klipfel and the Aggrieved Employees as alleged in the *San Nicholas* action and the *Klipfel* action, pursuant to this Settlement Agreement, and to settle Plaintiffs' Individual Claims, as defined above.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

50. Settlement Consideration. Defendants shall provide the funding for the full amount of the Settlement Fund (totaling one million dollars (\$1,000,000)) in an interest-bearing account to be opened and maintained by the Settlement Administrator. The funding shall be paid according to the following schedule: (1) the first payment of \$500,000.00 shall be made within thirty (30) days of the Effective Date; and (2) the second payment of \$500,000.00 shall be made by April 1, 2022. The following will be paid out of the Settlement Fund: the sum of the Individual Settlement Payments, the Class Representative Enhancements, the Class Counsel Award, the Settlement Administration Costs, and any payroll taxes (including both the employers' and the employees' share), as specified in this Agreement. None of the Settlement Fund shall revert back to Defendants. In no event shall Defendants be required to pay more than One Million Dollars (\$1,000,000) as part of this Settlement.

51. Limited Release By All Settlement Class Members. As of the date the Defendant fund the full Settlement Amount of one million dollars (\$1,000,000), Defendants and the Released Parties shall receive a limited release from the Participating Class Members of all claims alleged or which could have been alleged in the operative complaint in the Action that occurred during the Class Period and a release of all PAGA claims alleged in the operative complaint in the Action which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful

termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period and PAGA claims outside the PAGA Period ("Released Class Claims").

The Parties agree that the judgment, and limited release of claims provided herein, shall have *res judicata* effect. The definition of Released Class Claims – which include limitations and exclusions – shall not be limited in any way by the possibility that Plaintiffs or Class Members may discover new facts or legal theories or legal arguments not alleged in the operative pleadings in the Action but which might serve as an alternative basis for pursuing the same claims, causes of action, or legal theories of relief falling within the definition of Released Claims.

Plaintiffs and the Settlement Class Members may hereafter discover facts or legal arguments in addition to or different from those they now know or currently believe to be true with respect to the claims, causes of action and legal theories of recovery in this case which are the subject matter of the Released Class Claims. Regardless, the discovery of new facts or legal arguments shall in no way limit the scope or definition of the limited Released Class Claims, and by virtue of this Agreement, Plaintiffs and the Settlement Class Members shall be deemed to have, and by operation of the Final Judgment approved by the Court, shall have, fully, finally, and forever settled and released all of the Released Class Claims as defined in this Agreement. Plaintiffs hereby agree that, notwithstanding section 1542 of the California Civil Code, all Released Class Claims – subject to the limitations and exclusions listed above – that Plaintiffs may have, known or unknown, suspected or unsuspected are hereby released. Section 1542 provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

52. Plaintiffs and the Settlement Class Members expressly waive the provisions of section 1542 of the California Civil Code with full knowledge and with the specific intent to release all Released Claims and therefore specifically waive the provisions of any statute, rule, decision or other source of law of the United States or of any state of the United States or any subdivision of a state which prevents release of unknown claims.

53. Plaintiffs also expressly waive the provisions of section 1542 of the California Civil Code with full knowledge and with the specific intent to release all Individual Claims and therefore specifically waive the provisions of any statute, rule, decision or other source of law of the United States or of any state of the United States or any subdivision of a state which prevents release of unknown claims.

54. Tax Liability. The Parties represent that all taxes, including but not limited to employer and employee payroll taxes, to be paid under the Settlement shall be paid from the Settlement Fund. The Settlement Administrator will issue the Individual Settlement Payments as 30% wages and interest on wages and 70% as penalties and other non-wage damages. The Settlement Administrator will report the penalties on IRS Form 1099 - MISC and will not make any tax withholdings on those amounts. The Settlement Administrator will report wages and interest on wages IRS Form W-2 and will make any applicable tax withholdings. The Settlement Administrator shall calculate the employer and employee share of payroll taxes for the wages and interest on wages and withhold the appropriate amounts and, if requested by Defendants, assist Defendants with submission of the appropriate tax filings associated with the Individual Settlement Payments. Each Settlement Class Member will be responsible for correctly characterizing the Individual Settlement Payments for tax purposes and for payment of any taxes owing on said amount.

55. Preliminary Approval Motion. Plaintiffs shall file with the Court a Motion for an Order Granting Preliminary Approval of the Settlement and supporting papers, which shall include this Settlement Agreement. The Motion for an Order Granting Preliminary Approval of Settlement shall seek certification of the Class and Subclasses for settlement purposes only. Plaintiffs shall also provide notice of the Settlement to the LWDA as required by Labor Code Section 2699(1)(2). Any dispute

regarding forms of notices and other documents necessary to implement the Settlement contained in the Stipulation, if not timely resolved among the Parties, shall be referred to the Court. The Parties shall seek a prompt hearing date to obtain preliminary approval of the Settlement.

56. Settlement Administrator. The Settlement Administrator shall be responsible for: (a) calculating Individual Settlement Payments along with the appropriate tax withholdings; (b) processing and mailing payments to the Class Representatives, Class Counsel, the LWDA, and Settlement Class Members; (c) printing and mailing the Notice Packets to the Settlement Class Members as directed by the Court; (d) receiving and reporting the objections; (e) informing the Parties of any requests to be added to the Settlement Class; (f) distributing tax forms to the Settlement Class Members; (g) if requested by Defendants, assisting Defendants with submission of the appropriate tax filings associated with the Individual Settlement Payments; (h) providing declaration(s), as necessary, in support of preliminary and/or final approval of this Settlement; (i) calculating the number of Compensable Work Weeks in the Class Period; (j) advising Defendants' Counsel and Class Counsel of all progress of items identified in Section 54 below on a weekly basis; and (k) other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities. The Settlement Administrator shall keep the Class Data confidential and shall not provide the Class Data to Class Counsel. The Settlement Administrator may provide Class Counsel with the names of Settlement Class Members who request to be excluded from the Settlement or who object to the Settlement.

57. Settlement Administration.

A. Notice Packets. The Notice Packet shall contain the Notice of Proposed Class Action Settlement And Class Action Settlement Hearing in a form substantially similar to the form attached hereto as Exhibit 1. The Notice of Proposed Class Action Settlement And Class Action Settlement Hearing shall set forth the material terms of the Settlement, including the release to be given by all members of the Settlement Class who do not request to be excluded from the Settlement Class.

The Notice Packet also shall be individualized to include the number of Compensable Work Weeks, a unique Claimant ID, and the estimated amount of their Individual Settlement Payment.

B. Notice By First Class U.S. Mail and Email. Within twenty (20) days of the date that the Court grants Preliminary Approval of the settlement, the Defendants shall provide the Settlement Administrator with the Class Data. Upon receipt of the Class Data, the Settlement Administrator will perform a search based on the National Change of Address Database and/or similar database(s) to update and correct any known or identifiable address changes. No later than twenty-one (21) calendar days after receiving the Class Data from Defendants as provided herein, the Settlement Administrator shall mail copies of the Notice Packet to all Settlement Class Members via regular First Class U.S. Mail. The Settlement Administrator shall also email copies of the Notice Packet to Settlement Class Members to those who have an email address available. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Settlement Class Member. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class Member. In the event more than one address is identified, then the Settlement Administrator shall mail to each potentially valid address.

C. Undeliverable Notices. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by lawful use of skip-tracing, or other search using the name, address and/or Social Security number of the Settlement Class Member involved, and shall then perform a re-mailing, if another mailing address is identified by the Settlement Administrator. Settlement Class Members who received a re-mailed Notice Packet shall have their Response Deadline extended fifteen (15) calendar days from the original Response Deadline.

E. Disputes Regarding Individual Settlement Payments. Settlement Class Members will have the opportunity, should they disagree with Defendants' records regarding the number of Compensable Work Weeks worked by Settlement Class Members stated on the Notice of Proposed Class Action Settlement And Class Action Settlement Hearing, to provide documentation and/or an

explanation to show contrary Compensable Work Weeks. To the extent any individual alleges that he or she should be a part of the Settlement, then he or she will have the opportunity to provide supporting documentation to show Compensable Work Weeks. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall make a recommendation as to the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Agreement. If either Party disagrees with the recommendation, the Court will finally resolve the matter. Prior to any such resolution, counsel for the Parties will confer in good faith to resolve the dispute

E. Disputes Regarding Administration of Settlement. Any disputes not resolved by the Settlement Administrator concerning the administration of the Settlement will be resolved by the Court under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes without the necessity of involving the Court.

F. Opt-Outs. The Notice of Proposed Class Action Settlement And Class Action Settlement Hearing shall state that Settlement Class Members who do not wish to participate in the Settlement must mail the Settlement Administrator a written statement of opting out ("Notice of Opt-Out" by the Response Deadline. The Notice of Opt-Out must be signed by the Settlement Class member and state (1) the full name of the Settlement Class Member; (2) the Settlement Class Member's Claimant ID number; and (3) that the Settlement Class member wishes to opt out. Settlement Class Members who do not opt out in the manner specified above shall be deemed to be participants in the Settlement and will be bound by the terms of the Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to opt out from the Settlement.

G. Objections. The Notice of Proposed Class Action Settlement And Class Action Settlement Hearing shall state that Settlement Class Members who wish to object to the Settlement must mail the Settlement Administrator a written statement of objection ("Notice of Objection") by the Response Deadline. The Notice of Objection must be signed by the Settlement Class Member and state: (1) the full name of the Settlement Class Member; (2) the dates of employment of the Settlement

Class Member; (3) the Settlement Class Member's Claimant ID number; (4) the basis for the objection; and (5) whether the Settlement Class Member intends to appear at the Final Approval/Settlement Fairness Hearing. Settlement Class Members who fail to make objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement. Settlement Class Members who submit a timely Notice of Objection will have a right to appear at the Final Approval/Settlement Fairness Hearing in order to have their objections heard by the Court. No Settlement Class Member may appear at the Final Approval/Settlement Fairness Hearing unless he or she has timely mailed an objection that complies with the procedures provided in this paragraph. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to file or serve written objections to the Settlement or appeal from the Final Judgment.

58. Funding and Allocation of the Settlement Fund. No later than thirty (30) calendar days after the Effective Date, Defendants shall provide \$500,000.00 to the Settlement Administrator to fund the Settlement, as set forth in this Agreement. No later than April 1, 2022, Defendants shall provide the remaining \$500,000.00 to the Settlement Administrator to fund the remainder of the Settlement. The Settlement Fund shall not be distributed until all appeals, if any, have been finally resolved.

59. Payments from the Settlement Fund. The Parties agree to the following allocations to be paid from the Settlement Fund:

- a. PAGA Payment: The PAGA Payment, paid pursuant to Labor Code section 2699, shall be \$80,000, payable as follows
 - i. Seventy-Five Percent (75%) shall be paid to the LWDA as required by Labor Code section 2699.
 - ii. Twenty-Five Percent (25%) shall be included in the amount distributed to Participating Class Members as described below.
- b. Labor Code Claims Payment: The Labor Code Claims Payment is the Net Settlement Amount distributed as follows:

- iii. Twenty-Five Percent (25%) of the Net Settlement Amount shall be paid to class members whose last position held was Personal Trainer (hereinafter "Personal Trainer Class Member") based on the total number of Compensable Workweeks for all Personal Trainer Class Members. The Settlement Administrator will calculate the amount due to each Participating Personal Trainer Class Member by multiplying the appropriate dollars-per-Compensable Workweek amount by the number of Compensable Workweeks worked by each Participating Personal Trainer Class Member.
- iv. Seventy-Five Percent (75%) of the Net Settlement Amount shall be paid to all Participating Class Members based on the total number of Compensable Workweeks for all Participating Class Members, including Personal Trainer Class Members. The Settlement Administrator will calculate the amount due to each Participating Class Member by multiplying the appropriate dollars-per-Compensable Workweek amount by the number of Compensable Workweeks worked by each Participating Personal Trainer Class Member.

60. **Mailing.** Individual Settlement Payments shall be mailed by the Settlement Administrator by regular FirstClass U.S. Mail to Settlement Class Members' last known mailing address no later than fifteen (15) calendar days after Defendants make the final Settlement payment.

61. **Expiration.** Any checks issued to Settlement Class Members shall remain valid and negotiable for one hundred and eighty (180) calendar days from the date of their issuance. The Parties shall report to the Court, at a date no less than 300 days after Final Judgment, the total amount actually paid to class members pursuant to California Civil Procedure Code Section 384(b). After the report is received, the Court shall amend the judgment to direct Defendants to pay the sum of the unpaid residue or unclaimed or abandoned class member funds, plus any interest that has accrued thereon, to Legal Aid at Work, or any other cy-pres organization as agreed upon by the Parties and in compliance with

California Civil Procedure Code Section 384(b). The Parties agree to coordinate their efforts to seek Court approval for such an escheatment process of uncashed funds.

62. Class Representative Enhancements. As Class Representative Enhancements, Plaintiffs intend to seek up to \$10,000 to each of the Plaintiffs. The Class Representative Enhancements are in exchange for the Released Claims, for releasing the Individual Claims, and for Plaintiffs' time, effort and risk in bringing and prosecuting the Action. Defendants will not oppose a reasonable request by Plaintiffs for Class Representative Enhancements. The Settlement Administrator shall pay the Class Representative Enhancements to Plaintiffs from the Settlement Fund no later than fifteen (15) calendar days after Defendants fully fund the Settlement. Any portion of the requested Class Representative Enhancements that is not awarded to the Class Representatives shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. The Settlement Administrator shall issue an IRS Form 1099 - MISC to Plaintiffs for the Class Representative Enhancements. Plaintiffs shall be solely and legally responsible to pay any and all applicable taxes on respective Class Representative Enhancement and shall hold harmless Defendants from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Enhancements. The Class Representative Enhancements shall be in addition to the Plaintiffs' Individual Settlement Payment as a Settlement Class Member. In the event that the Court reduces or does not approve the requested Class Representative Enhancements, Plaintiffs shall not have the right to revoke the Settlement, and it will remain binding.

63. Class Counsel Award. Class Counsel intend to apply for an award of \$380,000 in attorneys' fees for Class Counsel, with two-thirds of this amount (\$254,600.00) payable to the Vick Law Group, and one-third of this amount (\$125,400.00) payable to Blumenthal Nordrehaug Bhowmik De Blouw LLP and the Law Offices of Mauro Fiore, Jr., A.P.C. In addition, the Vick Law Group shall be reimbursed up to \$25,000.00 in actual and reasonable costs and the Blumenthal firm shall be reimbursed up to \$11,000.00 in actual and reasonable costs. Defendants shall not oppose an application by Class Counsel for expenses and costs as set forth above. Defendants agree not to oppose a reasonable request for attorneys' fees or costs. The Parties agree that any and all claims for reasonable attorneys' fees and

costs have been settled by this Agreement and that neither Plaintiffs, Settlement Class Members, nor Class Counsel shall seek payment of attorneys' fees or reimbursement of costs/expenses from Defendants except as set forth in this Agreement. Any portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. The Settlement Administrator shall pay the Class Counsel Award to Class Counsel from the Settlement Fund no later than fifteen (15) calendar days after Defendants fully fund the Settlement. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 - MISC to Class Counsel for the payments made pursuant to this paragraph. In the event that the Court reduces or does not approve the requested Class Counsel Award, Plaintiffs, and Class Counsel shall not have the right to revoke the Settlement, and it will remain binding.

64. Settlement Administration Costs. The Settlement Administrator shall be paid for the costs of administration of the Settlement from the Settlement Fund. The costs for the Settlement Administration Costs is a flat-rate of Thirty Thousand Dollars (\$30,000.00). The Settlement Administrator shall be paid the Settlement Administration Costs no later than fifteen (15) calendar days after Defendants fund the Settlement Fund, provided that no appeals have been taken from the Final Judgment.

65. Final Approval Motion. At the earliest practicable time following the expiration of the Response Deadline, Plaintiffs shall file with the Court a Motion for Order Granting Final Approval and Entering Judgment, requesting final approval of the Settlement and the amounts payable for the Class Representative Enhancements, the Class Counsel Award, and the Settlement Administration Costs.

A. Final Approval Order and Judgment. The Parties shall present a Final Judgment and Order Granting Final Approval of Class Action Settlement ("Final Judgment") to the Court for its approval. The Final Judgment shall, among other things:

i. Find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve this Settlement Agreement and all exhibits thereto;

ii. Approve this Settlement Agreement and the proposed Settlement as fair, reasonable and adequate, consistent and in compliance with all applicable requirements of the California Code of Civil Procedure, California Rules of Court, the United States Constitution (including the Due Process Clause), and any other applicable law, and in the best interests of each of the Parties and the Class Members; direct the Parties and their counsel to implement this Settlement according to its terms and provisions; and declare this Settlement to be binding on Plaintiffs and all other Settlement Class Members, as well as their heirs, executors and administrators, successors and assigns;

iii. Find that the Notice of Proposed Class Action Settlement And Class Action Settlement Hearing and notice methodology implemented pursuant to this Stipulation (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Actions, their right to object to or exclude themselves from the proposed Settlement and their right to appear at the Final Settlement Hearing; (iii) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements of the California Code of Civil Procedure, California Rules of Court, the United States Constitution (including the Due Process Clause), and any other applicable law;

iv. Find that Plaintiffs and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the settlement;

v. Incorporate the Released Claims and Individual Claims set forth in this Agreement, make the Released Claims and Individual Claims effective as of the date of the Preliminary Approval Date, and forever discharge the Released Parties from any claims or liabilities arising from or related to the Actions;

vi. Authorize the Parties, without further approval from the Court, to agree to and to adopt such amendments, modifications and expansions of this Stipulation and all exhibits attached hereto as (i) are consistent with the Final Judgment; and (ii) do not limit the rights of Settlement Class Members under the Stipulation;

vii. Without affecting the finality of the Final Judgment, the Court shall retain continuing jurisdiction over the Actions, the Parties, and the Settlement Class, as well as the administration and enforcement of the Settlement. Any disputes or controversies arising with respect to the interpretation, consummation, enforcement, or implementation of the Settlement shall be presented by motion to the Court.

66. Final Judgment Notice to LWDA. After Final Judgment, Plaintiffs will provide the LWDA with a copy of the Final Judgment as required by Labor Code Section 2699(1)(2).

67. Publicity. The Parties and their counsel will not make any public statement that disparages the Settlement, Defendants, or Class Counsel. Defendants will be allowed to publicize the Settlement.

68. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement.

69. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Actions, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval/Settlement Fairness Hearing to be conducted by the Court.

70. Admissibility of Agreement. This Agreement shall not be admissible in any proceeding for any purpose, except to enforce it according to its terms.

71. Amendment or Modification. This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

72. Entire Agreement. This Agreement and any attached Exhibits, constitute the entire Agreement among these Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning the Settlement other than the representations, warranties and covenants contained and memorialized in the Agreement and its Exhibits.

73. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of

this Agreement. The person signing this Agreement on behalf of Defendants represents and warrants that he/she is authorized to sign this Agreement on behalf of Defendants. Plaintiffs represent and warrant that they are authorized to sign this Agreement and that they have not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

74. **Binding on Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

75. **California Law Governs.** All terms of this Agreement and the Exhibits hereto and any disputes arising hereunder shall be governed by and interpreted according to the laws of the State of California.

76. **Counterparts.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves copies or originals of the signed counterparts.

77. **Signatures.** Electronic signatures on this Agreement are considered valid and binding under Federal and California law.

78. **This Settlement Is Fair, Adequate and Reasonable.** The Parties believe this Settlement is a fair, adequate and reasonable settlement of these Actions and have arrived at this Settlement after extensive arm's-length negotiations, taking into account all relevant factors, present and potential.

79. **Jurisdiction of the Court.** The Parties agree that the Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

80. **Invalidity of Any Provision.** Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

81. Waiver of Certain Appeals. The Parties and Class Counsel agree to waive any and all rights to appeal, this waiver being contingent upon the Court entering the Final Judgment. This waiver includes waiver of all rights to any post-judgment proceeding and appellate proceeding, including, but not limited to, motions for relief from judgment and motions to amend or alter the judgment.

82. No Admissions. Plaintiffs have claimed and continue to claim that the Released Claims have merit and give rise to liability on the part of Defendant. Defendants have claimed and continue to claim that the Released Claims and Individual Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no documents referred to herein and no action taken to carry out this Agreement may be construed or used as an admission by or against Defendants or Plaintiffs or Class Counsel as to the merits or lack thereof of the claims asserted. To the extent that this Settlement is not approved, the Parties shall revert to their original positions. Defendants deny that these Actions is appropriate for class treatment except for settlement purposes.

83. Confidential Documents. Plaintiffs and Class Counsel agree that none of the documents and information provided to them in formal or informal discovery or at any other time in these Actions shall be used for any purposes other than prosecution of these Actions. Class Counsel shall not refer to, rely upon, or otherwise utilize any documents or information obtained in this Action to prosecute a separate action against Defendants and/or any Released Parties; however, nothing in this Section will be construed as a restraint on the right of any counsel to practice or a limitation on the rights that any Settlement Class Member or Class Counsel may have under any applicable federal, state, or local law to separately obtain documents or information from Defendants.

84. **IN WITNESS THEREOF**, the Parties each acknowledge that he/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement and hereby executes it voluntarily and with full understanding of its consequences.

[Signature Page Follows]

PLAINTIFFS:

Dated: _____

CHARLES SAN NICOLAS

Dated: _____

DAVID PRICE

Dated: _____

PETER CONTRERAS

Dated: _____

NATHAN KLIPFEL

DEFENDANTS:

Dated: 7/12/2021

WEST COVINA CORPORATE FITNESS, INC.

DocuSigned by:

Paul Becker

D759A55C79B348E...

By: Paul Becker

Its: Chief Financial Officer

Dated: 7/12/2021

MUSCLE HEAD, INC.

DocuSigned by:

Paul Becker

D759A55C79B348E...

By: Paul Becker

Its: Chief Financial Officer

Dated: 7/12/2021

MUSCLE BOUND, INC.

DocuSigned by:

Paul Becker

D759A55C79B348E...

By: Paul Becker

Its: Chief Financial Officer

PLAINTIFFS:

Dated: Jul 6, 2021 _____

Dated: Jul 6, 2021 _____

Dated: Jul 6, 2021 _____

Dated: _____



Charles San Nicolas (Jul 6, 2021 10:29 PDT)

CHARLES SAN NICOLAS



David Price (Jul 6, 2021 10:28 PDT)

DAVID PRICE



Peter Contreras (Jul 6, 2021 10:38 PDT)

PETER CONTRERAS

NATHAN KLIPFEL

DEFENDANTS:

Dated: _____

By: _____
Its: _____

MUSCLE HEAD, INC.

Dated: _____

By: _____
Its: _____

MUSCLE BOUND, INC.

Dated: _____

By: _____
Its: _____

PLAINTIFFS:

Dated: _____

CHARLES SAN NICOLAS

Dated: _____

DAVID PRICE

Dated: _____

PETER CONTRERAS

Dated: 7/06/2021



NATHAN KLIPFEL

DEFENDANTS:

WEST COVINA CORPORATE FITNESS, INC.

Dated: _____

By: _____
Its: _____

MUSCLE HEAD, INC.

Dated: _____

By: _____
Its: _____
MUSCLE BOUND, INC.

Dated: _____

By: _____
Its: _____

LA CORPORATE FITNESS, INC.

Dated: 7/12/2021

DocuSigned by:
Paul Becker
D758A55C79B348E
By: Paul Becker
Its: Chief Financial Officer

THOUSAND OAKS CORPORATE FITNESS, INC.

Dated: 7/12/2021

DocuSigned by:
Paul Becker
D758A55C79B348E
By: Paul Becker
Its: Chief Financial Officer

SIMI VALLEY CORPORATE FITNESS, INC.

Dated: 7/12/2021

DocuSigned by:
Paul Becker
D758A55C79B348E
By: Paul Becker
Its: Chief Financial Officer

CULVER CITY CORPORATE FITNESS, INC.

Dated: 7/12/2021

DocuSigned by:
Paul Becker
D758A55C79B348E
By: Paul Becker
Its: Chief Financial Officer

FULLERTON CORPORATE FITNESS, INC.

Dated: 7/12/2021

DocuSigned by:
Paul Becker
D758A55C79B348E
By: Paul Becker
Its: Chief Financial Officer

VALENCIA CORPORATE FITNESS, INC.

Dated: 7/12/2021

DocuSigned by:
Paul Becker
By: Paul Becker
Its: Chief Financial Officer

SANTA ANITA CORPORATE FITNESS, INC.

Dated: 7/12/2021

DocuSigned by:
Paul Becker
By: Paul Becker
Its: Chief Financial Officer

MONTCLAIR CORPORATE FITNESS, INC.

Dated: 7/12/2021

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Paul Becker
By: Paul Becker
Its: Chief Financial Officer

SANTA BARBARA CORPORATE FITNESS, INC.

Dated: 7/12/2021

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Paul Becker
By: Paul Becker
Its: Chief Financial Officer

ANAHEIM CORPORATE FITNESS, INC.

Dated: 7/12/2021

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Paul Becker
By: Paul Becker
Its: Chief Financial Officer

GLENDALE CORPORATE FITNESS, INC.

Dated: 7/12/2021

DocuSigned by:
Paul Becker
By: Paul Becker
Its: Chief Financial Officer

SANTA ANA CORPORATE FITNESS, INC.

Dated: 7/12/2021

DocuSigned by:
Paul Becker
By: Paul Becker
Its: Chief Financial Officer

GYM MANAGEMENT SERVICES, INC.

Dated: 7/12/2021

DocuSigned by:
Paul Becker
By: Paul Becker
Its: Chief Financial Officer

Dated: 7/12/2021

DocuSigned by:
ANGEL BANOS
By: ANGEL BANOS
Its: Chief Financial Officer

Dated: 7/12/2021

WILLIAM BANOS
By: WILLIAM BANOS
Its: Chief Financial Officer

APPROVED AS TO FORM:

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Dated: 7/6/21

By: 
NORMAN BLUMENTHAL
ATTORNEYS FOR PLAINTIFF
SAN NICOLAS, PRICE AND
CONTRERAS

THE VICK LAW GROUP, APC

Dated: _____

By: _____
SCOTT VICK
ATTORNEYS FOR PLAINTIFF KLIPFEL

**MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP**

Dated: _____

By: _____
STEVEN C. AMUNDSON
ATTORNEYS FOR DEFENDANTS

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Dated: _____

By: _____

NORMAN BLUMENTHAL
ATTORNEYS FOR PLAINTIFF
SAN NICOLAS, PRICE AND
CONTRERAS

THE VICK LAW GROUP, APC

Dated: 7/13/2021

By:  _____

SCOTT VICK
ATTORNEYS FOR PLAINTIFF KLIPFEL

**MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP**

Dated: July 12, 2021

By:  _____

STEVEN C. AMUNDSON
ATTORNEYS FOR DEFENDANTS