

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO**

THOMAS DWYER, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

SNAP FITNESS, INC.,

Defendant.

CASE NO. 1:17-cv-00455-MRB

**This is a notice of a settlement of a class action lawsuit.  
This is not a notice of a lawsuit against you.**

**If you are or have been a Snap Fitness member and (1) you paid a Club Enhancement Fee (“CEF”) under a Snap Fitness membership agreement that did not mention payment of the CEF, and/or (2) have been a party to a pre-November 2017 Snap Fitness prepaid membership agreement in the state of Ohio and either (i) canceled your membership between May 25, 2015, and the present (“Class Period”) while operating under that agreement, or (ii) remain a current Snap Fitness member under that agreement, you are a member of the Settlement Class (“Class” or “Class Member”) and can get a payment from a class action settlement (the “Settlement”).**

**THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.**

- On March 20, 2019, the Hon. Michael R. Barrett of the United States District Court for the Southern District of Ohio (the “Court”) preliminarily approved the Settlement and ordered that notice be sent to Class Members of their legal rights and options to participate in this Settlement.
- A federal court has authorized this Notice. This is not a solicitation from a lawyer. Please read this Notice carefully and completely.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:**

<b>DO NOTHING</b>	If you are a Class Member and you do nothing, you will receive a payment from this Settlement but will give up your rights to sue Snap Fitness for claims related to this case.
<b>EXCLUDE YOURSELF NO LATER THAN JULY 16, 2019</b>	If you are a Class Member and you exclude yourself from the Settlement, you will <u>not</u> receive a share of the Settlement Fund and you will <u>not</u> give up your right to sue Snap Fitness for claims related to this case.
<b>OBJECT NO LATER THAN JULY 16, 2019</b>	If you are a Class Member, you may write to the Court about why you do not like the Settlement, but only if you have not excluded yourself from the Class.
<b>GO TO A HEARING ON SEPTEMBER 9, 2019</b>	If you are a Class Member, you may speak in Court about the fairness of the Settlement.

**INQUIRIES**

**Please do not contact the Court regarding this notice.** All inquiries concerning this Notice, the Proof of Claim, or any other questions by Class Members should be directed to:

<b>Settlement Administrator:</b>	<b>One or Both Class Counsel:</b>
Snap Fitness CEF Settlement c/o JND Legal Administration P.O. Box 91246 Seattle, WA 98111 info@SnapFitnessCEFSettlement.com 1-833-291-1645	<b>or</b> Bryce A. Lenox The Law Office of Bryce A. Lenox, Esq. LLC 3825 Edwards Road, Suite 103 Cincinnati, Ohio 45209 bryce@brycelenoxlaw.com  Brian T. Giles The Law Office of Brian T. Giles, LLC 1470 Apple Hill Rd. Cincinnati, Ohio 45230 brian@gilesfirm.com

## **COMMON QUESTIONS AND ANSWERS CONCERNING THE SETTLEMENT**

### **1. Why did I get a notice?**

Notice was sent via email or U.S. mail to individuals who, according to Defendant's business records, (1) paid one or more CEFs under a Snap Fitness membership agreement that did not mention payment of the CEF; and/or (2) have been a party to a pre-November 2017 Snap Fitness prepaid membership agreement in the state of Ohio and either (i) canceled the membership during the Class Period while operating under that agreement, or (ii) remain a current Snap Fitness member under that agreement.

### **2. What is this lawsuit about?**

Thomas Dwyer filed this lawsuit against Defendant, alleging that Defendant violated the law by (1) charging a CEF to members whose Snap Fitness membership agreements did not mention the CEF and by (2) giving Snap Fitness members in Ohio insufficient notice of their cancellation rights under Ohio's Prepaid Entertainment Contract Act. Defendant denies that it violated the law. The parties have agreed to a settlement. The Settlement resolves all the claims in the Action against Defendant, as well as claims that could have been made in the Action against Defendant and Defendant's Releasees.<sup>1</sup> By entering into the Settlement, Defendant is not admitting that it did anything wrong.

### **3. Why is this a class action?**

In a class action, one or more persons and/or entities, called the Class Representative(s), sue on behalf of all persons and/or entities who have similar claims. All of these persons and/or entities are referred to collectively as a Class, and these individual persons and/or entities are known as Class Members. One court resolves all of the issues for all Class Members, except for those Class Members who exclude themselves from the Class.

The Class Representative appointed by the Court in the Action is Thomas Dwyer. The Class Representative is asking the Court to award him a service award of \$3,500 for serving as Class Representative.

### **4. Why is there a Settlement?**

The Class Representative and the Defendant do not agree regarding the merits of the Complaint's allegations. This matter has not gone to trial and the Court has not decided in favor of either the Class Representative or the Defendant. Instead, the Class Representative and the Defendant have agreed to settle the Action. The Class Representative and Class Counsel believe the Settlement is best for all Class Members because of the risks associated with continued litigation and the nature of the defenses raised by the Defendant. Even if the Class Representative were to win at trial, the Defendant could file an appeal whose outcome would be uncertain and could affect the collectability of any judgment previously obtained.

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<sup>1</sup> This notice incorporates by reference the definitions in the Settlement Agreement (the "Settlement") dated as of February 1, 2019, and all capitalized terms used, but not defined herein, shall have the same meanings as in the Settlement. The Settlement is posted on the Claims Administrator's website at [www.SnapFitnessCEFSettlement.com](http://www.SnapFitnessCEFSettlement.com).

## **5. How do I know if I am part of the Settlement?**

You are a Class Member if you (1) paid a CEF under a Snap Fitness membership agreement that did not mention payment of the CEF (the “CEF Class”), and/or (2) have been a party to a pre-November 2017 Snap Fitness prepaid membership agreement in the state of Ohio and either (i) canceled your membership between May 25, 2015, and the present (“Class Period”) while operating under that agreement, or (ii) remain a current Snap Fitness member under that agreement (the “PECA Class”).

## **6. What does the Settlement provide?**

### **(a) What is the Settlement Fund?**

The proposed Settlement calls for Defendant to create a Settlement Fund in the amount of \$2,920,000. The Settlement is subject to Court approval. A portion of the Settlement Fund will be used to pay taxes due on any interest earned by the Settlement Fund, if necessary. After any such deduction from the Settlement Fund, the amount remaining is for distribution to Class Members, with no reversion of those funds back to the Defendant.

### **(b) What can you expect to receive under the proposed Settlement?**

The amount you will receive depends on whether you are a member of the CEF Class, a member of the PECA Class, or a member of both Classes.

- Class Members in the CEF Class will receive a payment based on a percentage of the total amount they paid in CEFs. Based on Defendant’s records, the Claims Administrator estimates you might receive approximately 65% of the amount you paid in CEFs. Your share of the Settlement Fund will depend on the number of Class Members who exclude themselves from the Class.
- Class Members in the PECA Class will receive \$5.00.
- Individuals who are Class Members in both the CEF Class and the PECA Class are eligible to receive both payments identified above.

## **7. How will I receive a settlement payment?**

If you are a Class Member and do not exclude yourself from the Class, and if the Court grants final approval of the Settlement, you will receive a settlement payment in the form of a check mailed to your address at a future date. However, if you move from your current address, you will need to notify the Claims Administrator in writing and include your new address in order for the settlement payment to reach you. The Claims Administrator should be notified at:

Snap Fitness CEF Settlement  
c/o JND Legal Administration  
P.O. Box 91246  
Seattle, WA 98111  
[info@SnapFitnessCEFSettlement.com](mailto:info@SnapFitnessCEFSettlement.com)

## **8. What am I giving up to get a payment or stay in the Class?**

If you are a Class Member, you will remain in the Class unless you exclude yourself. That means that if the Settlement is approved, you and all Class Members will release (agreeing never to sue, continue to sue, or be part of any other lawsuit) the Released Claims against the Defendant's Releasees.

The Defendant's Releasees are Snap Fitness, Inc., and its past and present parents, subsidiaries, franchisees, and affiliated corporations, limited liability companies, partnerships, and other entities, the predecessors and successors in interest of any of them, and all of their respective past and present officers, directors, shareholders, employees, agents, members, partners, representatives, attorneys, insurers, and assigns, in their capacities as such.

The Released Claims are any and all claims, actions, causes of action, rights or liabilities, whether arising out of federal, state, foreign, or common law, including Unknown Claims, of any Class Member, which exist or may exist against any of the Defendant's Releasees by reason of any matter, event, cause, or thing that were or could have been alleged based on the facts, circumstances, transactions, events, occurrences, acts, omissions, or failures to act alleged, or which Plaintiff requested leave to allege, in the Action. Released Claims do not include any claims relating to the enforcement of the Settlement or any claims of any person or entity who Successfully Opted Out of the Settlement.

If you are a Class Member and you do not exclude yourself from the Class, you are agreeing to give up your rights to the Released Claims, which will bar you from ever filing a lawsuit against the Defendant or any of the Defendant's Releasees for the matters covered by the Released Claims. That means you will accept a share in the Settlement Fund, whether or not you claim it, as sole compensation from the Defendant or the Defendant's Releasees for any losses you have suffered for the matters covered by the Released Claims. You will not be prohibited, however, from participating in, complying with, or receiving benefits from any government or regulatory initiated enforcement action relating to the allegations in this lawsuit.

Further detail and information about what you are agreeing to give up is detailed in the Settlement, which is available at [www.SnapFitnessCEFSettlement.com](http://www.SnapFitnessCEFSettlement.com).

## **9. How do I get out of the Settlement?**

If you are a Class Member and want to keep any right you may have to sue or continue to sue the Defendant or the Defendant's Releasees for the matters covered by the Released Claims, then you must take steps to get out of the Settlement. This is called excluding yourself from—or “opting out” of—the Settlement. If you ask to be excluded, you will not receive a settlement payment, and you cannot object to the Settlement. If you ask to be excluded in conformity with this notice, you will not be legally bound by anything that happens in this Action.

To exclude yourself from the Settlement, you must send a written request to the Claims Administrator at the address below, postmarked no later than July 16, 2019:

Snap Fitness CEF Settlement  
c/o JND Legal Administration  
P.O. Box 91246  
Seattle, WA 98111

Exclusion requests must: (i) be signed by the person in the Settlement Class who is requesting exclusion; (ii) include the full name and address of the person in the Settlement Class requesting

exclusion; and (iii) include the following statement: “I/we request to be excluded from the settlement in the Snap Fitness CEF action.” No request for exclusion will be valid unless all of the information described above is included, and a member of the Settlement Class may opt out on an individual basis only.

#### **10. If I do not exclude myself, can I sue the Defendant for the same thing later?**

No. If you are a Class Member, unless you exclude yourself, you give up any right to sue the Defendant or the Defendant’s Releasees for the Released Claims. If you have a pending lawsuit, speak to your lawyer in that case immediately, since you may have to exclude yourself from this Class to continue your own lawsuit.

#### **11. Do I have a lawyer in this case?**

The Court has appointed Bryce A. Lenox, at The Law Office of Bryce A. Lenox, Esq. LLC, and Brian T. Giles, at The Law Office of Brian T. Giles, as Class Counsel to represent the Class Members for the purposes of this Settlement. You have the option to retain your own separate counsel at your own cost and expense. You need not retain your own separate counsel to exclude yourself from the Settlement, object, or appear at the Fairness Hearing.

#### **12. How will the lawyers be paid?**

Class Counsel have expended considerable time litigating this Action on a contingent fee basis, have paid for the expenses of the Action themselves, and have not been paid any attorneys’ fees in advance of this Settlement. Class Counsel have done so with the expectation that if they are successful in recovering money for the Class, they will receive attorneys’ fees and be reimbursed for their Litigation Expenses.

Class Counsel will file a motion asking the Court to award attorneys’ fees, reasonable Litigation Expenses, and a service award to the Class Representative in a collective amount of no more than \$350,000. Defendant has agreed to pay any amount awarded by the Court up to \$350,000 separately from the Settlement Fund, and an award of \$350,000 or less will not affect the amount that any Class Member receives. The Court may award less than \$350,000.

#### **13. How do I tell the Court that I do not like the Settlement?**

You can tell the Court that you do not agree with all or any part of the Settlement or Class Counsel’s motion for attorneys’ fees and Litigation Expenses, or any service awards to the Class Representative, and that you think the Court should not approve the Settlement, by mailing a letter stating that you object to the Settlement in the matter of *Dwyer v. Snap Fitness, Inc.*, Case No. 1:17-cv-00455-MRB. In the written objection, you must state your full name, address, a telephone number at which you currently can be reached, the reasons for your objection, the number of objections you have made in other class-action cases, identifying the specific cases, and whether you intend to appear at the Fairness Hearing on your own behalf or through counsel. Any documents supporting the objection must also be attached to the objection. Be sure to mail the objection to the address listed below, postmarked no later than July 16, 2019, so the Court will consider your views:

Office of the Clerk  
Potter Stewart U.S. Courthouse  
Room 103  
100 East Fifth Street  
Cincinnati, Ohio 45202

**14. What is the difference between objecting and opting out?**

Objecting is simply telling the Court you do not like something about the Settlement. You can object only if you stay in the Class. Opting out of—or requesting exclusion from—the Settlement is telling the Court you do not want to be part of the Class or the Settlement. If you exclude yourself, you cannot object to the Settlement because it no longer concerns you. If you stay in the Class and object, but your objection is overruled, you will not be allowed a second opportunity to exclude yourself and you will be bound by any order issued by the Court.

**15. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Fairness Hearing on September 9, 2019 at 10 a.m. before The Honorable Michael R. Barrett, United States District Judge for the Southern District of Ohio, Potter Stewart U.S. Courthouse, 100 East Fifth Street, Cincinnati, Ohio 45202.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and whether to approve the Settlement. If there are objections, the Court will consider them, and the Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to award Class Counsel for attorneys' fees and Litigation Expenses, and whether to make service awards to the Class Representative.

If you wish to attend the Fairness Hearing and be heard orally in opposition to the Settlement, the application for attorneys' fees and Litigation Expenses, and/or the request for payment of service awards to the Class Representative, you must indicate in your written objection, submitted as described in response to Question No. 13, that you intend to appear at the Fairness Hearing. Your written objection must identify any witnesses you may call to testify or exhibits you intend to introduce into evidence at the Fairness Hearing.

**16. Do I have to come to the Fairness Hearing?**

No. Class Counsel will answer any questions the Court may have. You are, however, welcome to attend at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mail your written objection and it is received on time, the Court will consider it.

**17. What happens if I do nothing at all?**

If you do nothing and the Court approves the Settlement, you will receive a payment from the Settlement Fund.

## **18. How do I get more information about this case?**

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement with the Court. You may examine the Court's file in the Clerk's Office at the United States District Court for the Southern District of Ohio Potter Stewart U.S. Courthouse, 100 East Fifth Street, Cincinnati, Ohio 45202, for more complete information about the details of the lawsuit and the proposed settlement. You may also visit the Settlement Website at [www.SnapFitnessCEFSettlement.com](http://www.SnapFitnessCEFSettlement.com), where the Settlement Agreement is posted, or call toll-free at 1-833-291-1645. Relevant case filings will be added to the Settlement Website as the Settlement proceedings continue.