UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (CINCINNATI)

THOMAS DWYER **Individually and on behalf of all others similarly situated** **Plaintiff,** **vs.** **SNAP FITNESS, INC.** **Defendant.**	:	**Case No. 1:17-cv-00455-MRB** **Judge Michael R. Barrett** **UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Pursuant to Fed. R. Civ. P. 23(e) Plaintiff Thomas Dwyer("Dwyer" or "Plaintiff"), on behalf of himself and the Settlement Class, respectfully moves this Court to enter the proposed Order Granting Final Approval of Class Action Settlement ("Final Approval Order"),[1] attached hereto as Exhibit 1, which certified the Settlement Class and grants final approval to the proposed Class Action Settlement Agreement and Release. The settlement was reached after hard-fought litigation, was the result of arm's-length negotiations, including a multi-month mediation with William Hawkins of Baker Hostetler. For these and other reasons as more fully set forth in the accompanying memorandum of law, the proposed settlement is fair, reasonable, and adequate, and final approval should be granted.

[1] Capitalized terms not defined herein are as stated in the Settlement Agreement and Release dated February 1, 2019 [Doc. 28, Ex.].

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Thomas Dwyer, individually and on behalf of the Settlement Class (collectively, "Plaintiffs"), respectfully request that the Court grant final approval of the class action Settlement between the Plaintiffs and Defendant Snap Fitness, Inc. (collectively, "Defendant" or "Snap Fitness"). Final approval of this Settlement is appropriate because the Settlement is the product of extensive arm's-length negotiations, and is fair, reasonable, and adequate. Under the Settlement, nearly 144,000 class members are provided an opportunity to receive a substantial benefit, including nearly 65% of all Club Enhancement Fees ("CEF") paid. In addition, each Settlement Class Member in the PECA Sub-Class will receive a cash award of $5.00. It therefore merits final approval.

II. FACTUAL BACKGROUND

A. The Litigation

On May 25, 2017, Dwyer filed his Class Action Complaint in the Court of Common Pleas, Hamilton County, Ohio. Dwyer's Class Action Complaint sought remedies for a nationwide class under theories of breach of contract, unjust enrichment for the allegedly improper charge of a "Club Enhancement Fee" in 2017 to Snap Fitness club members nationally. The Complaint also sought remedies for an Ohio subclass under the Ohio Consumer Sales Practices Act ("CSPA") and Prepaid Entertainment Contracts Act (R.C. 1345.41 to R.C. 1345.50) for an alleged failure to attach or otherwise provide a duplicate, detachable "notice of cancellation" form to contracts of Ohio Snap Fitness club members. On June 30, 2017, Snap Fitness removed the matter to this Court.

On October 26, 2017, Dwyer served interrogatories, requests for production of documents, and requests for admission upon Snap Fitness. While Snap Fitness responded to the written discovery on December 1, 2017, it produced documents on a rolling basis lasting for months, and ultimately produced over 1,000 documents. Class Counsel reviewed and analyzed the documents produced by Snap Fitness and those obtained through its own investigation. Based upon the documents produced by Snap Fitness, on July 12, 2018, Dwyer moved for leave to file an amended complaint to bring class claims under the consumer protection laws in the 40 states in which members were charged a Club Enhancement Fee and claims for fraud. Snap Fitness opposed the motion.

B. Negotiation of the Proposed Settlement and Execution of the Settlement Agreement

With the motion for leave to amend pending, and the parties recognizing their respective risks in the prosecution and defense of this case, the parties agreed to enter settlement negotiations in order to seek a mutually acceptable resolution to the dispute. Towards this goal, the parties mediated the matter on September 26, 2019 with Bill Hawkins of Baker Hostetler. Although substantial progress was made, no settlement was reached. However, the parties agreed to follow-up mediation sessions with Mr. Hawkins. Over the course of several months and many conferences with Mr. Hawkins, the parties ultimately came to terms on a settlement on November 20, 2018.

Thereafter, for over two months the Parties painstakingly negotiated the detailed Settlement Agreement [Doc. 28, Ex. 2], which exceeds 27 pages in length. Pursuant to the Settlement Agreement, Snap Fitness will pay a non-reversionary cash sum in the amount of $2,920,000, and each Settlement Class Member will be entitled to receive a Cash Award on the following terms:

(a) Each Settlement Class Member in the PECA Sub-Class will receive a Cash Award of $5.00.

(b) Each Settlement Class Member in the CEF Sub-Class will receive a Cash Award in a designated percentage of the Club Enhancement Fees that he or she paid. The Cash Award will be determined for each Settlement Class Member in the CEF Sub-Class as follows:

(i) first, the total amounts accounted for under Section 4.04(a) will be deducted from the Settlement Fund to calculate the "CEF Net Settlement Fund";

(ii) next, the CEF Net Settlement Fund will be divided by the total of all Club Enhancement Fees paid by Settlement Class Members to calculate the percentage of recovery to be applied class-wide (the "Percentage of Recovery"). The total of all Club Enhancement Fees cumulatively paid by Settlement Class Members will be derived from Defendant's business records.

(iii) next, the Percentage of Recovery will be applied to the Amount Paid to calculate the Cash Award for each Settlement Class Member.

(c) A Settlement Class Member who is a member of both the PECA Sub-Class and the CEF Sub-Class will receive a Cash Award consisting of a combined payment under Section 4.04(a) and Section 4.04(b).

In exchange for this valuable consideration, Dwyer and the Class Members who do not timely exclude themselves will release their claims against Snap Fitness.

Pursuant to Section V of the Settlement Agreement, Dwyer would apply to the Court for an award of reasonable attorney fees, litigation expenses and a class service award (per the Settlement Agreement, the "Fee and Expense Application"). [Settlement Agreement, ¶5.01]. The Fee and Expense Application would be paid separately from the $2,920,000 award to the

Class. *Id*. at ¶4.05, 5.01. Dwyer represented that the Fee and Expense Application would not exceed $350,000, and Snap Fitness agreed not oppose such a request so long as the application did not exceed this amount. ¶5.02.[2]

C. Preliminary Approval, Class Notice and Its Results

On March 20, 2019, the Court granted preliminary approval to the proposed class action settlement, finding its terms to be "fair, reasonable, and adequate" [Doc. 29, ¶4]. The Court's Order directed Class Counsel to disseminate notice in accordance with the Notice Plan, which the Court found met the requirements of due process and was the "best notice practicable under the circumstances. *Id*. at ¶ 8.

Under the approved notice program, the Settlement Administrator provided notice as follows: (i) Email Notice was sent via electronic mail to the most recent email address as reflected in Snap Fitness' reasonably available computerized account records, to all persons in the Settlement Class for whom such records exist; or (ii) the Postcard Notice was sent via first class mail to the most recent mailing address as reflected in Snap Fitness' computerized account records, for those persons in the Settlement Class for whom Snap Fitness does not have an email address (as reflected in reasonably available computerized account records), and to those persons in the Settlement Class whose emails are undeliverable, as determined by the Settlement Administrator. In addition, a Long-Form Notice was posted on the Settlement website operated by the Settlement Administrator. A specific toll-free phone number for Class Members to call the Settlement Administrator regarding any questions about this Settlement was also established. Unlike many class action settlements, potential Class Members are not

[2] On July 2, 2019, Dwyer filed his fee application, requesting approval the following payments in connection with the Settlement: (1) attorneys' fees in the amount of $338,352.55; (2) out of pocket expenses and costs to Class Counsel in the amount of $8,147.45 and (3) a service award of $3,500 to Plaintiff. That Motion is pending, and should be addressed at the September 9, 2019 fairness hearing along with this Motion.

required to complete a claim form to be eligible.

On February 22, 2019, the Settlement Administrator received a data file from Snap Fitness containing, among other information, the names, mailing addresses, and email addresses (where available) of individuals identified as potential Class Members. Jennifer Keough Declaration ("Keough Decl."), ¶7 (attached as Ex. 2). The file contained contact information and other identifying data for 141,366 unique potential Class Members. *Id*. On April 15, 2019, the Settlement Administrator received a supplemental data file from the Defendant including new Class Members and CEF charges that did not appear in the original file. *Id*. at ¶8. The updated file contained contact information and other identifying data for 2,479 unique potential Class Members. *Id*. Prior to commencing the notice campaign, the Settlement Administrator analyzed the raw data to remove duplicate records. *Id*. at ¶9. It identified 1,209 duplicate records within the Class, resulting in 142,636 unique Class Member records. *Id.* JND updated the Class Member contact information using data from the National Change of Address ("NCOA") database.[3] The Class Member data was promptly loaded into a database established for this Action. *Id*.

Pursuant to the Settlement, on May 17, 2019, the Settlement Administrator commenced an email campaign of customized court-approved notices to Class Members for whom facially valid email addresses were provided. *Id*. at ¶10. The Settlement Administrator sent a total of 121,930 email notices. *Id*. To date, 53,708 emails were not returned as undeliverable or "bounced back." *Id*.

[3] The NCOA database is the official United States Postal Service ("USPS") technology product which makes change of address information available to mailers to help reduce undeliverable mail pieces before mail enters the mail stream. This product is an effective tool to update address changes when a person has completed a change of address form with the USPS. The address information is maintained on the database for 48 months.

On May 17, 2019, the Settlement Administrator commenced a mailing campaign of customized court-approved postcard notices via U.S. Postal Service regular mail to 20,534 Class Members who did not have facially valid email addresses or whose email notice was undeliverable. *Id*. at ¶11. Additionally, on June 3, 2019, it mailed the Postcard Notice to 68,222 Class Members whose Email Notice was returned as undeliverable. *Id*. The Settlement Administrator tracked 7,580 mailed Notices that were returned to it as undeliverable. *Id*. at ¶11. Of these undeliverable Notices, it re-mailed 1,191 Notices to forwarding addresses provided by the USPS. *Id*. For the remaining undeliverable Notices, the Settlement Administrator conducted advanced address searches and received updated address information for 3,444 Class Members. *Id*. It re-mailed the Notice to the 3,444 Class Members, and 306 re-mailed Notices were returned as undeliverable. *Id*. In total, 139,213 Class Members were emailed or mailed a Notice which was not returned as undeliverable, representing 97.6% of total Class Members from the Settlement. *Id*. at ¶13.

Any objections to the Settlement or requests for exclusion from the Settlement were to be postmarked by July 18, 2019 [Doc. 29]. There were no objections, and only three opt-outs, which represents .0021% of the Class. Keough Decl., ¶23, 25.

III. ARGUMENT

A. Final Class Certification is Appropriate.

This Court preliminarily approved class certification for Settlement purposes in its March 20, 2019 Order [Doc. 29]. At this juncture, final approval is appropriate. The following is a summary of the detailed briefing previously submitted in connection with Plaintiff's Motion for Preliminary Approval. [Doc. 28].

1. The Elements of Rule 23(a) are Satisfied

For a settlement class to be certified under Rule 23, the plaintiff must establish each of the four threshold requirements of Subsection (a) of the Rule, which provides:

> One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). Here, all four elements are satisfied.

a. Numerosity

Rule 23(a)(l) requires that Plaintiffs demonstrate that "the class is so numerous that joinder of all members is impracticable." While no specific number of class members is required to maintain a class action, "[w]hen class size reaches substantial proportion the impracticability requirement is usually satisfied by the numbers alone." *In re Am. Med. Sys., Inc*., 75 F.3d 1069, 1076, 1079 (6th Cir. 1996) (citation omitted) ("the Sixth Circuit has previously held that a class of 35 was sufficient to meet the numerosity requirement"). Here, there are 142,636 Class Members spread across multiple states. Numerosity is therefore readily satisfied. See *Gascho v. Global Fitness Holdings*, LLC, No. 2:11–cv–436, 2014 WL 1350509, at *9 (S.D. Ohio April 4, 2014) aff'd, 22 F.3d 269, 281 (6th Cir. 2016) (numerosity satisfied with class of 605,735 health club members).

b. Commonality

Rule 23(a)(2) requires a showing of the existence of questions of law or fact common to the class. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345 (2011). "Their claims must depend upon a common contention of such a nature that it is capable of classwide resolution, which means that determination of its truth or falsity will resolve an issue that is central to the

validity of each one of the claims in one stroke." *Id*. at 350. Both the majority and dissenting opinions in that case agreed that "for purposes of Rule 23(a)(2) even a single common question will do." *Id.* at 359.

In this case, there are numerous common questions of law and fact, such as whether Snap Fitness has a common policy or practice of improperly charging through its franchisees a Club Enhancement Fee to its members' accounts; whether Snap Fitness had a common policy or practice of failing to provide through its franchisees a duplicate, detachable "notice of cancellation" to its Ohio club members; and whether the Class Members have actionable claims. Commonality is, therefore, satisfied. See *Gascho v. Global Fitness Holdings*, LLC, 2014 WL 1350509, at *10 (where health club "knowingly misrepresenting and failing to disclose the terms and conditions of its membership contracts and personal training contracts" and "refusing to provide copies of membership contracts, personal training contracts and other contracts for services at the time they are signed," those allegations satisfied commonality requirement).

c. Typicality

In order to satisfy the typicality requirement of Rule 23(a)(3), the claims or defenses of the representative parties must be typical of the claims or defenses of the class. "The typicality requirement ensures that the representative's interests will be aligned with those of the represented group and that the named plaintiff will also advance the interests of the class members." *Chesher v. Neyer*, 215 F.R.D. 544, 549 (S.D. Ohio 2003). "A plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." *Id*. (citing 1 Herbert B. Newberg & Ala Conte, Newberg on Class Actions, § 3-13, at 3-76 (3d ed. 1992)); *see also Am. Med. Sys*., 75 F.3d at 1082 (same). Typicality seeks to ensure that there are no conflicts

between the class representatives' claims and the claims of the class members represented. Here, all of Plaintiff's claims arise out of the same alleged conduct by Snap Fitness in its practices and policies regarding a charge of a Club Enhancement Fee to its members and its policies relating to notice of cancellations for Ohio customers and the same legal theories apply to all. Typicality is satisfied. See *Gascho v. Global Fitness Holdings*, LLC, 2014 WL 1350509, at *10 (typicality satisfied where claims of the Class Representatives against a health club arise from the same policies and practices of defendant that give rise to the claims of other class members and are based on the same legal theories).

d. Adequacy of Representation

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." "There are two criteria for determining this element: 1) the representatives must have common interests with the unnamed class members, and 2) it must appear that the representatives will vigorously prosecute the class action through qualified counsel." *Senter v. Gen. Motors Corp*., 532 F.2d 511, 524-25 (6th Cir. 1976).

Here, Dwyer is an adequate representative because during the Class Period he was charged a Club Enhancement Fee by Snap Fitness and did not receive a separate and detachable notice of cancellation form, both of which are covered by the Settlement. He has also actively participated in the litigation of this case, including personal attendance at the first day of mediation.

In addition, Dwyer's counsel is qualified, as the Court previously recognized in appointing attorneys from The Law Office of Bryce A. Lenox, Esq. LLC and The Law Office of Brian T. Giles, LLC as Class Counsel. [Doc. 29, p. 2]. These firms have invested considerable time and resources into the prosecution of this action. Class Counsel possess a wealth of

experience litigating complex class action lawsuits, and were able to negotiate an outstanding settlement for the Class Members. See Giles Affidavit; Lenox Affidavit, [Doc. 28, Exs. 3 and 4]

2. The Requirements of Rule 23(b)(3) are Met in the Settlement Context.

In addition to satisfying Rule 23(a), the Settlement Class qualifies under Rule 23(b)(3). Rule 23(b)(3) provides that a class action may be maintained if:

> a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include: (A) the class members' interest in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3). "The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997). "[A] plaintiff must establish that the issues in the class action that are subject to generalized proof ... predominate over those issues that are subject only to individualized proof." *Beattie v. CenturyTel, Inc*., 511 F.3d 554, 564 (6th Cir. 2007) (internal quotation marks and citation omitted). With respect to superiority, the Court considers whether a class action is "superior to other methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

Here, there are several common questions of law and fact that predominate over any questions that may affect individual Class Members. For example, were this case to proceed, the primary issue would be whether Snap Fitness improperly charged a Club Enhancement Fee to members nationwide and failed to provide a duplicate, detachable "notice of cancellation" form to Ohio class members, and whether Snap Fitness is liable for these actions. These are issues subject to "generalized proof," and are "question[s] that [are]common to all class

members." *See Daffin*, 2004 WL 5705647, at *2 (predominance satisfied where significant issues included: 1) whether throttles were defective; 2) whether that defect reduced the value of the car; and 3) whether Ford breached its warranty); *see also In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, No. 3:08-MD-01998, 2009 WL 5184352, at *6 (W.D. Ky. Dec. 22, 2009) ("the proof required [must focus] on Defendant's conduct, not on the conduct of the individual class members."). Accordingly, the predominance prong of Rule 23(b)(3) is satisfied.

The second prong of Rule 23(b)(3) — that a class action is superior to other available methods for the fair and efficient adjudication of the controversy — is also readily satisfied. *See* Fed. R. Civ. P. 23(b)(3). The Settlement Agreement provides members of the Settlement Class with quick, simple, and certain relief, and contains well-defined administrative procedures to ensure due process, including the right of any Class Member to object to the settlement or to request exclusion from the Class (which deadline has now passed). The settlement also would relieve the substantial judicial burdens that would be caused by repeated adjudications in individual trials against Snap Fitness. *See Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 545 (6th Cir. 2012) ("Where it is not economically feasible to obtain relief within the traditional framework of a multiplicity of small individual suits for damages, aggrieved persons may be without any effective redress unless they may employ the class-action device.") (Internal quotations omitted). Here, individual trials are not feasible; the proposed class action remedy is superior.

B. <u>The Settlement Agreement Merits Final Approval</u>

Pursuant to Rule 23(e), the Court may approve this Settlement if it determines that it is "fair, reasonable and adequate." As a general matter, courts within this Circuit have noted the

importance of refraining from any attempts to resolve the legal and factual issues that are the basis of the underlying lawsuit when considering the foregoing factors. *See Levell v. Monsanto Research Corp*., 191 F.R.D. 543, 550 (S.D. Ohio 2000). It is not appropriate to "withhold approval simply because the benefits accrued from the [agreement] are not what a successful plaintiff would have received in a fully litigated case." *Levell*, 191 F.R.D. at 550. A settlement "is a compromise which has been reached after the risks, expense, and delay of further litigation have been assessed." *Bronson v. Bd. of Ed*., 604 F. Supp. 68, 74 (S.D. Ohio 1984).

Thus, it is well-settled that "class counsel and the class representatives may compromise their demand for relief in order to obtain substantial assured relief for the plaintiffs' class." *Id*.; *see also Brent v. Midland Funding, LLC*, No. 3:11 CV 1332, 2011 WL 3862363, at *12 (N.D. Ohio Sept. 1, 2011) (citing authorities). "In general, a reviewing court's task is not to decide whether one side is right or even whether one side has the better of these arguments. The question is rather whether the parties are using settlement to resolve a legitimate legal and factual disagreement." *Brent*, 2011 WL 3862363, at *12 (internal quotes omitted).

The Sixth Circuit has identified the following factors when considering whether to finally approve a class action settlement: "(1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest." *Vassalle v. Midland Funding LLC*, 708 F.3d 747, 754 (6th Cir. 2013); *see also Brotherton v. Cleveland*, 141 F. Supp. 2d 894, 904-905 (S.D. Ohio 2011). The balance of these factors weighs in favor of granting final approval.

1. The Settlement resulted from mediated, arm's-length negotiations without any risk or evidence of fraud or collusion.

Settlements resulting from arm's length negotiations conducted by court-approved counsel are presumptively reasonable. *See* 1 Herbert B. Newberg & Ala Conte, Newberg on Class Actions, § 11.41 at 90 (4th Ed. 2002). Courts presume the absence of fraud or collusion in settlement negotiations, unless there is evidence to the contrary. *In re Telectronics Pacing Sys.*, 137 F. Supp. 2d 985, 1106 (S.D. Ohio 2001). Here, there is no such evidence.

This Settlement was the result of extensive, contentious, arm's-length negotiations between counsel with many decades of experience in handling complex, class action litigation. Negotiations were arduous and lengthy, stretching over several months under the close supervision of Bill Hawkins of Baker Hostetler. His guidance was vital to achieving the Settlement. Bill Hawkins' participation in the Parties' negotiations alone establishes the lack of fraud or collusion in this case.[4]

There is simply no evidence suggesting that fraud or collusion invaded any part of the mediated, arm's-length, and protracted settlement negotiations between the Parties. Accordingly, this factor strongly supports granting final approval.

2. <u>The complexity, expense, and likely duration of the litigation warrant final approval of the Settlement.</u>

"Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them." *Brent*, 2011 WL 3862363, at *16 (quoting *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000)). "Thus, '[i]n most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.'" *Id*. (quoting 4 Alba Conte

[4] *See, e.g.,In re Regions Morgan Keegan Secs.,* Nos. 2:09-2209SMH V, 2:07- cv-02830-SHM-dkv, 2013 WL 12110279, at *5 (W.D. Tenn. Aug. 6, 2013) (noting that "[t]he parties protected against the risk of fraud or collusion by using a highly qualified and experienced independent mediator during settlement negotiations.").

& Herbert B. Newberg, Newberg on Class Actions § 11.50 (4th ed. 2002)).[5] This case is no different in that it is a consumer class action and a settlement at this stage of the case will avoid the risk of "costs, delays, and multitude of other problems associated" with class action cases.

In the absence of settlement, Plaintiffs' action would remain subject to the Court issuing a ruling on Dwyer's motion for leave to amend his Complaint. Depending on the Court's ruling, amended pleadings, Rule 12 briefing and additional discovery may be in order. Thereafter, the Parties would need to complete fact discovery, which would be voluminous, complicated, and expensive. Then, the Parties would need to undertake class certification and summary judgment briefing, which would likely require utilization of costly expert testimony. Continued litigation would certainly be an involved and expensive process.

Moreover, the resulting litigation, including any appeals, could take many years and involve substantial expense for all Parties. The uncertainty of continued litigation stands in stark contrast to the immediate relief offered by this Settlement. Therefore, the Settlement provides Settlement Class Members with real benefits now without having to endure the risks, duration, and expense that would surely follow if this litigation were to continue. *See Bert v. AK Steel Corp.*, No. 1:02-cv-467, 2008 WL 4693747, at *2 (S.D. Ohio Oct. 23, 2008) ("The Court has no doubt that the required trials or hearings would have been time consuming, and that a complete resolution of the case would not be reached for several more years. This factor clearly weighs in favor of the proposed settlement.").

3. <u>Substantial discovery was conducted in this case.</u>

[5] *See also Amos v. PPG Indus., Inc.*, No. 2:05-cv-70, 2015 WL 4881459, at *1 (S.D. Ohio Aug. 13, 2015) ("In general, most class actions are inherently complex, and settlement avoids the costs, delays, and multitude of other problems associated with them.") (internal citations and quotations omitted); *Miracle v. Bullitt Cnty., Ky.*, No. CIV.A. 05-130-C, 2008 WL 3850477, at *6 (W.D. Ky. Aug. 15, 2008) (The "uncertainty of the outcome of the litigation makes it more reasonable for the plaintiffs to accept the settlement offer from the defendant").

The Parties have already engaged in substantial discovery, which has included written discovery, as well as the production and analysis of thousands of pages of documents. Based on the documents produced by Snap Fitness and documents obtained through Class Counsel's independent investigation into the facts surrounding this matter, both Parties had the opportunity to assess the strengths and weaknesses of each other's litigation positions. In light of the substantial discovery that has taken place, this factor also lends support for granting final approval of the Settlement.

4. The likelihood of success balanced against the amount and form of relief offered by the settlement weigh in favor of approving the settlement.

The Sixth Circuit has identified the likelihood of success on the merits as the most important of all the factors a district court must evaluate in assessing the fairness of a class action settlement. *Poplar Creek Dev. Co. v. Chesapeake Appalachia, LLC*, 636 F.3d 235, 245 (6th Cir. 2011). A district court must weigh the likelihood that the class ultimately will prevail "against the amount and form of the relief offered in the settlement." *Carson v Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981); *see also In re Gen. Tire & Rubber*, 726 F.2d 1075, 1086 (6th Cir. 1984); *UAW v. Gen. Motors, Corp.*, 497 F.3d 615, 631 (6th Cir. 2007).

Although Dwyer remains confident in his claims against Snap Fitness, Plaintiff recognizes the substantial risks involved in establishing liability and damages in this case. From the outset of this litigation, Snap Fitness has consistently maintained that the allegations in this action are without merit, and has raised various legal defenses, including lack of personal jurisdiction. The Court could deny Defendants' pending motion for leave to amend, or rule against Plaintiff later in this case on issues related to personal jurisdiction, class certification or summary judgement. Furthermore, there is a risk that a jury might award little or nothing in the

way of damages. And even if Plaintiff prevails on class certification, summary judgment, and at trial, Plaintiff would still face the potential for prolonged appeals to the Sixth Circuit.

By contrast, the Settlement offers immediate, significant, and substantial relief to all Class Members. The Settlement delivers real value to Class Members. Under any analysis, the relief afforded by this Settlement is fair and reasonable, especially when weighed against the anticipated cost, prolonged nature, and uncertain outcome of continued litigation. Thus, this factor too weighs in favor of granting final approval.

5. The fact that both Plaintiff's and Defendant's counsel, as well as the Plaintiffs, recommend approval of the Settlement strongly indicates that the Settlement is fair, reasonable, and adequate.

The Sixth Circuit has observed that, when experienced counsel immersed in the legal and factual issues comprising a class action recommend approval of their class settlement, their recommendations are entitled to deference. *See Williams v. Vukovich*, 720 F.2d 909, 922 (6th Cir. 1983) (a district court "should defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs" and that deference "should correspond to the amount of discovery completed and the character of the evidence uncovered"). Likewise, courts in the Sixth Circuit defer to the recommendations made by class representatives who, like the Plaintiff here, were intimately involved in the litigation and support the Settlement. *Gascho v. Global Fitness Holdings, LLC*, No. 2:11-cv-436, 2014 WL 1350509, at *18 (S.D. Ohio Apr. 4, 2014) ("Not insignificantly, the Class Representatives have also approved the Settlement Agreement").

Class Counsel and Plaintiff support this Settlement because it provides Class Members with immediate and substantial benefits that will directly address the issue of Snap Fitness franchisees' charge of a CEF, as well as the issues surrounding the detachable "notice of cancellation" form to contracts of Ohio Snap Fitness club members. Snap Fitness is also supportive of the Settlement, which was reached after two years of litigation and thorough

settlement negotiations. As the result of substantial discovery conducted and extensive settlement negotiations, the Parties are in a position to fully analyze the strengths and weaknesses of their respective cases and determine that the Settlement at this stage of the litigation is appropriate. Accordingly, the informed recommendations of the Parties and their experienced counsel weigh in favor a granting final approval.

6. Absent Class Members Have Reacted Favorably Towards The Settlement.

In determining whether a class action settlement is fair, adequate and reasonable, a court must also consider the reaction of absent class members. *Vassalle*, 708 F.3d at 754. "Although this is not clear evidence of class-wide approval of the settlement, it does permit the inference that most of the class members had no qualms with it." *See Olden v. Gardner*, 294 F. App'x 210, 217 (6th Cir.2008) (finding that 79 objections in a class of nearly 11,000 members "tends to support a finding that the settlement is fair"). *See also In re Delphi Corp. Sec., Derivative & "ERISA" Litig.*, 248 F.R.D. 483, 500 (E.D.Mich.2008) ("If only a small number [of opt outs or objections] are received, that fact can be viewed as indicative of the adequacy of the settlement.") (internal quotations omitted; alteration in original); *Hainey v. Parrott*, 617 F.Supp.2d 668, 675 (S.D.Ohio 2007) ("Generally, however, a small number of objections, particularly in a class of this size, indicates that the settlement is fair, reasonable and adequate.").

The deadline for Class Members to object or opt out of the Settlement was July 18, 2019. As of that date, only three Class Members opted out, which represents .0021% of the Class, and no Class Members objected. Clearly, the Class believed the Settlement to be fair and adequate.

7. This Settlement serves the public interest.

Particularly in light of the immediate benefits that the Settlement provides to the Class Members, and the fact that this Settlement will avoid further discovery and expensive motion

practice, this "overriding public interest" would be well served by approval of this Settlement. "[T]he law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." *Brent*, 2011 WL 3862363, at *12 (quoting 4 Alba Conte & Herbert Newberg, Newberg on Class Actions, § 11.41 (4th ed. 2002)). *See also In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 530 (E.D. Mich. 2003) ("There is a strong public interest in encouraging settlement of complex litigation and class action suits because they are 'notoriously difficult and unpredictable' and settlement conserves judicial resources."); *In re Nationwide Fin. Servs. Litig.*, No. 2:08–cv–00249, 2009 WL 8747486, at *8 (S.D. Ohio Aug. 18, 2009) ("[T]here is certainly a public interest in settlement of disputed claims that require substantial federal judicial resources to supervise and resolve."); *Hainey v. Parrott*, 617 F. Supp. 2d 668, 679 (S.D. Ohio 2007) ("noting that "[p]ublic policy generally favors settlement of class action lawsuits.").

This Settlement serves the public's interest by ending already protracted litigation and freeing up judicial resources. *See In re Telectronics*, 137 F. Supp. 2d atv1025; *see also Hainey*,617 F. Supp. 2d at 679; *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 248 (S.D. Ohio 1991) (noting that the settlement of a class action lawsuit served the public interest because it "avoid[ed] a time-consuming and expensive trial" and "eliminate[d] the possibility of any time-consuming and expensive appeals.").

In total, all of the factors to be considerable when determining whether to grant final approval weigh in favor of a finding that the Settlement is fair, reasonable, and adequate.

IV. CONCLUSION

Because the proposed Settlement is fair, adequate, and reasonable, Plaintiff respectfully request that the Court grant final approval and enter the proposed Order attached as Exhibit 1.

Respectfully submitted,

/s/ Bryce Lenox
Bryce A. Lenox (0069936)
THE LAW OFFICE OF BRYCE A. LENOX, ESQ. LLC
3825 Edwards Road, Suite 103
Cincinnati, Ohio 45208
(513) 520-9829
bryce@brycelenoxlaw.com

/s/ Brian T. Giles
Brian T. Giles (0072806)
THE LAW OFFICE OF BRIAN T. GILES, LLC
1470 Apple Hill Rd.
Cincinnati, Ohio 45230
(513) 379-2715
Brian@GilesFirm.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that on August 19, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to counsel of record in this matter who are registered on CM/ECF.

/s/ Bryce A. Lenox
Bryce A. Lenox

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

THOMAS DWYER, *et al.*,	:	**CASE NO. 1:17-cv-00455-MRB**
Individually and On Behalf of All Others Similarly Situated,	:	**(Judge Michael R. Barrett)**
Plaintiff,	:	
v.	:	
SNAP FITNESS, INC.,	:	
Defendants.	:	

[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT

WHEREAS, the above-titled putative class action is pending before the Court; and

WHEREAS, Plaintiff Thomas Dwyer, on behalf of himself and the Settlement Class in the litigation, and Defendant Snap Fitness, Inc. ("Defendant" or "Snap Fitness"), have entered into the Class Action Settlement Agreement and Release dated February 1, 2019 ("Agreement"), which was preliminarily approved by this Court as fair, adequate, and reasonable pursuant to Rule 23 of the Federal Rules of Civil Procedure on March 20, 2019 [ECF No. 29] and which, together with the exhibits thereto, sets forth the terms and conditions for the proposed Settlement of the Litigation and the dismissal of the Litigation with prejudice; and

WHEREAS, notice of the Settlement was provided to Class Members in accord with the Court's Order Preliminarily Approving Settlement by a Notice electronically mailed to all Class Members for whom Defendant's records reflected a valid email address and a Postcard Notice to all other Class Members; and

WHEREAS, a notice of Settlement was mailed to government officials as described in 28 U.S.C. § 1715; and

WHEREAS, the Court having conducted a Fairness Hearing on September 9, 2019 at 10:00 a.m., in Courtroom 109 at the United States District Court for the Southern District of Ohio, Potter Stewart U.S. Courthouse, 100 East Fifth Street, Cincinnati, Ohio 45202; and

WHEREAS, based on the foregoing, having considered the papers filed and proceedings held in connection with the Settlement, having considered all of the other files, records, and proceedings in the Action and being otherwise fully advised,

NOW, THEREFORE, the Court hereby **FINDS, CONCLUDES, AND ORDERS:**

1. This Court has jurisdiction over the subject matter of the Action and over all Parties to the Action, including all Class Members.

2. This Order incorporates the definitions in the Settlement Agreement, and all terms used in the Order have the same meanings as set forth in the Settlement Agreement, unless otherwise defined herein.

3. Pursuant to Fed. R. Civ. P. 23(b)(3), the Court affirms its certification, solely for purposes of effectuating and finalizing the Settlement, of the following Settlement Class:

> (a) persons who have paid a Club Enhancement Fee under a Snap Fitness membership agreement that did not mention payment of the Club Enhancement Fee (the "CEF Sub-Class");
>
> (b) persons who have been a party to a pre-November 2017 Snap Fitness prepaid membership agreement in the state of Ohio and who either (i) canceled their membership during the Class Period while operating under that agreement, or (ii) remain current Snap Fitness members under that agreement (the "PECA Sub-Class"). For purposes of this definition, "canceled" shall mean a termination of membership in which the member did not transfer to another form of Snap Fitness membership within two days, as reflected in Defendant's business records.
>
> Excluded from the Class are Defendant and its officers and directors; Class Counsel and their partners, associates, lawyers, and employees; and the judicial officers and their immediate family members and associated Court staff assigned to this case.

4. Defendant complied with the notice requirements in the Class Action Fairness Act, 28 U.S.C. § 1715. The Court's docket shows that no Attorney General objected to the Settlement Agreement or otherwise attempted to intervene or participate in the Action or the Fairness Hearing following receipt of the Class Action Fairness Act notice.

5. The Court affirms the appointment of Plaintiff Thomas Dwyer as the Class Representative of the Settlement Class and finds that the Class Representative has fairly and adequately represented the interests of Class Members in connection with the Settlement.

6. The Court affirms the appointment of Bryce A. Lenox of The Law Office of Bryce A. Lenox, Esq. LLC and Brian T. Giles of The Law Office of Brian Giles LLC as Class Counsel for the Class.

7. The persons who have Successfully Opted Out of the Class are identified in Exhibit 1 attached hereto ("Excluded Persons").

8. The Class Representative and the Class Members, and all and each of them, are hereby bound by the terms of the Settlement set forth in the Settlement Agreement. Excluded Persons are no longer parties to this Action and are not bound by the Settlement embodied in the Settlement Agreement.

9. The Settlement set forth in the Settlement Agreement (i) is in all respects fair, reasonable, and adequate to the Class, (ii) was the product of informed, arm's-length negotiations among competent, able counsel, and (iii) was made based upon a record that is sufficiently developed and complete to have enabled the Class Representative and Defendant to adequately evaluate and consider their positions.

10. The terms of the Agreement, and the Settlement provided for therein, are finally approved as fair, reasonable, and adequate and as being in the best interests of the Settlement Class. The Court therefore authorizes and directs implementation of all terms and provisions of

the Settlement Agreement, including, but not limited to, the timely honoring of all valid claims submitted by Class Members.

11. The Notice given to the Class in accord with the Order Preliminarily Approving Settlement was the best notice practicable under the circumstances and constituted sufficient notice to all persons entitled thereto. The form, content, and distribution of the Email Notice, Postcard Notice, and Long-Form Notice, satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and all other applicable law and rules.

12. Judgment shall be, and hereby is, entered dismissing the Action with prejudice, on the merits, and without taxation of costs in favor of or against any Party.

13. The Class Representative and all Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, assigns, and insurers, in their capacities as such, are hereby conclusively deemed to have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged Defendant 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, from any and all claims, actions, causes of action, rights or liabilities, whether arising out of federal, state, foreign, or common law, including Unknown Claims, 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 (the "Released Claims").

14. The Class Representative and all Class Members are hereby barred and permanently enjoined from instituting, asserting, or prosecuting any or all of the Released Claims against any of the Defendant's Releasees.

15. The Court hereby decrees that neither the Settlement Agreement nor this Order nor the fact of the Settlement is an admission or concession by Defendant or Defendant's Releasees of any fault, wrongdoing, or liability whatsoever, or as an admission of the appropriateness of class certification for trial or dispositive motion practice. This Order is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action. Nothing relating to the Settlement shall be offered or received in evidence as an admission, concession, presumption, or inference against Defendant or Defendant's Releasees in any proceeding, other than such proceedings as may be necessary to consummate or enforce the Settlement or to support a defense based on principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense.

16. The Court awards a collective amount of $350,000 for Class Counsel's Litigation Expenses, including attorneys' fees, and a service award to the Class Representative.

17. The Court hereby retains jurisdiction over the implementation, administration, interpretation, and enforcement of this Settlement.

18. There being no just reason for delay, the Clerk of Court is hereby directed to enter final judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

19. If the judgment does not become final in accord with Section 11.01 of the Settlement Agreement, then the final judgment shall be rendered null and void to the extent provided by and in accord with the Settlement Agreement, and this Order shall be vacated. In such event, all orders entered and releases delivered in connection with the Settlement shall be

null and void. In such event, the Action shall return to its status immediately prior to execution of the Settlement.

Dated:_____

_____
Judge Michael R. Barrett
United States District Judge

EXHIBIT 1
Dwyer v. Snap Fitness, Inc.
Case No. 1:17-cv-00455-MRB

PERSONS WHO ARE EXCLUDED FROM THE CLASS

Name	**City**	**State**
Kevin Barbier	Denham Springs	Louisiana
Eleanor Gray	Saint Paul	Minnesota
Pamela Staida	Geneva	Ohio

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (CINCINNATI)

THOMAS DWYER **Individually and on behalf of all others similarly situated** **Plaintiff,** **vs.** **SNAP FITNESS, INC.** **Defendant.**	:	**Case No. 1:17-cv-00455-MRB** **Judge Michael R. Barrett** **DECLARATION OF JENNIFER M. KEOUGH IN SUPPORT OF MOTION FOR APPROVAL OF SETTLEMENT**

I, Jennifer M. Keough, declare and state as follows:

1. I am Chief Executive Officer of JND Class Action Administration ("JND"). JND is a legal administration services provider with its headquarters located in Seattle, Washington. JND has extensive experience with all aspects of legal administration and has administered settlements in hundreds of class action cases.

2. JND is serving as the Settlement Administrator ("Administrator") in the above-captioned litigation ("Action"), as ordered by the Court in its Order Granting Preliminary Approval of Class Action Settlement dated March 20, 2019 ("Order"). This Declaration is based on my personal knowledge, as well as upon information provided to me by experienced JND employees, and if called upon to do so, I could and would testify competently thereto.

CAFA NOTICE

3. In compliance with the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715, JND compiled a CD-ROM containing the following documents:

a. Class Action Complaint with Jury Demand filed July 3, 2017 in the Court of

Common Pleas, Hamilton County, Ohio;

b. First Amended Class Action Complaint with Jury Demand filed July 12, 2018 in the United States District Court Southern District of Ohio;

c. Motion for Preliminary Approval of Class Action Settlement filed on March 1, 2019;

d. Settlement Agreement and Release filed on March 1, 2019 (including proposed notices);

e. Declaration of Bryce A. Lenox in Support of the Settlement Agreement and Preliminary Approval of the Settlement filed on March 1, 2019;

f. Declaration of Brian T. Giles in Support of the Settlement Agreement and Preliminary Approval of the Settlement filed on March 1, 2019;

g. Declaration of Jennifer M. Keough Regarding Proposed Notice Program filed on March 1, 2019;

h. List of Class Members by State; and

i. Proportionate Share of Class Members by State.

4. The CD-ROM was mailed on March 11, 2019, to the appropriate Federal and State officials identified in the attachment with an accompanying cover letter, a copy of which is attached hereto as **Exhibit A**.

5. The Parties identified additional Class Member data which required minor revisions to the Parties' Settlement Agreement and proposed notice documents and submitted an unopposed motion to amend the preliminary approval order. As a result, JND compiled a supplemental CAFA CD-ROM containing the following documents:

a. Unopposed Motion for Amendment of Preliminary Approval of Class Action

Settlement, filed on May 9, 2019;

b. Amendment to Settlement Agreement, dated May 9, 2019;

c. Revised Notice Documents, including the proposed Short Form Notice and proposed Long Form Notice;

d. Revised List of Class Members by State;

e. Revised Proportionate Share of Class Members by State; and

f. Order Granting Amendment of Preliminary Approval of Class Action Settlement, entered on May 10, 2019.

6. The supplemental CAFA CD-ROM was mailed on May 17, 2019 to the appropriate Federal and State officials identified in the attachment with an accompanying cover letter, a copy of which is attached hereto as **Exhibit B**.

CLASS MEMBER DATA

7. On February 22, 2019, JND received a data file from Defendant Snap Fitness, Inc. ("Snap Fitness") containing, among other information, the names, mailing addresses, and email addresses (where available) of individuals identified as potential Class Members. The file contained contact information and other identifying data for 141,366 unique potential Class Members.

8. On April 15, 2019, JND received a supplemental data file from the Defendant including new Class Members and CEF charges that did not appear in the original file. The updated file contained contact information and other identifying data for 2,479 unique potential Class Members.

9. Prior to commencing the notice campaign, JND analyzed the raw data to remove duplicate records. JND identified 1,209 duplicate records within the Class, resulting in 142,636

unique Class Member records. JND updated the Class Member contact information using data from the National Change of Address ("NCOA") database.[1] The Class Member data was promptly loaded into a database established for this Action.

EMAIL NOTICE

10. Pursuant to the Settlement, on May 17, 2019, JND commenced an email campaign of customized court-approved notices to Class Members for whom facially valid email addresses were provided. As of the date of this Declaration, JND has sent a total of 121,930 email notices. To date, 53,708 emails were not returned as undeliverable or "bounced back".

NOTICE MAILING

11. Pursuant to the terms of the Settlement Agreement, on May 17, 2019, JND commenced a mailing campaign of customized court-approved postcard notices via U.S. Postal Service regular mail to 20,534 Class Members who did not have facially valid email addresses or whose email notice was undeliverable. Additionally, on June 3, 2019, JND mailed the Postcard Notice to 68,222 Class Members whose Email Notice was returned as undeliverable. A representative sample of the Postcard Notice is attached hereto as **Exhibit C**.

12. As of the date of this Declaration, JND tracked 7,580 mailed Notices that were returned to JND as undeliverable. Of these undeliverable Notices, JND re-mailed 1,191 Notices to forwarding addresses provided by the USPS. For the remaining undeliverable Notices, JND conducted advanced address searches and received updated address information for 3,444 Class Members. JND re-mailed the Notice to the 3,444 Class Members, and 306 re-mailed Notices were

[1] The NCOA database is the official United States Postal Service ("USPS") technology product which makes change 26 of address information available to mailers to help reduce undeliverable mail pieces before mail enters the mail stream. This product is an effective tool to update address changes when a person has completed a change of address form with the USPS. The address information is maintained on the database for 48 months.

returned as undeliverable.

13. As of the date of this Declaration, 139,213 Class Members were emailed or mailed a Notice which was not returned as undeliverable, representing 97.6% of total Class Members from the Settlement.

SETTLEMENT WEBSITE

14. On May 17, 2019, JND established a Settlement Website (www.SnapFitnessCEFSettlement.com) which hosts copies of important case documents, answers to frequently asked questions, and provides Administrator contact information for telephone, mail, or email contact. As of the date of this Declaration, the Settlement Website tracked 1,245 unique users who registered 3,097 page views.

15. JND will continue to update and maintain the Settlement Website throughout the settlement administration process in accordance with the Settlement Agreement.

TOLL-FREE NUMBER

16. On May 17, 2019, JND established a case-specific toll-free number (1-833-291-1645) which individuals may call to obtain information regarding the Settlement. The line is available 24 hours a day, seven days a week.

17. As of the date of this Declaration, the toll-free number has received 248 calls.

18. JND will continue to maintain the toll-free telephone number throughout the settlement administration process in accordance with the Settlement Agreement.

EMAIL ADDRESS

19. On May 17, 2019, JND established an email address (info@SnapFitnessCEFSettlement.com) which individuals may email to obtain information regarding the Settlement.

20. As of the date of this Declaration, JND has received 90 emails.

21. JND will continue to maintain the email inbox throughout the settlement administration process in accordance with the Settlement Agreement.

REQUESTS FOR EXCLUSION

22. The Notices informed Class Members that any Class Member who wanted to exclude themselves from the Settlement ("opt-out") must mail a letter to JND stating that they desire to opt out of the Settlement or otherwise not participate in the Settlement, postmarked or received on or before July 16, 2019.

23. As of the date of this Declaration, JND has received three (3) opt-out requests. A list of the Class Members requesting to be excluded is attached hereto as **Exhibit D**.

OBJECTIONS

24. The Notices informed recipients that any Class Member who wanted to object to the proposed Settlement, the request for attorneys' fees and reimbursement of litigation expenses, or Service Awards to Named Plaintiff could do so by submitting a written statement to the Court, on or before July 16, 2019.

25. As of the date of this Declaration, JND has not received any objections to the proposed Settlement.

I declare under penalty of perjury under the laws of the State of Ohio that the foregoing is true and correct. Executed on the 14th day of August, 2019, at Seattle, Washington.

Jennifer M. Keough

EXHIBIT A

JND CLASS ACTION ADMINISTRATION

March 11, 2019

The United States Attorney General
And the Appropriate State Officials
Identified on Attachment A

RE: CAFA Notice of Proposed Class Action Settlement

Dear Attorney General or Appropriate State Official:

This notice is being provided to you in accordance with the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715, and on behalf of Defendant, Snap Fitness Inc., in the below-referenced class action ("the Action"). A Class Action Settlement Agreement was submitted for approval to the Court on March 1, 2019. Plaintiff's motion is scheduled for a telephone status conference regarding preliminary approval on March 20, 2019, at 10:00 a.m. EDT.

Case Name:	*Thomas Dwyer v. Snap Fitness, Inc.*
Case Number:	*1:17-cv-00455-MRB*
Jurisdiction:	*United States District Court for the Southern District of Ohio*
Date Settlement filed with Court:	*March 1, 2019*

Copies of all materials filed in the Action are electronically available on the Court's Pacer website found at https://ecf.ohsd.uscourts.gov. Additionally, pursuant to 28 U.S.C. § 1715 (b), the enclosed CD-ROM contains the following documents filed in the Action:

01 – Complaint.pdf
Class Action Complaint with Jury Demand filed July 3, 2017

02 – Proposed First Amended Complaint.pdf
First Amended Class Action Complaint with Jury Demand filed on July 12, 2018

03 – Motion for Preliminary Approval.pdf
Motion for Preliminary Approval of Class Action Settlement filed on March 1, 2019.

04 - Settlement Agreement and Release, including:

Exhibit A-1 – [Proposed] Notice of Proposed Class Action Settlement

Exhibit A-2 – [Proposed] Short Form Notice

Exhibit A-3 – [Proposed] Long Form Notice

Exhibit B – [Proposed] Order Granting Final Approval of Class Action Settlement

Exhibit C – [Proposed] Order Granting Preliminary Approval of Class Action Settlement

05 - Declaration of Bryce A. Lenox
Declaration of Bryce A. Lenox in Support of the Settlement Agreement and Preliminary Approval of the Settlement

06 - Declaration of Brian T. Giles
Declaration of Brian T. Giles in Support of the Settlement Agreement and Preliminary Approval of the Settlement

07 - Declaration of Jennifer M. Keough
Declaration of Jennifer M. Keough Regarding Proposed Notice Program

08 – List of Class Members by State.pdf

09 – Proportionate Share of Class Members by State.pdf

If you have any questions regarding the details of the case and settlement, please contact defense counsel's representative at:

Kerry L. Bundy
Peter C. Magnuson
Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Kerry.Bundy@faegrebd.com
Peter.Magnuson@faegrebd.com

For questions regarding this notice, please contact us at:

JND Legal Administration
1100 2nd Ave, Suite 300
Seattle, WA 98101
Phone: 800-207-7160

Regards,

/s/

JND Legal Administration

Enclosures

EXHIBIT B

JND CLASS ACTION ADMINISTRATION

May 17, 2019

The United States Attorney General
And the Appropriate State Officials
Identified on Attachment A

RE: Supplemental CAFA Notice of Proposed Class Action Settlement

Dear Attorney General or Appropriate State Official:

This letter supplements the Notice of Proposed Class Action Settlement, dated March 11, 2019, that was previously sent to you on behalf of Defendant, Snap Fitness Inc., in the below-referenced class action ("the Action") and pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715.

Case Name:	*Thomas Dwyer v. Snap Fitness, Inc.*
Case Number:	*1:17-cv-00455-MRB*
Jurisdiction:	*United States District Court for the Southern District of Ohio*

On March 20, 2019, United States District Judge Michael Barrett held a status conference on the parties' proposed class action settlement and granted preliminary approval to the settlement. As the parties prepared to send the required notice to class members, additional data came to light that required minor revisions to the parties' settlement agreement and proposed notice documents. In addition, in response to a request from a state regulatory agency, the parties amended the settlement agreement to clarify that the claims release did not bar class members from participating in, complying with, or benefiting from any regulatory action taken in connection with the matters alleged in the complaint. Given the minor revisions to the settlement agreement and notice, plaintiff submitted an unopposed motion to amend the preliminary approval order, which Judge Barrett granted on May 10, 2019. None of the deadlines from Judge Barrett's previous order were affected by the amendment.

By this letter, Defendant Snap Fitness Inc. hereby supplements its previous Notice with the following materials included on the accompanying CD:

01 – Motion for Amendment of Preliminary Approval.pdf
Unopposed Motion for Amendment of Preliminary Approval of Class Action Settlement, filed on May 9, 2019.

02 – Amendment to Settlement Agreement and Release.pdf
Amendment to Settlement Agreement, dated May 9, 2019.

03 – Revised Notice Documents, including:

Exhibit A-1 – [Proposed] Notice of Proposed Class Action Settlement

Exhibit A-2 – [Proposed] Short Form Notice

Exhibit A-3 – [Proposed] Long Form Notice

04 – Revised List of Class Members by State.pdf

05 – Revised Proportionate Share of Class Members by State.pdf

06 – Preliminary Approval Order.pdf
Order Granting Amendment of Preliminary Approval of Class Action Settlement, filed on May 10, 2019.

If you have any questions regarding the details of this supplemental Notice, please contact defense counsel's representative at:

Kerry L. Bundy
Peter C. Magnuson
Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Kerry.Bundy@faegrebd.com
Peter.Magnuson@faegrebd.com

For questions regarding this notice, please contact us at:

JND Legal Administration
1100 2nd Ave, Suite 300
Seattle, WA 98101
Phone: 800-207-7160

Regards,

/s/

JND Legal Administration

Enclosures

EXHIBIT C

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

If you paid a Snap Fitness Club Enhancement Fee in 2017 or 2018, or were a Snap Fitness member in Ohio before November 2017, you may be entitled to compensation as a result of the settlement of the class action lawsuit captioned:

Dwyer v. Snap Fitness, Inc.
No. 1:17-cv-00455 (S.D. Ohio)

A federal court authorized this notice. This is not a solicitation from a lawyer.

Please read this notice carefully. It summarily explains your rights and options to participate in a class action settlement.

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

Unique ID: [PrintedID]

«Barcode»
Postal Service: Please do not mark barcode

«First1» «Last1»
«co»
«Addr1»
«Addr2»4
«City», «St» «Zip»
«Country»

What is this lawsuit about? Thomas Dwyer filed this lawsuit against Snap Fitness, Inc. ("Snap Fitness"), alleging that Snap Fitness violated the law by charging members a Club Enhancement Fee ("CEF") in health clubs across the country and by entering into member agreements in Ohio that didn't comply with Ohio's Prepaid Entertainment Contract Act ("PECA"). Snap Fitness denies that it violated the law. The parties have agreed to a settlement.

Why did you receive this notice? You received this notice because Snap Fitness's records identified you as a potential member of one or both of the following classes: (1) All persons who have paid a CEF under a Snap Fitness membership agreement that did not mention payment of the CEF ("CEF Sub-Class"); and (2) All persons who have been a party to a pre-November 2017 Snap Fitness prepaid membership agreement in the state of Ohio and who either (i) canceled their membership between May 25, 2015, and the present ("Class Period") while operating under that agreement, or (ii) remain current Snap Fitness members under that agreement ("PECA Sub-Class").

What does the settlement provide? Snap Fitness will establish a settlement fund of $2,920,000.00 and will separately pay notice and administration costs, an award of attorneys' fees, and an incentive award to Mr. Dwyer. Anyone in the PECA Sub-Class is entitled to receive $5. Anyone in the CEF Sub-Class is entitled to receive approximately 65% of the total amount he or she paid in CEFs. It is estimated that each valid claimant will receive between approximately $0.01 and $115.

What are your legal rights and options? You have three options. First, you may do nothing, in which case you will receive a payment from the settlement fund and will release any claim(s) you have against Snap Fitness related to the claims and conduct alleged in this case. Second, you may exclude yourself from the settlement, in which case you will neither receive a share of the settlement fund nor release any claim(s) you have against Snap Fitness. Or third, you may object to the settlement. To obtain additional information about your legal rights and options, please visit www.SnapFitnessCEFSettlement.com, or contact the settlement administrator by writing to: Snap Fitness CEF Settlement, c/o JND Legal Administration, P.O. Box 91246, Seattle, WA 98111 or by calling 1-833-291-1645.

When is the fairness hearing? The Court will hold a final fairness hearing on September 9, 2019 at 10:00 a.m. The hearing will take place in the Potter Stewart U.S. Courthouse, 100 East Fifth Street, Cincinnati, Ohio 45202. At the final fairness hearing, the Court will consider whether the settlement is fair, reasonable, and adequate and, if so, whether it should be granted final approval. The Court will hear objections to the settlement, if any. The Court may make a decision at that time, postpone a decision, or continue the hearing.

EXHIBIT D

JND LEGAL ADMINISTRATION

DWYER V. SNAP FITNESS SETTLEMENT
REQUESTS FOR EXCLUSION/OPT-OUTS

List of Individuals Submitting Exclusion Requests		
Name	**City**	**State**
Kevin Barbier	Denham Springs	LA
Eleanor Gray	Saint Paul	MN
Pamela Staida	Geneva	OH