

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

Case No.: 1:20-CV-20836-BLOOM/Louis

AARON FRUITSTONE, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

CLASS ACTION

SPARTAN RACE, INC.,
a Delaware Corporation,

Defendant.

**PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT, CLASS COUNSEL'S APPLICATION FOR ATTORNEYS'
FEES AND EXPENSES, NOTICE REGARDING SERVICE AWARDS, AND
INCORPORATED MEMORANDUM OF LAW**

INTRODUCTION

Class Counsel are very proud to present for final approval a class action settlement (the “Settlement”) that was already granted Preliminary Approval by this Court, on behalf of almost a million consumers who paid Defendant, Spartan Race, Inc. (“Spartan”), the \$14 “Racer Insurance Fee” in connection with registering for a Spartan Race event during the Class Period. The Settlement provides relief valued at approximately \$25.6 million to approximately 800,000 Class Members from across the country and requires important and valuable injunctive relief. As of this date, the Parties have received only 5 opt-outs and only 1 objection¹ to final approval. This response to the Settlement is overwhelmingly supportive.

The Settlement’s benefits were the result of significant, rigorous arm’s length negotiations by the Parties and their counsel, under the direction of a distinguished mediator, Michael Young of JAMS. Per the Court-approved notice plan, notice of this Settlement was disseminated to all Class Members via, among other things, establishment of a settlement website and direct email to those Settlement Class Members whose e-mail addresses Spartan identified in its records.

Undersigned counsel were well positioned to evaluate and negotiate this Settlement because they had been actively litigating this matter against Spartan for nearly a year. Specifically, Plaintiff’s counsel investigated their claims and allegations through extensive discovery, including the review of tens of thousands of pages of documents and the depositions of key Spartan personnel, including its founder and CEO, Joe De Sena. Despite that work, Plaintiff and Class Members faced significant hurdles in litigating their claims to successful adversarial resolution. As such, and given the immediate and substantial benefits the Settlement will provide to the Class, there can be no question that the Settlement is “fair, reasonable, and adequate” and should be granted final approval.

For this accomplishment, Class Counsel are asking for the Court to award them only 8.9% of the value of just the direct benefits to the Class (not including the significant injunctive relief) or up to \$2,290,000.00 in fees and expenses, negotiated only *after* all Class Members’ benefits had been secured, under the direct supervision of a nationally recognized mediator, and payable by Spartan *outside* of the benefits that are provided to the Class. An award amounting to 8.9% of just

¹ Pursuant to the Preliminary Approval Order, the deadline to request exclusion from the Settlement Class or to object to the Settlement is **April 7, 2021**, and responses to objections are due by **April 27, 2021** [ECF No. 107 at 15, 18]. Accordingly, Class Counsel will file a response to any and all objections on or before April 27, 2021. Plaintiff does not waive any arguments regarding the validity or substance of any objection by not addressing same in this Motion because it would be premature.

the monetary value of the recovery (not including the significant injunctive relief) made available to Class Members is well within the parameters established by the Eleventh Circuit in *Poertner v. Gillette Co.*, 618 Fed. App'x 624, 629 (11th Cir. 2015).

Class Counsel respectfully request that this Court grant final approval of the Settlement and approve the application for attorneys' fees and costs. Plaintiff further requests that this Court reserve jurisdiction as to the Representative Plaintiff's service award and instead *reserve jurisdiction* for reconsideration of just that award until *Johnson v. NPAS Solutions, LLC*, 2020 WL 5553312 (11th Cir. Sept. 17, 2020), is fully resolved. *See* Argument Section II.B., *infra*. A Proposed Order is attached as **Exhibit A**.

FACTUAL BACKGROUND

I. BACKGROUND OF THE LITIGATION AND MEDIATION

Plaintiff initiated this action against Spartan on February 26, 2020. On April 13, 2020, Plaintiff filed the operative Amended Complaint [ECF No. 15] alleging that Spartan's representations regarding the "Racer Insurance Fee," objectively construed, would lead a reasonable consumer to believe that this mandatory, non-refundable \$14 charge is used solely to purchase insurance on behalf of the Spartan event registrant. The Amended Complaint alleges that, in reality, and unknown to consumers, Spartan uses the Racer Insurance Fees to defray administrative expenses and as a hidden profit center for Spartan. *Id.*, ¶¶ 20–21. Plaintiff alleges that Spartan's representations regarding the Racer Insurance Fee were deceptive and the class members suffered damage. The Amended Complaint asserts claims for violations of the Massachusetts Consumer Protection Law, Massachusetts General Laws, Chapter 93A, et seq., and the Florida Deceptive and Unfair Trade Practices Act, §§ 501.201, et seq., Florida Statutes.

Spartan filed a Motion to Transfer this case to Massachusetts and an alternative Motion to Dismiss. [ECF No. 24]. After extensive briefing and oral argument, the Court denied Spartan's transfer motion, as well as Spartan's Motion to Dismiss. [ECF Nos. 32, 34, 36]. The parties thereafter engaged in extensive discovery, exchanging hundreds of thousands of pages of documents and data, conducting several depositions and participating in multiple hearings on discovery disputes before Magistrate Judge Lauren Louis.

Plaintiff filed his Motion for Class Certification on September 3, 2020, [ECF No. 58], which was fully briefed as of December 23, 2020. [ECF Nos. 63–65, 72–73, 95]. In November 2020, the parties moved to stay these proceedings in deference to a private mediation before Michael D.

Young, an experienced and highly regarded mediator with the New York office of JAMS. [ECF Nos. 79, 81]. Declaration of Michael D. Young dated January 27, 2021 [ECF Nos. 102-2, 103] (“Young Decl.”). In addition to counsel for the parties, outside coverage counsel for Travelers and Chubb, the two insurance carriers providing potential coverage to Spartan for the claims asserted in the action, participated actively throughout the mediation. Young Decl., ¶ 8. The mediation was hard-fought and protracted, extending over a two-month period, during which the parties participated in a full-day mediation session and multiple Zoom and telephonic follow on mediation sessions. *See, e.g.*, Young Decl. Over the course of the mediation and as the negotiations progressed, the parties sought and obtained several extensions of the stay allowing them to continue their negotiations. *See id.*; *see also* [ECF Nos. 83–85, 87–88].

At several points during the mediation, the parties reached a near impasse as counsel for Plaintiff pressed for enhanced settlement benefits to maximize the recovery for the putative class members. Spartan, for its part, emphasized that its insurers were asserting coverage defenses and that Spartan currently lacks the financial resources necessary to satisfy the claims asserted, should Plaintiff fully prevail at trial. Young Decl., ¶ 9. Spartan therefore consistently maintained throughout the mediation process that its precarious financial condition precluded it from making any meaningful monetary contribution to any class settlement. *Id.*

Despite their best efforts, the parties informed the Court on December 22, 2020 that they had been unable to reach a mutually satisfactory settlement and the Court lifted the stay and reset the class certification hearing. [ECF Nos. 89–90]. On December 29, 2020, the Court heard oral argument on Plaintiff’s Motion for Class Certification, [ECF No. 97] at which the Court inquired about the status of the settlement negotiations. Counsel informed the Court that although their prior efforts had not achieved a settlement agreement, the parties had left open the door for further negotiations. After the class certification hearing, the parties continued settlement negotiations in the ongoing mediation with Mr. Young. After many weekend and late-night calls and Zoom conferences, Mr. Young made a mediator’s proposal, based upon all of the relevant circumstances, which the parties accepted. Young Decl., ¶ 11.

Commenting on the mediation process, mediator Young attests that “[t]he proposed Settlement is the product of hard-fought arm’s length negotiations . . . conducted by extremely knowledgeable counsel having extensive experience in complex class actions, who were highly

knowledgeable concerning the claims and defenses asserted in the Action. The caliber of the representation of both sides was, in my experience, exemplary.” *Id.* ¶ 5.

On January 28, 2021, Plaintiff filed an Unopposed Motion for Preliminary Approval of Class Action Settlement, [ECF No. 102]. The Court then preliminarily approved the Settlement on February 2, 2021. [ECF No. 107]. Thereafter, on February 5, 2021, in compliance with the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, Spartan caused fifty-three (53) CAFA Notice Packets to be mailed via Certified U.S. Mail to the U.S. Attorney General and to the Attorneys General of every state, the District of Columbia, Puerto Rico, and the Virgin Islands. (Tucci Decl., **Exhibit B**, at ¶¶ 2–3). To date, the parties have not received *a single inquiry* regarding the Settlement from the CAFA Notice. (*Id.* at ¶ 4.)

II. THE SETTLEMENT TERMS AND AGREEMENT

A. The Proposed Settlement Class

All individuals in the United States who during the Class Period, based on Spartan’s records, paid a \$14 “Racer Insurance Fee” or “Insurance Fee” in connection with an event organized and sponsored by Spartan. Excluded from the Class are (a) Defendant’s board members and executive level officers; (b) the federal district and magistrate judges assigned to this Action and their staff, and (c) individuals who submit a valid, timely exclusion/opt-out request. [ECF No. 102-3], ¶ II.A.3.

B. Settlement Relief

This proposed Settlement substantially fulfills the main objectives of this action and affords beneficial relief to the Settlement Class Members that certainly falls “within the range of potential recovery” through successful litigation of the claims asserted in this action. Although Spartan does not admit any fault or liability in the Settlement, Spartan has agreed to provide substantial relief to be distributed according to the Settlement Agreement. As described more fully below, each Class Member will be entitled to elect to receive either: (a) one four-month free membership to the “Spartan+ Membership Program,” or (b) one \$5 electronic Voucher per each paid registration during the Class Period, up to a maximum of four (4) total electronic Vouchers per Class Member.

Plaintiff and his counsel estimate that the value of the Settlement relief made available to Settlement Class Members, exclusive of the valuable injunctive relief, is similar (if not more) to relief that Class Members might receive, if they were able to certify this case nationwide over

Spartan’s objections and obtain a favorable jury verdict.² Moreover, attached as **Exhibit C** is the Expert Declaration of forensic accountant Soneet Kapila (“Kapila Decl.”), which analyzes the specific value of the Settlement benefits. In addition, the Settlement Class Members stand to benefit from the important injunctive relief described below. The Court should find such relief to be fair, adequate, and reasonable, especially given the risks of success on the merits of Plaintiff’s claims.

1. The Spartan+ Membership Program (the “Program”)

Each Class member will be provided with a free four-month subscription to the Spartan+ Program, unless they select the alternative relief. [ECF No. 102-3], ¶ III.A. While the pandemic adversely impacted the operating revenues for Spartan and other companies operating mass participation events for which social distancing was not feasible, online or remote fitness memberships available through computer or personal device applications or websites have flourished and remain a growing industry. (Kapila Decl. ¶ 25). According to an industry analysis published in January 2021, the global fitness app market size was valued at “\$4.4 billion in 2020 and is expected to expand at a compound annual growth rate (CAGR) of 21.6% from 2021 to 2028.” *Id.* Further, the protracted spread of the COVID-19 pandemic resulting in nationwide lockdowns and social distancing norms has precipitated a transition to virtual fitness from traditional studios and gyms. *Id.* The growing awareness regarding health and wellness is also driving the market. *Id.* This, in turn, has vastly increased the downloads and usage of fitness apps. *Id.*

According to a poll conducted in mid-2020, 74% of Americans used at least one fitness app or site during quarantine (41% for the first time), and “64% of Americans are now more interested in at-home fitness options,” and over half of those now plan on canceling their gym memberships for good. *Id.*, ¶ 26. The average American used two fitness apps and took four online fitness classes during the lockdown. *Id.* Further, the global downloads of fitness and health apps since 2020 increased by 46%. *Id.*, ¶ 27. This increased usage rate of fitness apps due to a growing trend of online fitness training is driving the market globally. Therefore, memberships in a virtual fitness program have enjoyed a boost and provide a real and tangible benefit to the Class. *Id.*, ¶ 28.

This new Spartan+ Program subscription, recently launched in March 2021, provides significant value to each Settlement Class Member in that it includes: (1) subscription to an

² This estimate is based on the retail value of the free four-month membership in the Spartan + Membership Program, which is available at the election of the Settlement Class Members and as the default benefit if a Settlement Class Member does not affirmatively elect the Electronic Voucher(s).

enhanced Spartan Fit App (formerly \$14.99/month),³ including online workouts, training programs, activity tracking and more from world class coaches; (2) free shipping and handling for merchandise ordered from Spartan’s website; (3) a 20% discount applicable to online merchandise purchases; (4) exclusive discounts on select Spartan merchandise available to Spartan+ members⁴; (5) free, downloadable, high-resolution photo downloads (without watermarks) after events; (6) access to other “members only” premium content on Spartan’s website; (7) express race day registration; (8) a Club Area for post-race recovery; (9) guaranteed start time choice for races; and (10) advanced race analysis to help participants with their fitness goals and to complete races. (Kapila Decl. ¶ 30). ***The retail cost of this membership program to the public is \$7.99 per month, so the four-month free membership has a value to each Settlement Class Member of \$32. Id., ¶ 31.*** Settlement Class Members are not required to provide any credit card to initiate the Program subscription and subscriptions will automatically terminate at the end of four months unless the Class Member affirmatively chooses to extend it. [ECF No. 102-3], ¶ III.A.

Plaintiff’s expert, Mr. Kapila, opines that this pricing is a “reasonable market-based retail value for the Spartan+ Membership,” which includes benefits that “compare favorably to other digital fitness memberships, such as Peloton and Apple+,” and therefore “the value of the free Spartan+ Program afforded by the proposed Settlement approximates its retail value of \$7.99 per month or \$32 for the four-month free membership period allowed under the Settlement Agreement.” (Kapila Decl. ¶¶ 32–39). Thus, “the aggregate market-based retail value made available to Class Members for the Spartan+ Program component of the proposed Settlement totals \$25.6 million.” *Id.*, ¶ 39.

2. Electronic Vouchers for Free Purchase of Spartan Merchandise

As an alternative to the four-month free subscription to the Program, each Class Member may elect to receive one \$5.00 electronic Voucher per each event for which they paid a full registration fee during the Class Period, up to a total of four (4) electronic Vouchers (for a combined value of \$20.00). [ECF No. 102-3], ¶ III.B. Each electronic Voucher shall entitle the class member to a \$5.00 credit towards the purchase of any non-discounted merchandise on Spartan’s website. *Id.*

³ The Spartan Fit app previously launched by Spartan has been enhanced for inclusion in the Spartan+ Program.

⁴ Currently there is a jacket available to Spartan + Program members for \$99, with a retail value of \$250.

There are currently many non-discounted merchandise items available for sale on the Spartan website for \$5.00 or less, and Spartan has no intention of removing said items as a result of this Settlement. *Id.*; *see also* Kapila Decl. ¶¶ 41–44. Electronic Vouchers are fully transferable to friends and family and each Voucher will be valid for *two (2) years* from the date of issuance. [ECF No. 102-3], ¶ III.B. Spartan currently sells Spartan Gift Cards in various dollar amounts that are utilized in a similar manner as the electronic Vouchers. Thus, “the value of the Electronic Voucher afforded by the proposed Settlement approximates its retail value of \$5 per Electronic Voucher or \$20 for the 4 Electronic Vouchers allowed under the Settlement Agreement,” for an estimated aggregate value of \$10 million. Kapila Decl. ¶¶ 43–44.

3. Election of Benefits

The Class Notice further informed each Class Member that they had sixty (60) days from the date the Class Notice email is sent to make their selection, otherwise the default relief will be the free four-month subscription to the Program. [ECF No. 102-3], ¶ III.B. Due to the fact that Spartan’s records contain all information sufficient to identify and directly contact the members of the Settlement Class and that *there is no Claim Form or Claims Process*, to save the substantial costs of administration by a third party, Spartan will primarily administer the Settlement in good faith and will absorb that cost and with the participation and oversight of Class Counsel. If Spartan’s records conflict with information submitted by a claimant, counsel for both Parties shall in good faith attempt to resolve the conflict as they have done throughout the pendency of this matter.

4. Injunctive Relief to the Settlement Class

Plaintiff’s main reason for bringing this litigation was so Spartan provides full and adequate disclosures regarding the \$14 “Racer Insurance Fee.” In addition to providing all Class Members with the relief described above, Spartan also agrees to the following injunctive relief, starting on the Effective Date, that will directly benefit all current and future Spartan consumers:

- Spartan will not describe in writing or abbreviate the at-issue fee as a “Racer Insurance Fee,” “Racer Insur. Fee,” “Insurance Fee,” “Insur. Fee,” or similar nomenclature. Spartan specifically retains the right to describe the at-issue fee as an “Administrative, Insurance, and Management Fee,” “AIM Fee,” or “Admin Fee” during the online event registration process or elsewhere.
- Spartan will add the following language to current and future marketing and sales materials, FAQs, relevant website screens in the registration process, and screen

indicators or selectors that describe or are adjacent to the at-issue fee: “The Administrative, Insurance, and Management Fee covers a number of different costs involved in Spartan events, including administrative and management costs, insurance costs and expenses for related risk management and safety measures. This fee is not a direct pass-through of third-party costs to the racer and may include revenues to Spartan.”

- Spartan agrees that it will not represent, directly or indirectly, that 100% (or all) of the “Administrative, Insurance, and Management Fee” is paid to an insurance provider or other third-party.

[ECF No. 102-3], ¶ III.C

Accordingly, there is no question that with the full value of all Settlement relief, including injunctive relief, the Settlement is fair, adequate, and reasonable and warrants final approval, especially in light of the risks attendant to continued litigation of these claims.

C. Class Counsel’s Fees and Expenses and Named Plaintiff’s Case Contribution Award

The Court has already designated the law firms of The Moskowitz Law Firm, PLLC and Bonnett, Fairbourn, Friedman & Balint, P.C. to serve as Class Counsel for the Settlement Class. [ECF No. 107]. Collectively, Class Counsel’s application for attorneys’ fees and expenses for all of the law firms involved, including Brown, Readdick, Bumgartner, Carter, Strickland & Watkins, LLP, as well as a service award for the named Plaintiff of up to \$10,000.00 (subject to Court approval), shall not exceed \$2,300,000.⁵ [ECF No. 102-3 at section VIII]. The Court may consider whether to approve these awards separate and apart from its analysis of the fairness, reasonableness, and adequacy of the Settlement.

III. PRELIMINARY APPROVAL AND SETTLEMENT ADMINISTRATION

After the Court preliminarily approved the Settlement and certified the proposed Settlement Class, it ordered the parties to implement the Notice plan. [ECF No. 107 at 16–18]. On March 2, 2021, Spartan disseminated the notice via direct email to the Settlement Class Members as required by the Preliminary Approval Order and in substantially the form of the notice attached as Exhibit A to the Settlement Agreement. (Sheridan Decl., **Exhibit D**, at ¶¶ 2–4). In all, Spartan sent 789,239 emails to Settlement Class Members. *Id.*, ¶ 4. On March 3, 2021, Class Counsel established an

⁵ Any award of attorneys’ fees and costs will be paid by Spartan’s insurance carriers as part of the Settlement.

internet website, <https://moskowitz-law.com/results/spartan-race>, to inform Settlement Class Members of the terms of the Agreement, their rights, dates and deadlines, and related information, as required by the Preliminary Approval Order.⁶ Since notice was disseminated and the settlement website established, Class Counsel has fielded calls and inquiries from dozens of Class Members who voiced their support for the Settlement and Class Counsel answered any questions regarding the Settlement administration process. Joint Decl. ¶ 29.

The deadline for opt-outs or objections is April 7, 2021. As of the date of this filing, the parties have received only 5 opt-out requests, representing only .00076% of the Settlement Class, and counsel has received one objection. (Sheridan Decl., at ¶¶ 6–7).

LEGAL ARGUMENT

I. THIS COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT.

Settlement “has special importance in class actions with their notable uncertainty, difficulties of proof, and length. Settlements of complex cases contribute greatly to the efficient utilization of scarce judicial resources, and achieve the speedy resolution of justice[.]” *Turner v. Gen. Elec. Co.*, No. 2:05-cv-186, 2006 WL 2620275, at *2 (M.D. Fla. Sept. 13, 2006) (citation omitted). For these reasons, “there exists an overriding public interest in favor of settlement, particularly in class actions that have the well-deserved reputation as being most complex.” *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1314 (S.D. Fla. 2005) (citation omitted).

Courts in this circuit consider the following factors: (1) the existence of fraud or collusion behind the settlement; (2) complexity, expense and duration of litigation; (3) the stage of proceedings at which the settlement was achieved; (4) the likelihood of the plaintiffs’ success on the merits; (5) the range of possible recovery; and (6) the opinions of class counsel, class representatives, and the substance and amount of opposition received. *See Leverso v. SouthTrust Bank of Ala., N.A.*, 18 F.3d 1527, 1530 n.6 (11th Cir. 1994); *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 691–94 (S.D. Fla. 2014). “In assessing these factors, the Court ‘should be hesitant to substitute . . . her own judgment for that of counsel.’” *Lipuma*, 406 F. Supp. 2d at 1315

⁶ *See* Joint Declaration of Adam Moskowitz and Andrew Friedman in Support of Plaintiff’s Motion for Final Approval of Class Action Settlement, Class Counsel’s Application for Attorneys’ Fees and Expenses, Notice Regarding Service Awards and Incorporated Memorandum of Law at ¶ 28. (“Joint Decl.”) (attached as **Exhibit E**).

(quoting *In re Smith*, 926 F.2d 1027, 1028 (11th Cir. 1991)). Analysis of these factors compels the conclusion that this Court should approve the Settlement.

A. The Settlement is the Product of Good Faith, Informed, and Arm’s-Length Negotiations among Experienced Counsel.

The first factor for final approval requires this Court to consider whether the Settlement was obtained by fraud or collusion among the parties and their counsel. Courts begin with a presumption of good faith in the negotiating process. *See Saccoccio*, 297 F.R.D. at 692 (“Where the parties have negotiated at arm’s length, the Court should find that the settlement is not the product of collusion”); *Hemphill v. San Diego Ass’n of Realtors, Inc.*, 225 F.R.D. 616, 621 (S.D. Cal. 2004) (“the courts respect the integrity of counsel and presume the absence of fraud or collusion in negotiating the settlement”). The Settlement terms in this case are the product of significant give and take by the settling parties, and were negotiated at arm’s length. The parties participated in an intensive mediation with Michael Young, a well-respected mediator with significant experience resolving complex cases. Mr. Young conducted multiple mediation sessions throughout December 2020. (Joint Decl., ¶¶ 10–14, 33).

The parties, through regular telephonic and zoom sessions, as well as email communications, and with the assistance of Mr. Young, negotiated first the terms of an initial memorandum of understanding and then a final Settlement Agreement. *Id.* Mr. Young has significant experience mediating complex commercial suits to resolution, and was involved in every step of the process. *Id.* ¶¶ 10, 33. The very fact of his involvement weighs in favor of approval. *See, e.g., Lobatz v. U.S. In re Educ. Testing Serv. Praxis Principles of Learning & Teaching, Grades 7-12 Litig.*, 447 F. Supp. 2d 612, 619-20 (E.D. La. 2006) (use of special master to oversee mediation evidenced procedural fairness of negotiating process); *In re WorldCom, Inc. ERISA Litig.*, 2004 WL 2338151, at *6 (S.D.N.Y. Oct. 18, 2004) (fact that “[a] respected and dedicated judicial officer presided over the lengthy discussions from which this settlement emerged” belied any suggestion of collusion). The parties’ negotiations were also informed by considerable discovery obtained by Class Counsel in litigating these claims.

B. The Issues Presented Were Highly Complex and Settlement Approval Will Save the Class Years of Extremely Costly Litigation in this Court and on Appeal.

This case involves complex legal claims and defenses brought on behalf of 800,000 Settlement Class Members, and includes claims for complex deceptive trade practices claims and common law unjust enrichment. [ECF No. 15.] Litigating these claims would have undoubtedly

proven difficult and consumed significant time, money, and judicial resources. Even if Plaintiff were ultimately to have prevailed on class certification and on the merits in this litigation (which Spartan contests), that success would likely have borne fruit for the Class only after years of trial and appellate proceedings and the expenditure of millions of dollars by both sides. (Joint Decl. ¶ 35); *see, e.g., In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mex., on Apr. 20, 2010*, 910 F. Supp. 2d 891, 932 (E.D. La. 2012), *aff'd*, 2014 WL 103836 (5th Cir. Jan. 10, 2014) (“Even assuming litigation could obtain the results that this Settlement provides, years of litigation would stand between the class and any such recovery. Hence, this second factor weighs strongly in favor of granting final approval to the Settlement Agreement.”).

By contrast, the Settlement provides immediate and substantial relief to the Settlement Class, with benefits approximating approximately *a hundred percent* of Settlement Class Members’ actual damages. (Joint Decl. ¶¶ 41–49.) This recovery is extremely favorable, and constitutes an excellent result. *See, e.g., Beber et al. v. Branch Banking & Trust Co. et al.*, No. 15-cv-23294 (S.D. Fla.) (ECF No. 109) (approving similar settlement with payment percentages of 10%, 8%, and 5%); *Saccoccio*, 297 F.R.D. at 693 (return of 12.5% of premiums charged for FPI with prospective relief “very likely exceeds what Plaintiffs could have won at trial”); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1346 (S.D. Fla. 2011) (range of 9% to 45% of damages was an “exemplary” result). These benefits come without the expense, uncertainty, and delay of litigation. In light of the costs, uncertainties, and delays of litigating through trial—possibly an appeal—“the benefits to the class of the present settlement become all the more apparent.” *See Ressler v. Jacobson*, 822 F. Supp. 1551, 1555 (M.D. Fla. 1992).

C. The Factual Record Was Sufficiently Developed to Enable Class Counsel to Make a Reasoned Judgment Regarding the Settlement.

Courts consider “the degree of case development that class counsel have accomplished prior to settlement” to ensure that “counsel had an adequate appreciation of the merits of the case before negotiating.” *In re Gen. Motors Pick-up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 813 (3d Cir. 1995). At the same time, “[t]he law is clear that early settlements are to be encouraged, and accordingly, only some reasonable amount of discovery should be required to make these determinations.” *Ressler*, 822 F. Supp. at 1555.

Prior to Settlement, Class Counsel had been investigating and litigating these claims related to Spartan’s Racer Insurance Fee for over a year, and familiarized themselves thoroughly with the facts of this matter. (Joint Decl. ¶¶ 36.) This knowledge led the parties to enter into Settlement

discussions. Further, before, during, and after mediation, Class Counsel confirmed details regarding Spartan’s marketing and representations regarding the Racer Insurance Fee, the Class members affected, and the amount at stake to ensure the Settlement was fair and complete, and to confirm the value of the relief provided to the Settlement Class. *Id.* ¶¶ 30–33, 41–49.

D. Plaintiff Faced Significant Obstacles to Obtaining Relief.

“[T]he likelihood and extent of any recovery from the defendants absent ... settlement” must be considered in assessing the reasonableness of a settlement. *See In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 314 (N.D. Ga. 1993); *see also Ressler*, 822 F. Supp. at 1555 (“a court is to consider the likelihood of the plaintiffs’ success on the merits of his claims against the amount and form of relief offered in the settlement before judging the fairness of the compromise”). Class Counsel and Plaintiff believe they have a compelling case, but also recognize that Spartan would have raised significant defenses to all claims. *See, e.g.*, ECF Nos. 44, 63, 95. Although Plaintiff and Class Counsel maintain that these defenses lack merit, had litigation continued, Plaintiff and Settlement Class Members would have risked not prevailing on their claims. (Joint Decl. ¶¶ 3–4, 37–40). Had the parties continued to litigate, Plaintiff could have stood to recover nothing on behalf of a nationwide Class.

E. The Benefits Provided by the Settlement Are Fair, Reasonable, and Adequate When Considered Against the Possible Range of Recovery.

As explained above, the Settlement Agreement provides significant benefits. All Settlement Class Members are eligible for either the default option of a free, four-month subscription to the Program or the Vouchers for up to four races they registered for. This represents a significant recovery for Class Members, making available approximately 100% of claimants’ actual potential damages (not factoring in potential multiple damages), which meets and likely exceeds the standards established by this and other courts. (Joint Decl. ¶¶ 47–49). Moreover, the agreed-to injunctive relief ensures that the alleged violations will be cured going forward. Federal courts hold that settlements providing the class with a percentage of the recovery sought in litigation are reasonable in light of the attendant risks of litigation. *See, e.g., Johnson v. Brennan*, No. 10-cv-4712, 2011 WL 4357376 (S.D.N.Y. Sept. 16, 2011) (“[T]here is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery.”); *see also Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542–43 (S.D. Fla. 1988) (approving recovery of \$.20 per share where desired recovery was \$3.50 a share because “the fact that a proposed settlement amounts to only a fraction of the possible recovery does not mean the

settlement is inadequate or unfair”); *Fisher Bros., Inc. v. Mueller Brass Co.*, 630 F. Supp. 493, 499 (E.D. Pa. 1985) (approving settlement providing recovery of 0.2% of sales). “Moreover, when settlement assures immediate payment of substantial amounts to class members, even if it means sacrificing speculative payment of a hypothetically larger amount years down the road, settlement is reasonable[.]” *Johnson*, 2011 WL 4357376, at *12; *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (“the very essence of settlement is . . . a yielding of absolutes and an abandoning of highest hopes”).

Highlighting the value of the Settlement’s benefits to the Settlement Class is Judge Gold’s opinion finally approving a class settlement in *David v. Am. Suzuki Motor Corp.*, No. 08-cv-22278, 2010 WL 1628362 (S.D. Fla. Apr. 15, 2010), a case involving Suzuki motorcycles allegedly prone to catastrophic frame failure. In that settlement, Suzuki agreed to provide class members (1) either a \$500 credit towards a new motorcycle purchase or a \$40 credit towards parts, accessories, or service for existing motorcycle, (2) an extension of the frame warranty to 10 years, and (3) an agreement to arbitrate with class members for potential monetary awards for alleged damages to frames. *Id.*, *2. Judge Gold rejected objections to the settlement finding that automatic enrollment in a warranty extension would be valued on the retail price of the relief in the open market and was not premised on a class member’s future purchase from defendant. *Id.*, *7.

Courts around the country have approved class action settlements with similar non-cash directly paid settlement benefits, correctly concluding that they are not “coupon settlements.” *See In re Equifax Inc. Customer Data Sec. Breach Litig.*, 1:17-MD-2800-TWT, 2020 WL 256132 (N.D. Ga. Mar. 17, 2020) (finally approving settlement with relief including an option to select free credit monitoring and identity protection services, granting a requested fee of \$77.5 million, finding that it constituted “less than 1% [of the value of the other non-monetary benefits available to the class] when the retail value of the credit monitoring services already claimed by class members is included”); *see also In re Online DVD-Rental Antitrust Litigation*, 779 F.3d 934 (9th Cir. 2015) (affirming final approval of a settlement providing \$12 gift cards to 1.2 million claimants and concluding the settlement was not a “coupon settlement” within the meaning of CAFA); *Johnson v. Ashley Furniture Industries, Inc.*, No. 13cv2445 BTM(DHB), 2016 WL 866957 (S.D. Cal. Mar. 7, 2016) (finally approving a class action settlement where defendant would automatically distribute \$25 merchandise vouchers to all known class members and to all unknown class members who submitted claim forms, concluding the settlement was not a “coupon” settlement under CAFA

because, “class members have choices as to what they may purchase with the voucher and may purchase an entire product as opposed to just reducing the purchase price”); *Glaberson v. Comcast Corp.*, No. 03-6604, 2015 WL 5582251 (E.D. Pa. 2015) (finally approving a settlement where current subscribers could choose either (1) a onetime credit of \$15 off their bill or (2) credits from a selection of Comcast services, which were valued at their retail value); *Dupler v. Costco Wholesale Corp.*, 705 F. Supp. 2d 231 (E.D. N.Y. 2010) (finally approving class action settlement providing class members benefits of 1 to 2 free months of Costco membership in exchange for settling claims that Costco improperly calculated renewed memberships, valuing the free memberships as a “\$38.8 million direct economic benefit to the class” and approving as reasonable the requested fee award of \$5,380,000, which amounted to 14% of the value of the settlement and which would be paid separately from the settlement benefits); *Browning v. Yahoo! Inc.*, No. C04-01463 HRL, 2007 WL 4105971 (N.D. Cal. Nov. 16, 2007) (finally approving a settlement including relief of either a free credit report worth \$5 or two months of free credit monitoring worth \$9.95 a month, concluding it was not a coupon settlement “because it does not require class members to spend money in order to realize the settlement benefit,” even though the relief was not transferable).

Plaintiff and the Settlement Class faced significant hurdles in litigating their claims to resolution, including overcoming Defendants’ defenses, including the potential denial of class certification of these claims and potential defeat at trial. Despite these challenges, as a result of the Settlement, each Settlement Class Member stands to recover benefits estimated to be worth twice the amount of each Racer Insurance Fee paid, or approximately a hundred percent of the amount they would be entitled to at trial (without factoring in potential multiple damages). These results are clearly reasonable.

F. The Opinions of Class Counsel, the Class Representatives, and Absent Class Members Strongly Favor Settlement Approval.

A court should give “great weight to the recommendations of counsel for the parties, given their considerable experience in this type of litigation.” *Warren v. Tampa*, 693 F. Supp. 1051, 1060 (M.D. Fla. 1988). This Court has already found that Class Counsel and Plaintiff will adequately represent the Class in this action, and its conclusion was warranted. *See* Preliminary Approval Order.

Class Counsel litigated this matter aggressively and competently, reviewed tens of thousands of documents, prevailed over Spartan’s Motion to Transfer or Alternatively to Dismiss, and fully support the Settlement. Based on this specific experience, and decades of experience in litigating

consumer class action lawsuits, it is Class Counsel's informed opinion that the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class. (Joint Decl. ¶ 50.)

As of March 23, 2021, of the approximate 800,000 Settlement Class members, the parties have received only five opt out requests and one objection. (Sheridan Decl. ¶¶ 6–7). This overwhelming support is evidence of the Settlement's fairness. *See, e.g., Saccoccio*, 297 F.R.D. at 694 (opposition amounting to .018% of the class was termed as “low resistance to the settlement” and weighed “in favor of approving the settlement.”); *Churchill Village LLC v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir. 2004) (affirming settlement with 45 objections out of 90,000 notices). Viewed either independently or taken together, the above factors confirm that the Settlement is fair, reasonable, and adequate and in the best interests of the Settlement Class.

II. THE COURT SHOULD AWARD REASONABLE FEES AND COSTS AND RESERVE JURISDICTION ON THE REQUESTED SERVICE AWARD.

For their extensive work prior to the filing of the complaint and throughout the pre-trial and settlement phases of this litigation, Class Counsel seek less than 8.9% of the settlement value made available to the Settlement Class (excluding the valuable and important prospective relief), or two million two hundred ninety thousand dollars (\$2,290,000.00) in attorneys' fees and expenses.

A. The Court Should Award the Requested Attorneys' Fees and Expenses.

Class Counsel is entitled to attorneys' fees for the benefit obtained in the Settlement. *See Saccoccio*, 297 F.R.D. at 695 (“The attorneys' fees in a class action can be determined based upon the total fund, not just the actual payout to the class.”); *Casey*, No. 12-cv-00820 (N.D.N.Y.) (D.E. 223); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 676 (1980); *David v. Am. Suzuki Motor Corp.*, No. 08–CV–22278, 2010 WL 1628362 (S.D. Fla. Apr. 15, 2010) (settlement with ascertainable benefits may be treated as a common fund to which a percentage fee may be awarded, even if the fee is separately paid by the defendant). In the Eleventh Circuit, “attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class.” *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); *see also Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1339 (S.D. Fla. 2007); *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1333 (S.D. Fla. 2001).

A settlement with ascertainable benefits may be treated as a “common fund” from which a percentage fee may be awarded. *See Poertner v. Gillette Co.*, 618 F. App'x 624, 628-29 (11th Cir. 2015) (per curiam) (finding value of nonmonetary relief and cy pres award to be part of the “settlement pie” from which percentage of fund for fee award was calculated); *see also Dupler*, 705

F. Supp. 2d 231 (valuing free Costco membership settlement benefits as a “\$38.8 million direct economic benefit to the class” and approving as reasonable the requested fee award of 14% that value or \$5,380,000, which would be paid separately from the settlement benefits); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 2020 WL 256132 (granting requested fee of \$77.5 million, finding that it constituted “less than 1% [of the value of the other non-monetary benefits available to the class] when the retail value of the credit monitoring services already claimed by class members is included”); *Jones v. United Healthcare Services, Inc.*, No. 15-cv-61144-RLR, ECF No. 153 (S.D. Fla. Feb. 2, 2017) (Rosenberg, J.) (finally approving class action settlement and attorneys’ fee award of \$2.75 million, conducting a common-fund analysis and finding that the award was a “small percentage” of overall benefit obtained for 4,410 class members to receive coverage for Hepatitis C treatment); *Batista v. Nissan North America, Inc.*, No. 14-cv-24728-RNS, ECF No. 191 (S.D. Fla. June 29, 2017) (Scola, J.) (approving a \$3.75 million attorney fee award, representing between 3.8%–10.1% of the \$37 to \$99 million value of extended warranties afforded in class action settlement).

“[F]ederal district courts across the country have, in the class action settlement context, *routinely* awarded class counsel fees in excess of the 25 percent ‘benchmark,’ even in so-called ‘mega-fund’ cases.” *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1210 (S.D. Fla. 2006) (emphasis added; awarding fees of 31½% of settlement fund). Here, the requested percentage falls well below the range provided by the Eleventh Circuit. *See Camden I*, 946 F. 2d at 774 (20%–50% of the value provided); *David*, 2010 WL 1628362 at *8 n.15 (20%–50% of common fund is “the customary fee in class actions that result in substantial benefits”).

The Eleventh Circuit’s factors for evaluating the reasonable percentage to award class action counsel are (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the “undesirability” of the case; (11) the nature and the length of the professional relationship with the client; and (12) awards in similar cases. *See Camden I*, 946 F.2d at 772 n.3. This Court may also consider the time required to reach settlement, the existence of substantial objections and non-

monetary benefits, and the economics of prosecuting a class action. *Id.* at 775. As explained below, the factors set forth in *Camden I* support the full award requested.

1. The Contingent Nature of the Fee, the Financial Burden Carried by Counsel, and the Economics of Prosecuting a Class Action Support the 8.9% Award.

A determination of a fair fee for Class Counsel must include consideration of the contingent nature of the fee, the outlay of out-of-pocket expenses by Class Counsel, and the fact that the risks of failure and nonpayment in a class action are extremely high. *See Pinto*, 513 F. Supp. 2d at 1339. These factors weigh in favor of awarding Class Counsel approximately 8.9% of the monetary value of the benefits obtained. Class Counsel received no compensation during the course of this litigation and incurred expenses on behalf of the Class, which they risked losing had Spartan prevailed. (Joint Decl. ¶¶ 75–80.) From the time Class Counsel filed suit, there was a real possibility Class Counsel would receive no compensation, whatsoever.

2. The Fee Request Reflects the Market Rate in Complex, Contingent, Litigation.

A fee of approximately 8.9% of the cash value is below the market for class actions. *See Saccoccio*, 297 F.R.D. at 695 (“20–30% fee that is customary in common fund cases.”). “The percentage method of awarding fees in class actions is consistent with, and is intended to mirror, practice in the private marketplace where attorneys typically negotiate percentage fee arrangements with their clients.” *Pinto*, 513 F. Supp. 2d at 1340. In private litigation, attorneys regularly contract directly with their clients for contingent fees between 25% and 33%. These percentages are the prevailing market rates throughout the United States for contingent representation. *See id.* at 1341 (citing, *inter alia*, *Kirchoff v. Flynn*, 786 F.2d 320, 323 (7th Cir. 1986)). In making a determination of what constitutes a fair fee, this Court should be guided by such awards.⁷ A fee of approximately 8.9% of the total monetary benefits is well below the range of the customary fee awarded in common fund cases. *See, e.g., Hamilton v. SunTrust Mortgage, Inc.*, No. 13-cv-60749 at (D.E. 178) (awarding 16% of the total monetary benefits).

⁷ *See also, e.g., Sawyer v. Intermex Wire Transfer, LLC*, 2020 WL 5259094, at *1 (S.D. Fla. Sept. 3, 2020) (awarding one-third of the common fund); *Hanley v. Tampa Bay Sports & Entm't LLC*, No. 8:19-cv-00550-CEH-CPT, 2020 WL 2517766, at *6 (M.D. Fla. Apr. 23, 2020) (“Indeed, district courts in the Eleventh Circuit routinely approve fee awards of one-third of the common settlement fund.”); *Wolff v. Cash 4 Titles*, No. 03-cv-22778, 2012 WL 5290155, at *6 (S.D. Fla. Sept. 26, 2012) (collecting cases and concluding that 33% is consistent with the market rate in class actions); *Waters*, 190 F.3d 1291 (affirming 33-1/3%).

3. The Novelty and Difficulty of the Questions at Issue

As previously mentioned, this case presents novel questions of law and issues of fact. Class action matters are generally complex. Spartan's defenses regarding differences in representations, the purpose of the Racer Insurance Fee, the different state laws at issue, and its various affirmative defenses led to significant briefing on class certification and would have led to further briefing on the merits, at trial, post-trial, and on appeal. (Joint Decl. at ¶¶ 3, 35–40, 60–62, 69–74). Thus, even though Class Counsel successfully reached a settlement with Spartan, the difficulty and associated risk of mastering and litigating these issues amply supports the full award requested. *Id.*

4. The Skill, Experience, and Reputation of Class Counsel

This litigation required a high degree of skill and experience. Class Counsel have established their skill, experience, and reputation in the record, and in repeated cases before this court. (Joint Decl. at ¶ 65–67); Firm Resumes at [ECF No. 102-4]. Class Counsel have many years of experience successfully litigating nationally recognized class actions. Beyond that, Class Counsel's reputation, diligence, expertise, and skill are reflected in the results they have achieved. They resolved this dispute efficiently despite the potential hurdles presented them and the arguments raised by Spartan detailed above. The quality of Class Counsel and their achievement in this case is equally shown by the strength of their opponents, Cole, Scott, and Kissane, P.A., and Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., which are excellent defense firms. (Joint Decl. at ¶ 79). This factor thus also favors awarding the requested fee.

5. The Result Achieved for the Class

The result achieved is a major factor to consider in making a fee award and here, it is significant and perhaps best establishes the propriety of the requested fee award. *See Hensley v. Eckerhart*, 461 U.S. 424, 436, (1983) (“critical factor is the degree of success obtained”); *Pinto*, 513 F. Supp. 2d at 1342; *Behrens*, 118 F.R.D. at 547–48 (“The quality of work performed in a case that settles before trial is best measured by the benefit obtained.”). In considering the results, courts examine the value of *both* monetary and prospective relief. *See Poertner*, 618 Fed. App'x at 629; *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360 (S.D. Fla. 2007); *LiPuma*, 406 F. Supp. 2d at 1323. The results here, with Class benefits worth more than \$25.6 million in value and the prospective relief, are excellent. Spartan is required to provide meaningful disclosures regarding the fee they charged (now called the “Administrative, Insurance, and Management Fee” or “AIM Fee”) and other injunctive changes. These results are powerful evidence supporting the fee award.

6. The Time and Labor of Class Counsel

Investigating, prosecuting, and settling the claims here demanded time and labor. (Joint Decl. ¶¶ 60–65). The complexity of this case required organization by Class Counsel, including assignment of work and regular meetings and calls to ensure coordinated, productive work efforts to maximize efficiency and minimize duplication of effort. Class Counsel spent over 1,200 hours investigating the claims of many potential plaintiffs and in litigating Plaintiff’s and the Class’s claims against Defendant in this action. *Id.* Plaintiff’s counsel investigated their claims and allegations through extensive discovery, including the review of thousands of pages of documents and the depositions of key Spartan personnel. *Id.* Further, this Court held an over two-and-a-half-hour hearing on Plaintiff’s motion for class certification. [ECF No. 97]. This work required a significant amount of resources.

7. The Reaction of the Class to the Settlement.

To date, the parties have received one objection and only five opt-out requests, which supports the fee request. *See Pinto*, 513 F. Supp. 2d at 1343; (Sheridan Decl. ¶¶ 6–7.)

B. Notice Regarding Service Awards.

Plaintiff and Class Counsel hereby acknowledge that a panel of the United States Court of Appeals for the Eleventh Circuit issued a ruling in *Johnson v. NPAS Solutions, LLC*, 2020 WL 5553312 (11th Cir. Sept. 17, 2020), holding that service awards for class action representatives are impermissible.⁸ Although the Settlement Agreement makes clear that the settlement is in no way conditioned upon the granting of any service awards [ECF No. 102-3 at ¶ VIII.], Plaintiff and Class Counsel hereby submit that this Court should reserve jurisdiction regarding awarding the service award for Plaintiff, unless and until the ruling in *NPAS* prohibiting service awards is reversed *en banc*, vacated, or overruled on or before the Final Fairness Hearing. Class Counsel will advise this Court of the status of *NPAS* prior to the Final Fairness Hearing.

⁸ *NPAS* will not become binding precedent until issuance of the mandate (which has been stayed pending a petition for rehearing *en banc*, which has not yet been ruled on). *See, e.g., Nat. Res. Def. Council, Inc. v. County of Los Angeles*, 725 F.3d 1194, 1203–04 (9th Cir. 2013), *certiorari denied*, 572 U.S. 1100 (2014) (explaining that “[n]o opinion of this circuit becomes final until the mandate issues”); *see also* Fed R.App. P. 41(c), 1998 Adv. Comm. Note (“A court of appeals’ judgment or order is not final until issuance of the mandate[.]”); *Key Enters. of Del., Inc. v. Venice Hosp.*, 9 F.3d 893, 898 (11th Cir. 1993) (“[B]ecause the panel’s mandate had not issued, the panel’s decision was never the ‘law of the case.’”).

To the extent it is still binding on this Court at the time of final approval, the Parties respectfully submit that this Court still approve the Settlement and all of its terms, but not approve the service award and retain “jurisdiction for the limited purpose of revisiting the denial of service awards if the Eleventh Circuit holds a rehearing *en banc* in *Johnson v. NPAS Sols., LLC* and reverses its decision,” or another Eleventh Circuit decision overrules *NPAS*. See *Metzler, et al. v. Medical Mgmt. Int’l Inc., et al.*, 2020 WL 5994537 (M.D. Fla. Oct. 9, 2020) (reserving jurisdiction to award service awards if *NPAS* is reversed). Class Counsel could then “move for reconsideration upon such a reversal.” *Id.*

However, should *NPAS* be reversed, vacated, or overruled, this Court should approve Plaintiff’s service award. The Notice advised Settlement Class Members that Plaintiff would apply for a service award not to exceed \$10,000 for taking on the risks of litigation, and for Settlement of his individual claim as a Settlement Class Member in this Action.

In instituting this litigation, the Plaintiff acted as a private attorney general seeking a remedy for what appeared to be a public wrong. See *Pinto*, 513 F. Supp. 2d at 1344. Plaintiff aided in the investigation of these claims and settlement. (Joint Decl. ¶¶ 51–57). Private class action suits are a primary weapon in the enforcement of laws designed for the protection of the public. See *Pinto*, 513 F. Supp. 2d at 1344. Approval of this award is warranted as a matter of policy and is appropriate under applicable precedents. See *Gevaerts v. TD Bank*, No. 2015 WL 6751061, at *9 (S.D. Fla. Nov. 5, 2015) (approving the requested service awards of \$10,000); *Dorado v. Bank of Am., N.A.*, 2017 WL 5241042, at *7 (S.D. Fla. Mar. 24, 2017) (same); *Feller v. Transamerica Life Ins. Co.*, 2019 WL 6605886, at *14 (C.D. Cal. Feb. 6, 2019) (awarding \$10,000 service awards to both class representatives and named plaintiffs).

CONCLUSION

Plaintiff and Class Counsel respectfully request that the Court grant final approval of the Settlement, as well as the application for Class Counsel’s fees and expenses. Further, Plaintiff and Class Counsel request that the Court grant the request for a service award should *NPAS* be reversed, vacated, or overruled by the time this Court enters its final order approving the settlement, or alternatively deny the request and reserve jurisdiction for Plaintiff and Class Counsel to move for reconsideration if *NPAS* is thereafter reversed, vacated, or overruled.

Dated: March 24, 2021

Respectfully submitted,

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Counsel for Plaintiff and the Class

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 24, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Southern District of Florida, by using the CM/ECF system, which will serve a copy of same on all counsel of record.

By: /s/ Adam M. Moskowitz
Adam M. Moskowitz

Exhibit A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No.: 1:20-CV-20836-BLOOM/Louis

AARON FRUITSTONE, on behalf of
himself and others similarly situated,

Plaintiff,

v.

SPARTAN RACE, INC.,

Defendant.

_____ /

**[PROPOSED] ORDER GRANTING FINAL APPROVAL TO CLASS ACTION
SETTLEMENT AND ENTERING FINAL JUDGMENT**

The claims of Settling Plaintiff Aaron Fruitstone, on behalf of himself and all Settlement Class Members, and Defendant Spartan Race, Inc., have been settled pursuant to the Stipulation of Settlement dated January 22, 2021 (the "Settlement Agreement"). On February 2, 2021, the Court granted preliminary approval of the proposed class action settlement set forth in the Settlement Agreement and provisionally certified the Settlement Class for settlement purposes only [ECF No. 107].

On May 7, 2021, the Court held a duly noticed Final Approval Hearing to consider: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable and adequate; (2) whether Judgment should be entered dismissing the Settling Plaintiff's claims on the merits and with prejudice, including the claims of Settlement Class Members; and (3) whether and in what amount to award Attorneys' Fees and Expenses to Class Counsel and a Service Award to the Settling Plaintiff.

THEREFORE, IT IS HEREBY **ORDERED, ADJUDGED AND DECREED** that:

1. The terms and conditions in the Settlement Agreement are hereby incorporated as though fully set forth in this Judgment, and unless otherwise indicated, capitalized terms in this Judgment shall have the meanings attributed to them in the Settlement Agreement.

2. The Court has personal jurisdiction over Settling Plaintiff, the Defendant, and Settlement Class Members, venue is proper, the Court has subject-matter jurisdiction to approve the Settlement Agreement, including all Exhibits thereto, and the Court has jurisdiction to enter this Judgment. Without in any way affecting the finality of this Judgment, this Court hereby retains jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and of this Judgment, and for any other necessary purpose, including, but not limited to, enforcement of the Releases contained in the Settlement Agreement and entry of such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement.

3. The Settlement was negotiated at arm's length by experienced counsel who were fully informed of the facts and circumstances of this litigation and of the strengths and weaknesses of their respective positions. The Settlement was reached after the Parties had engaged in extensive litigation, mediation and negotiations. Counsel for the Parties were therefore well-positioned to evaluate the benefits of the Settlement, taking into account the expense, risk and uncertainty of protracted litigation with respect to numerous difficult questions of fact and law.

4. The Court finds that the prerequisites for a class action under Fed. R. Civ. P. 23(a) and 23(b) have been satisfied for settlement purposes for the Settlement Class in that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the

claims of Settling Plaintiff are typical of the claims of the Settlement Class Members he seeks to represent; (d) Settling Plaintiff and Class Counsel have and will continue to fairly and adequately represent the interests of the Settlement Class Members for purposes of the Settlement; (e) the questions of law and fact common to Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; (f) the Settlement Class is reasonably ascertainable; and (g) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy. Accordingly, and pursuant to Fed. R. Civ. P. 23, this Court hereby finally certifies the Settlement Class.

5. Pursuant to Fed. R. Civ. P. 23, the Court hereby finally certifies the Settlement Class for settlement purposes only, as identified in the Settlement Agreement, which shall consist of the following:

All individuals in the United States who during the Class Period, based on Spartan's records, paid a \$14 "Racer Insurance Fee" or "Insurance Fee" in connection with any race organized and sponsored by Spartan. Excluded from the Class are (a) Defendant's board members and executive level officers; (b) the federal district and magistrate judges assigned to this Action, along with their court staff; and (c) individuals who submit a valid, timely exclusion/opt-out request.

6. The Court finally designates the law firms of The Moskowitz Law Firm, PLLC, and Bonnett, Fairbourn, Friedman & Balint, P.C. as Class Counsel for the Settlement Class.

7. The Court finally designates Settling Plaintiff Aaron Fruitstone as the Settlement Class representative.

8. The Court makes the following findings with respect to Class Notice to the Settlement Class:

8.1. The Court finds that the direct distribution of the Class Notice and the creation of the Settlement Website for Class Member information, all as provided for in the Settlement Agreement and the Preliminary Approval Order, (i) constituted the best practicable

notice under the circumstances that was reasonably calculated, under the circumstances, to apprise Noticed Class Members of the Settlement, their right to object or to exclude themselves from the Settlement, and their right to appear at the Final Approval Hearing; (ii) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to be provided with notice; and (iii) complied fully with the requirements of Fed. R. Civ. P. 23, the United States Constitution, the Rules of this Court, and any other applicable law.

8.2. Class Counsel has filed with the Court a declaration from Deanna Sheridan, Vice President of Spartan Race, Inc., attesting that the Class Notice was emailed to Noticed Class Members on March 2, 2021, and Class Counsel attests in their Joint Declaration that the Settlement Website was established on March 3, 2021. Adequate Class Notice was given to the Noticed Class Members in compliance with the Settlement Agreement and the Preliminary Approval Order.

9. Persons who wished to be excluded from the Settlement Class were provided an opportunity to request exclusion as described in the Class Notice and on the Settlement Website. The Court finds that the individual interests of the [REDACTED] persons who timely sought exclusion from the Settlement Class are preserved and that no person was precluded from being excluded from the Settlement Class if he or she so desired. Those persons who timely and properly excluded themselves from the Settlement Class are identified in the attached Exhibit 1.

10. Defendant has complied with all notice obligations under the Class Action Fairness Act, 28 U.S.C. §§ 1715, et seq., in connection with the proposed Settlement.

11. [description of objections, if any]. The Court finds that the objections to the Settlement do not establish that the proposed Settlement is unfair, unreasonable, inadequate, or should otherwise not be approved, and are hereby overruled.

12. By failing to timely file and serve an objection in writing to the Settlement

Agreement, to the entry of this Judgment, to Class Counsel's application for fees, costs, and expenses, or to the Service Award to the Settling Plaintiff, in accordance with the procedure set forth in the Notice and mandated in the Preliminary Approval Order, Settlement Class Members are deemed to have waived any such objection through any appeal, collateral attack, or otherwise.

13. The terms and provisions of the Settlement Agreement, including all Exhibits attached thereto, have been entered into in good faith and, pursuant to Fed. R. Civ. P. 23(e), are hereby fully and finally approved as fair, reasonable, adequate as to, and in the best interests of, Settlement Class Members. The Court hereby enters judgment approving and adopting the Settlement and the Settlement Agreement, fully and finally terminating all Released Claims of all Releasing Persons in this Litigation against the Released Parties, on the merits and with prejudice.

14. Pursuant to Fed. R. Civ. P. 23(h), the Court hereby awards Class Counsel's attorneys' fees and expenses in the amount of [REDACTED] dollars (\$ [REDACTED]) payable by Defendant's Insurers pursuant to the terms of the Settlement Agreement. The Court also [subject to resolution of *Johnson v. NPAS Solutions, LLC*, 2020 WL 5553312 (11th Cir. 2020)] awards a Case Contribution Award in the amount of \$_____ to Settling Plaintiff Aaron Fruitstone, payable by Defendant's Insurers pursuant to the terms of the Settlement Agreement. Defendant shall not be responsible for, and shall not be liable with respect to the allocation among Class Counsel or any other person who may assert a claim thereto, the attorneys' fees and expenses awarded by the Court.

15. The terms of the Settlement Agreement, including all Exhibits thereto, and of this Judgment, shall be forever binding on, and shall have res judicata and preclusive effect in and on, all claims and pending and future lawsuits maintained by Settling Plaintiff and each Settlement Class Member, as well as each of their respective spouses, family members, executors,

representatives, administrators, guardians, wards, heirs, attorneys-in-fact, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, joint tenants, tenants in common, tenants by the entirety, co-mortgagors, co-obligors, co-debtors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf, and all other Releasing Persons.

16. The Release, which is set forth in Section VI of the Settlement Agreement, is expressly incorporated herein in all respects and is effective as of the entry of this Judgment. Each of the Released Parties is forever released, relinquished, and discharged by each Releasing Person, including all Settlement Class Members, from all Released Claims (as that term is defined below and in the Settlement Agreement).

16.1. The definitions in the Settlement Agreement are incorporated in and are part of this Judgment.

16.2 Each Releasing Party shall, by operation of this Judgment, be deemed to have released any and all actions, claims, demands, rights, suits, debts, and causes of action of whatever kind or nature against the Released Parties, including damages, costs, expenses, penalties, equitable relief, injunctions, and attorneys' fees, known or unknown, suspected or unsuspected, in law or in equity that arise out of or relate to the factual allegations and claims asserted in this case individually and/or on a class wide basis.

16.3 In agreeing to the foregoing Release, Settling Plaintiff, for himself and on behalf of Settlement Class Members, shall be deemed to have acknowledged that unknown losses or claims could possibly exist and that any present losses may have been underestimated in amount or severity. Settling Plaintiff or any Settlement Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject

matter of the Released Claims or the law applicable to such claims may change. Nonetheless, Settling Plaintiff and each Settlement Class Member shall be deemed to have irrevocably waived and fully, finally and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent, claims with respect to all Released Claims. Further, Settling Plaintiff and each Settlement Class Member shall be bound by this Agreement, including by the Releases, and all of their claims in the Action asserted against Defendants shall be dismissed with prejudice and released, without regard to subsequent discovery of different or additional facts or subsequent changes in the law, and regardless of whether unknown losses or claims exist or whether present losses may have been underestimated in amount or severity, and even if they never received the Mail Notice of the Settlement, did not otherwise have knowledge of the Settlement, or never received Claim Settlement Relief. The Settling Parties shall be deemed to have acknowledged that the foregoing Releases were bargained for and are a material element of the Settlement Agreement.

16.4. Released Claims do not apply to new claims arising after the close of the Settlement Class Period based on conduct that took place after the close of the Settlement Period. Nothing in the Order shall be deemed a release of any Settlement Class Member's respective rights and obligations for such post-Settlement Claims.

16.5. Settling Plaintiff and Class Counsel have represented and warranted that there are no outstanding liens or claims against the Action, and Settling Plaintiff and Class Counsel will be solely responsible for satisfying any liens or claims asserted against the Action.

16.6. Settling Plaintiff and each Settlement Class Member shall be deemed to agree and acknowledge that the foregoing Releases were bargained for and are a material element of the Settlement Agreement.

16.7 The Releases do not affect the rights of Noticed Class Members who timely and properly submitted a Request for Exclusion.

16.8 The Settlement Agreement shall be the exclusive remedy for all Settlement Class Members with regards to the Released Claims.

17. Neither the Settlement Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein, nor this Judgment, nor any of its terms and provisions shall be:

17.1. Offered by any person or received against any of the Released Parties as evidence or construed as or deemed to be evidence of any presumption, concession, or admission by any Released Party of the truth of the facts alleged by any person or the validity of any claim that has been or could have been asserted in the Litigation or in any litigation against any Released Party, or other judicial or administrative proceeding, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation against any Released Party, or of any liability, negligence, fault or wrongdoing of any Released Party;

17.2. Offered by any person or received against any of the Released Parties as evidence of a presumption, concession, or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by any of the Released Parties or of any other wrongdoing by any of the Released Parties;

17.3 Offered by any person or received against any of the Released Parties as evidence of a presumption, concession, or admission with respect to any liability, negligence, breach, fault, omission, or wrongdoing in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal;

17.4 Offered or received in evidence in any action or proceeding against any of the Released Parties in any court, administrative agency, or other tribunal for any purpose whatsoever, other than to enforce or otherwise effectuate the Settlement Agreement (or any agreement or order relating thereto), including the Releases or this Judgment.

18. In the event that the Effective Date does not occur, this Judgment shall automatically be rendered null and void and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void, and the Parties will be restored to their positions as of [REDACTED].

19. This Judgment and the Settlement Agreement (including the Exhibits thereto) may be filed in any action against or by any Released Party in order to support any argument, defense or counterclaim, including, without limitation, those based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion, issue preclusion, or similar defense or counterclaim.

20. Settling Plaintiff and all Settlement Class Members and their respective spouses, family members, executors, representatives, administrators, guardians, wards, heirs, attorneys-in-fact, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, joint tenants, tenants in common, tenants by the entirety, co-mortgagors, co-obligors, co-debtors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf, have released the Released Claims as against the Released Parties, and are, from this day forward, hereby permanently barred and enjoined from directly or indirectly (a) filing, commencing, prosecuting, maintaining (including claims or actions already filed), intervening in, defending, or participating in (as parties, class members or otherwise) any action in any jurisdiction before any court or tribunal based on, arising from, or relating to any of the

Released Claims or the facts and circumstances relating thereto, against any of the Released Parties; or (b) organizing any Settlement Class Members, or soliciting the participation of any Settlement Class Members, for purposes of pursuing any action (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) in any jurisdiction before any court or tribunal based on or relating to any of the Released Claims or the facts and circumstances relating thereto. Any person in violation of this injunction may be subject to sanctions, including payment of reasonable attorneys' fees incurred in seeking enforcement of the injunction. The foregoing injunction is issued in order to protect the continuing jurisdiction of the Court and to effectuate and implement the Settlement Agreement and this Judgment.

21. Settlement Class Members shall promptly dismiss with prejudice all claims, actions, or proceedings that have been brought by any Settlement Class Member in any jurisdiction that are based on Released Claims pursuant to the Settlement Agreement and this Judgment, and that are enjoined pursuant to this Judgment.

22. The claims of Settling Plaintiff, individually and on behalf of the Settlement Class, including all individual claims and class claims presented herein, are hereby dismissed on the merits and with prejudice against Defendants without fees (including attorneys' fees) or costs to any party except as otherwise provided in this Judgment.

23. Settling Parties are hereby directed to implement and consummate the Settlement according to its terms and provisions, as may be modified by Orders of this Court. Without further order of the Court, Settling Parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement Agreement, as may be modified by the Preliminary Approval Order or this Judgment.

24. Pursuant to Rule 54(b), the Court hereby enters Judgment as described herein and expressly determines that there is no just reason for delay. Without impacting the finality of this Judgment, the Court shall retain jurisdiction over the construction, interpretation, consummation, implementation, and enforcement of the Settlement Agreement and this Judgment, including jurisdiction to enter such further orders as may be necessary or appropriate.

DONE and ORDERED in Miami, Florida, this _____ day of _____, 2021.

**THE HONORABLE BETH BLOOM
UNITED STATES DISTRICT JUDGE**

Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No.: 1:20-CV-20836-BLOOM/Louis

AARON FRUITSTONE, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

CLASS ACTION

SPARTAN RACE, INC.,
a Delaware Corporation,

Defendant.

**DECLARATION OF RG/2 CLAIMS ADMINISTRATION LLC REGARDING
NOTICE PROCEDURES**

I, Christopher J. Tucci, declare as follows:

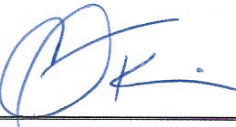
1. I am the Vice President of Business Development and Client Relations for RG/2 Claims Administration LLC (“RG/2”).

2. In compliance with the Class Action Fairness Act (“CAFA”), 28 U.S.C. Section 1715, RG/2 compiled a CD-ROM containing the following documents: Plaintiff’s Amended Class Action Complaint, Order Granting Amended Motion for Preliminary Approval, and Class Counsel’s Resumes, Class Notice, and Settlement Agreement, and a cover letter (collectively, the “CAFA Notice Packet”). A copy of the cover letter is attached hereto as **Exhibit A**.

3. On February 5, 2021, RG/2 caused fifty-three (53) CAFA Notice Packets to be mailed via Certified Mail from the U.S. Post Office in Philadelphia, Pennsylvania to the parties listed on **Exhibit B**, i.e., the U.S. Attorney General, the Attorneys General of each of the states in which Settlement Class Members reside, and the Attorneys General for Puerto Rico and the U.S. Virgin Islands.

4. As of the date of this Declaration, RG/2 has received no response to the CAFA Notice Packet from any of the recipients identified in Paragraph 3 above.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct, and that this declaration was executed in the Commonwealth of Pennsylvania on March 16, 2021.

By: 

Christopher J. Tucci

EXHIBIT A



February 5, 2021

VIA «Via_Mail»

«First» «Last», «Esquire»

«Title»

«Street_1» «Street2»

«City», «State1» «Zip»

Re: *Fruitstone v. Spartan Race, Inc.* (S.D. Fla.)
Case No. 1:20-cv-20836-BB, Notice Pursuant to 28 U.S.C. § 1715

Dear Sir or Madam:

On behalf of Defendant, Spartan Race, Inc., (“Defendant”), RG/2 Claims Administration LLC (“RG/2 Claims”), hereby provides this Notice of a Proposed Class Action Settlement in the above-referenced class action pursuant to the Class Action Fairness Act of 2005 (“CAFA”). The proposed settlement will resolve the case.

In accordance with its obligations under CAFA, RG/2 Claims encloses the following:

(1) The Complaint, any materials filed with the Complaint, and any Amended Complaints.

Plaintiff’s Class Action Complaint and First Amended Class Action Complaint filed in *Fruitstone v. Spartan Race, Inc.* case can be found on the enclosed CD as “Exhibit 1- Spartan Race, Inc. Complaints.”

(2) Notice of any scheduled judicial hearing in the class action.

The Court has scheduled a fairness hearing regarding the settlement for May 7, 2021 at 10:00 a.m. before Judge Beth Bloom via Zoom video conference (Meeting ID 160 960 4111 and Passcode 692150).

(3) Any proposed or final notification to class members.

The Notice of Class Action Settlement as submitted to the Court can be found on the enclosed CD as “Exhibit 2 – Notice of Class Action Settlement.”



«First» «Last», «Esquire»

February 5, 2021

Page 2



(4) Any proposed or final class action settlement.

The Stipulation of Settlement entered into by the parties and as submitted to the Court can be found on the enclosed CD as “Exhibit 3 – Stipulation of Settlement.” There are no other agreements contemporaneously made between Class Counsel and counsel for the defendants.

(5) A final judgment or notice of dismissal.

Final judgment has not yet been entered. Upon entry, a copy of the Final Order and Judgment will be available through PACER and can be accessed online as follows: (1) enter PACER, (2) click on “Query,” (3) enter the civil case number, 1:20-cv-20836-BB, (4) click on “Run Query,” and (5) click on the link “Docket Report.” The order(s) entering final judgment will be found on the docket entry sheet.

(6) Names of class members who reside in each state and the estimated proportionate share of the claims of such members to the entire settlement.

As of today, it is not feasible to identify the names of every Class Member who resides in your state; the list of class member totals by state can be found on the enclosed CD as “Exhibit 4 – Class Member Totals by State” represents our best current estimate of the total number of Class Members residents in your state. The specific settlement allocation to each Class Member will be determined by the Stipulation of Settlement and each Class Member’s election of benefits according to Court-approved guidelines. As a result, we do not yet know which Class Members will receive settlement benefits or the financial value of the benefits each Class Member will receive, and it is not feasible to determine the estimated proportionate share of the claims of the Class Members who reside in each state to the entire settlement. Upon final approval of the Court, the settlement benefits will be distributed to the Class Members according to the relevant provisions of the Stipulation of Settlement.

(7) Any written judicial opinion relating to the materials described in (3) through (5).

On February 2, 2021, the Court entered the Preliminary Approval Order relating to the materials described in sections (3) through (5). The Order Granting Motion for Preliminary Approval of Class Action Settlement, Conditionally Certifying a Class for Settlement Purposes, Directing the Issuance of Class Notice, and Scheduling a Final Approval Hearing as submitted to the Court can be found on the enclosed CD as “Exhibit 5 – Order Granting Motion for Preliminary Approval.”

Final judgment has not yet been entered. Upon entry, a copy of said judgment can be found online through the process described in section (5) above.

If you have questions about this notice, the lawsuits, or the enclosed materials, please do not hesitate to contact me.

Sincerely,
RG/2 Claims Administration LLC

Enclosures

EXHIBIT B

Mail Type	First	Last	State/Territory	Street 1	Street 2	City	State1	Zip
FedEx	Steve	Marshall	Alabama	501 Washington Ave	P.O. Box 300152	Montgomery	AL	36130
Certified Mail	Clyde "Ed"	Sniffen Jr.	Alaska	P.O. Box 110300		Juneau	AK	99811
FedEx	Mark	Brnovich	Arizona	2005 N Central Ave		Phoenix	AZ	85004
FedEx	Leslie	Rutledge	Arkansas	323 Center st	Suite 200	Little Rock	AR	72201
FedEx	Xavier	Becerra	California	1300 I St.	Ste. 1740	Sacramento	CA	95814
FedEx	Phil	Wieser	Colorado	Ralph L Carr Colorado Judicial Center	1300 Broadway, 10th Floor	Denver	CO	80203
FedEx	William	Tong	Connecticut	55 Elm St.		Hartford	CT	06141
FedEx	Kathy	Jennings	Delaware	Carvel State Office Bldg.	820 N. French St.	Wilmington	DE	19801
FedEx	Karl	Racine	District of Columbia	441 4th Street NW	Suite 1100 South	Washington	DC	20001
FedEx	Ashley	Moody	Florida	The Capitol	PL 01	Tallahassee	FL	32399
FedEx	Chris	Carr	Georgia	40 Capitol Square SW		Atlanta	GA	30334
FedEx	Clare E	Connors	Hawaii	425 Queen St.		Honolulu	HI	96813
FedEx	Lawrence	Wasden	Idaho	700 W. State Street	P.O. Box 83720	Boise	ID	83720
FedEx	Kwame	Raoul	Illinois	James R. Thompson Ctr.	100 W. Randolph St.	Chicago	IL	60601
FedEx	Todd	Rokita	Indiana	Indiana Government Center South	302 West Washington Street, 5th Floor	Indianapolis	IN	46204
FedEx	Tom	Miller	Iowa	Hoover State Office Bldg.	1305 E. Walnut	Des Moines	IA	50319
FedEx	Derek	Schmidt	Kansas	120 S.W. 10th Ave.	2nd Fl.	Topeka	KS	66612
FedEx	Daniel	Cameron	Kentucky	700 Capitol Avenue	Capitol Building, Suite 118	Frankfort	KY	40601
Certified Mail	Jeff	Landry	Louisiana	P.O. Box 94095		Baton Rouge	LA	70804
FedEx	Aaron	Frey	Maine	6 State House Station		Augusta	ME	04333
FedEx	Brian	Frosh	Maryland	200 St. Paul Place		Baltimore	MD	21202
FedEx	Maura	Healey	Massachusetts	1 Ashburton Place		Boston	MA	02108
Certified Mail	Dana	Nessel	Michigan	P.O.Box 30212	525 W. Ottawa St.	Lansing	MI	48909
FedEx	Keith	Ellison	Minnesota	State Capitol Complex,	Ste. 102	St. Paul	MN	55155
Certified Mail	Lynn	Fitch	Mississippi	Department of Justice	P.O. Box 220	Jackson	MS	39205
FedEx	Eric	Schmitt	Missouri	Supreme Ct. Bldg	207 W. High St.	Jefferson City	MO	65101
FedEx	Austin	Knudsen	Montana	Justice Bldg	215 N Sanders	Helena	MT	59620
Certified Mail	Doug	Peterson	Nebraska	State Capitol	P.O. Box 98920	Lincoln	NE	68509
FedEx	Aaron	Ford	Nevada	Old Supreme Ct. Bldg.	100 N. Carson St.	Carson City	NV	89701
FedEx	Gordon	MacDonald	New Hampshire	State House Annex	33 Capitol St.	Concord	NH	03301
FedEx	Gurbir S.	Grewal	New Jersey	Richard J. Hughes Justice Complex	25 Market Street, P.O. Box 080	Trenton	NJ	08625
Certified Mail	Hector	Balderas	New Mexico	P.O. Drawer 1508		Sante Fe	NM	87504
FedEx	Leticia A	James	New York	Dept. of Law - The Capitol	2nd Fl.	Albany	NY	12224
Certified Mail	Josh	Stein	North Carolina	Dept. of Justice	P.O. Box 629	Raleigh	NC	27602
FedEx	Wayne	Stenehjem	North Dakota	State Capitol	600 E. Boulevard Ave	Bismarck	ND	58505
FedEx	Dave	Yost	Ohio	State Office Tower	30 E. Broad St.	Columbus	OH	43266
FedEx	Mike	Hunter	Oklahoma	313 NE 21st Street		Oklahoma City	OK	73105
FedEx	Ellen F.	Rosenblum	Oregon	Justice Bldg	1162 Court St, NE	Salem	OR	97301
FedEx	Josh	Shapiro	Pennsylvania	1600 Strawberry Square		Harrisburg	PA	17120
Certified Mail	Domingo Emanuelli	Hernández	Puerto Rico	PO Box 902192		San Juan	PR	00902

FedEx	Peter	Neronha	Rhode Island	150 S. Main St		Providence	RI	02903
Certified Mail	Alan	Wilson	South Carolina	Rembert C. Dennis Office Bldg	P.O.Box 11549	Columbia	SC	29211
FedEx	Jason	Ravsborg	South Dakota	1302 East Highway 14	Suite 1	Pierre	SD	57501
FedEx	Herbert H.	Slattery, III	Tennessee	425 5th Avenue North		Nashville	TN	37243
Certified Mail	Ken	Paxton	Texas	Capitol Station	P.O.Box 12548	Austin	TX	78711
FedEx	Robert M. "Monty"	Wilkinson	United States	U.S. Department of Justice	950 Pennsylvania Avenue, NW	Washington	DC	20530
FedEx	Sean	Reyes	Utah	Utah State Capitol Complex	Rm 236	Salt Lake City	UT	84114
FedEx	TJ	Donovan	Vermont	109 State St		Montpelier	VT	05609
Certified Mail	Denise	George-Counts	Virgin Islands	34-38 Kronprindsens Gade	GERS Building, 2nd Floor	St. Thomas	VI	00802
FedEx	Mark	Herring	Virginia	900 East Main Street		Richmond	VA	23219
FedEx	Bob	Ferguson	Washington	1125 Washington St. SE	PO Box 40100	Olympia	WA	98504
FedEx	Patrick	Morrisey	West Virginia	State Capitol Complex,	1900 Kanawha Blvd E.	Charleston	WV	25305
FedEx	Josh	Kaul	Wisconsin	114 East State Capitol	P.O. Box 7857	Madison	WI	53707
FedEx	Bridget	Hill	Wyoming	123 Capitol Building	200 W. 24th Street	Cheyenne	WY	82002

Exhibit C

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

Case No.: 1:20-CV-20836-BLOOM/LOUIS

AARON FRUITSTONE, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

CLASS ACTION

SPARTAN RACE, INC.,
a Delaware Corporation,

Defendant.

EXPERT DECLARATION OF SONEET R. KAPILA

I, SONEET R. KAPILA, declare and state that the following facts are known to me personally, and that I am competent to testify about them:

1. I am over eighteen years of age and have personal knowledge of the matters set forth herein.

RETENTION

2. I am one of the founding partners of KapilaMukamal, LLP (“KM”), a forensic consulting and insolvency advisory firm. KM was retained by The Moskowitz Law Firm, Co-Lead Class Counsel, and the Class Representative Aaron Fruitstone, on behalf of a Settlement Class defined as: as: “all individuals in the United States who during the Class Period, based on Spartan’s records, paid a \$14 ‘Racer Insurance Fee’ or ‘Insurance Fee’ in connection with an event organized

and sponsored by Spartan.”¹

3. In conducting my investigation and analysis, I was assisted by other KM professionals with extensive experience in litigation consulting, insolvency and forensic investigations working under my direct supervision. Any references to “I”, “my”, “KM” or “Kapila” within the Declaration incorporate my efforts with the assistance of my co-professionals working under my direct supervision.

4. I reserve the right to supplement this Declaration as necessary, to the extent that any additional information becomes available between the date of this Declaration and the date that I may testify in this proceeding.

QUALIFICATIONS

5. I am a Certified Public Accountant (CPA), a Certified Fraud Examiner (CFE), Certified in Financial Forensics (CFF) conferred by the AICPA, and a Certified Insolvency and Restructuring Advisor (CIRA). The CIRA designation is conferred by the Association of Insolvency and Restructuring Advisors (AIRA), after a three part examination and a required 4,000 hours of prior qualified insolvency experience.

6. I am a Fellow of the American College of Bankruptcy. This recognition is based on recommendations by peers in the insolvency industry at a national level, invitation by the American College of Bankruptcy and induction into this College.

7. KM is a niche practice focusing on forensic and fraud investigative work, litigation support, creditors’ rights, bankruptcy, insolvency and fiduciary services. Several of the core professionals of KM have similar certifications as identified in ¶5 above. I have served as a Federal

¹ Order Granting Motion for Preliminary Approval of Class Action Settlement, Conditionally Certifying a Class For Settlement Purposes, Directing The Issuance Of Class Notice, And Scheduling a Final Approval Hearing. [ECF No. 107]

Bankruptcy Trustee, Bankruptcy Examiner, Chief Restructuring Officer, Special Accounting Master, SEC Corporate Monitor, and Federal and State Court Receiver in numerous matters in the Southern and Middle Districts of Florida and in the District of New Jersey.

8. I have served as a Federal Bankruptcy Trustee on the panel of U.S. Bankruptcy Trustees in the Southern District of Florida from approximately 1992 to present. I have been appointed as a Chapter 11 Trustee, SubChapter V Trustee, Chapter 7 Trustee, Bankruptcy Examiner, post confirmation Liquidating Trustee or other post confirmation fiduciary roles and as Special Accounting Master. In these roles I have investigated frauds, Ponzi schemes, distressed businesses and their failures, financial affairs of bankruptcy debtors, evaluated asset recoveries and claims against third parties. I have provided expert testimony and extensive litigation support services to law firms involving complex insolvency issues and commercial damages. I have been qualified as an expert dozens of times in federal and state courts regarding Ponzi schemes, insolvency, fraudulent transfers, funds and asset tracing, lost profits, damages and other subject matters as well as a non-testifying expert in many other cases. A true and correct copy of my Resume and Case Experience is attached hereto as **Attachment A**.

BACKGROUND²

9. The Plaintiff filed this class action seeking damages resulting from Spartan Race Inc.'s ("Spartan's") representations regarding its "Racer Insurance Fee." Plaintiff alleges these representations were deceptive and tended to lead a reasonable consumer to believe that the mandatory, nonrefundable \$14 charge is used solely to purchase insurance on behalf of the race registrant. Plaintiff alleges that Spartan failed to disclose that it uses the Racer Insurance Fees to

² Includes information provided by Counsel.

defray administrative expenses and as a hidden profit center for Spartan.³ Plaintiff also seeks injunctive relief to prohibit Spartan from continuing to make the allegedly deceptive representations concerning the Racer Insurance Fee.⁴

10. Spartan denies Plaintiffs' allegations and asserts that the Racer Insurance Fee is not described as a pass-through charge and is used to pay insurance premiums and to defray various other additional costs incurred by the company and associated directly with insurance, risk mitigation, administrative expenses, and the Racer Insurance Fee. Spartan also asserts that it fully discloses to all class members, in various locations during the registration process, that the Racer Insurance Fee encompasses other "insurance related administrative fees" and therefore Spartan's conduct, taken as a whole, is not deceptive⁵.

11. I am informed that the Court conducted a hearing on Plaintiff's Motion for Class Certification, but had not yet issued its class certification decision at the time of settlement.

12. After numerous mediation sessions, the Parties resolved this matter in January 2021. Under the proposed Stipulation of Settlement ("Settlement Agreement"), Spartan, without the need for a claim form and/or any claims process, will allow every class member to receive:

- a free four-month membership to the new Spartan+ Membership Program (described below), or

³ Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement and Certification of the Settlement Class; page 2 [ECF No. 102]

⁴ ECF No. 107; pp 12-13.

⁵ ECF No. 63 Defendant Spartan Race, Inc's Response in Opposition to Plaintiff's Motion for Class Certification and ECF No. 95 Defendant Spartan Race, Inc's Sur-Reply in Opposition to Plaintiff's Motion for Class Certification.

- Alternatively, at the class member’s sole discretion, a \$5 Electronic Voucher for each event for which the member paid a Racer Insurance Fee during the Class Period (up to a maximum of 4 Electronic Vouchers).⁶

13. The Class Members have sixty days from the date the Class Notice email is sent to make their selection between the Spartan+ Program and the Electronic Vouchers, otherwise the default relief shall be the free four-month subscription to the Spartan+ program.⁷

14. Additionally, the Settlement Agreement also provides injunctive relief requiring Spartan to rename the “Racer Insurance Fee” as the “Administrative, Insurance, and Management Fee” or “AIM Fee”⁸ and to provide increased disclosures regarding the fee, notice to the class, and the payment of Plaintiff’s attorneys’ fees and costs, as well as a class representative award.⁹

SCOPE OF ENGAGEMENT

15. I was retained by Plaintiff to provide an expert opinion with respect to the estimated monetary value of the *non-injunctive relief* made available to the Class Members under the Settlement Agreement entered into by the Parties in this Action. Specifically, I have been asked to value the Spartan+ Membership program and the \$5 Spartan Electronic Vouchers. I have not been asked to provide any legal opinions, including whether this Settlement is covered by the provisions of the Class Action Fairness Act (“CAFA”) or whether the relief is “fair and reasonable” under these particular facts and the applicable law. I have not been requested to provide, nor have I performed analysis beyond the analysis required to formulate my opinions as rendered herein, nor will I be rendering opinions relating to legal theories or issues of liability. Further, I was not

⁶ Settlement Agreement; pp 7- 8.

⁷ *Id.*, pp. 11-12.

⁸ *Id.*, pp. 8–9.

⁹ ECF No. 107, pp. 12–13.

retained to and do not provide any opinions as to the value of the *injunctive relief* provided by the proposed Settlement.

16. The information, analysis, and opinions contained in this Declaration are based on the information provided to me by Plaintiff's counsel. In the course of performing my analysis, I also reviewed and analyzed the documents, data and information described below, including the Settlement Agreement, the Motion for Preliminary Approval, the Preliminary Approval Order, and information available in the public domain. I have additionally considered certain publicly available information, regarding Spartan and the fitness industry and market. See Exhibit 1- Documents Utilized.

SUMMARY OF FINDINGS

17. The Spartan+ Program was recently launched on March 17, 2021 and includes the features discussed below. It is my opinion that the value of the free Spartan+ Program afforded by the proposed Settlement approximates its retail value of \$7.99 per month or \$32 for the four-month free membership period allowed under the Settlement Agreement. See ¶¶ 25 - 31.

18. The value of the Electronic Voucher afforded by the proposed Settlement approximates its retail value of \$5 per Electronic Voucher or \$20 for the 4 Electronic Vouchers allowed under the Settlement Agreement. See ¶¶ 40 - 44.

EXPERT ANALYSIS

19. Factors pertinent to my determination of the estimated value of the relief provided to each Class Member, include: (1) the population of the Settlement Class and the existing market for fitness applications, and (2) transferability, stack-ability and claim form requirements of the relief provided to the Class.

Spartan Events

20. According to an article in the Los Angeles Times dated August 2018 concerning the market for the goods and services provided by Spartan:

5Ks, half marathons and marathons, for example, no longer hold the allure they used to. Participation in 5Ks was 3.4 million in 2016 and has declined by 13% since then, half-marathon participation declined 25% over the same period (down from 2.9 million), and marathon participation was flat during the same period, according to a report released earlier this year on the state of running by RunRepeat.com and the International Assn. of Athletics Federations. ... Participation is up among millennials and women at two of the most popular franchises, Spartan Race and Tough Mudder, which will hold 250 and 123 events, respectively, this year around the world. The Spartan obstacle course racing series, which registered about 1 million racers worldwide in 2017, is on track to see 1.2 million racers at the starting line by the end of 2019, according to Jonathan Fine, a Spartan brand representative. 'We've found the largest growth between the ages 18 to 29' ...¹⁰

21. Spartan organizes, sponsors and operates a series of obstacle races of varying distance and difficulty ranging from 3K to marathon distances. The series include the Spartan Sprint, the Spartan Super, the Spartan Beast, and the Spartan Ultra.¹¹ Spartan events are held in the USA and have been franchised to operate in 30 countries including Canada, South Korea, Australia and several European countries. Spartan also has a military series, hosted on military bases¹². Spartan also sponsors winter¹³ and team events¹⁴.

22. The first Spartan event was held in 2010 at the Catamount Outdoor Center in Williston, Vermont and represented the city of Burlington, Vermont.¹⁵ Roughly 500 competitors

¹⁰ https://www.latimes.com/health/la-he-extreme-fitness-20190615-story.html?_amp=true

¹¹ <https://spartanrace.zendesk.com/hc/en-us/sections/200413936-About-Spartan>

¹² <https://race.spartan.com/en/special-series-honor>

¹³ <https://race.spartan.com/en/race/find-race>; <https://www.spartan.com/blogs/unbreakable-race-stories/spartan-race-2021-schedule>

¹⁴ <https://race.spartan.com/en/teams>

¹⁵ <https://mountaintimes.info/by-the-numbers/>

participated to "run, crawl, jump and swim" and overcome a variety of obstacles. Immediately prior to the COVID-19 Virus pandemic, Spartan was conducting races involving approximately 250,000 to 350,000 participants each year.¹⁶

23. In 2013 Reebok became an event title sponsor, and the Spartan events were renamed the "Reebok Spartan Race Series".¹⁷ On December 7, 2013, Universal Sports broadcast a special on the 2013 Spartan Race World Championships.¹⁸ In August 2015, the NBC parent network approved a Spartan-based television series named "Spartan: Ultimate Team Challenge," led by the producers of the NBC American Ninja Warrior series.¹⁹ In February 2020, Spartan acquired the assets of its main obstacle course event competitor Tough Mudder²⁰ and became the leader and popular company offering obstacle course events.

24. An article authored by Kaelyn Lynch and published in Outside Magazine in 2020 chronicled the devastating financial impact of the COVID-19 pandemic on the operations and financial condition of Spartan:

"Like most other industries, endurance racing has been hit hard by the pandemic. In March, [Spartan] furloughed 75 percent of [its] staff after losing over \$9 million in profits. The Endurance Sports Coalition, which, along with Spartan, includes brands like Ironman and USA Triathlon, normally has a \$3 billion annual economic impact, most of which will be lost this year as races are postponed and vendors drop out. Some races, like Ironman,

¹⁶ *Ibid.*

¹⁷ <https://www.forbes.com/sites/darrenheitner/2013/09/03/spartan-race-growing-through-participation-surge-and-reebok-nbc-partnerships/?sh=691e93501b60>

¹⁸ https://issuu.com/bobconner232/docs/the_spartan_race_and_the_three_four

¹⁹ <https://deadline.com/2015/08/nbc-spartan-race-competition-series-american-ninja-warrior-producer-1201506930/>

²⁰ <https://www.bizjournals.com/boston/news/2020/02/26/spartan-race-clears-hurdle-in-acquisition-of-rival.html>

have transferred participants' registration fees to events later in 2020 or 2021, while others have encouraged people to run virtual races, where they create their own, socially distanced courses. In an industry where the vast majority of businesses are small mom-and-pop operations, though, the pandemic could cause many companies to close their starting lines for good.”²¹

The Spartan+ Membership Program

25. While the pandemic adversely impacted the operating revenues for Spartan and other companies operating mass participation events for which social distancing was not feasible, online or remote fitness memberships available through computer or personal device applications or websites have flourished and remain a growing industry. According to an industry analysis published in January 2021, the global fitness app market size was valued at “\$4.4 billion in 2020 and is expected to expand at a compound annual growth rate (CAGR) of 21.6% from 2021 to 2028”.²² Further, the protracted spread of the COVID-19 pandemic resulting in nationwide lockdowns and social distancing norms has precipitated a transition to virtual fitness from traditional studios and gyms. The growing awareness regarding health and wellness is also driving the market.²³ This, in turn, has vastly increased the downloads and usage of fitness.

26. According to a poll conducted in mid-2020, 74% of Americans used at least one fitness app or site during quarantine (41% for the first time), and “64% of Americans are now more interested in at-home fitness options”, and over half of those now plan on canceling their gym

²¹ <https://www.outsideonline.com/2413634/spartan-race-summer-2020-coronavirus>

²² <https://www.grandviewresearch.com/industry-analysis/fitness-app-market>

²³ *Ibid*

memberships for good.²⁴ The average American used two fitness apps and took four online fitness classes during the lockdown.²⁵

27. According to an article published in the World Economic Forum in September 2020, the global downloads of fitness and health apps increased by 46%. This increased usage rate of fitness apps due to a growing trend of online fitness training is driving the market globally.²⁶ For example, exercise equipment company Peloton has surged in popularity this year with a report that it doubled its sales in 2020, collecting an estimated \$1.8 billion in revenue by the end of the year.²⁷

28. Therefore, memberships in a virtual fitness program have enjoyed a boost, and provide a real and tangible benefit to the Class.

29. The proposed Settlement provides an automatic four-month free enrollment in the Spartan+ Membership Program (the “Spartan+ Program”) to every Class Member unless such Class Member elects to receive alternative monetary relief in the form of Electronic Vouchers. Notably, Class Members will not be required to submit a claim form, make any election, or take other affirmative action, other than clicking to activate the membership online, to receive the four-month free enrollment in the Spartan+ Program.

30. The Spartan+ Program, which was recently launched on March 17, 2021, is accessible remotely through a smartphone/tablet app accessing the internet. Spartan currently offers a remote fitness application, but the Spartan+ Program will include many important

²⁴ <https://www.freeletics.com/en/press/news/freeletics-surveys-americans-to-understand-what-is-in-store-for-the-fitness-industry-post-covid-19/>

²⁵ *Ibid.*

²⁶ <https://www.weforum.org/agenda/2020/09/fitness-apps-gym-health-downloads>

²⁷ <https://www.statista.com/chart/22836/peloton-annual-sales/>

features,²⁸ including: (1) subscription to an enhanced Spartan Fit App (formerly \$14.99/month),²⁹ including online workouts, training programs, activity tracking and more from world class coaches; (2) free shipping and handling for merchandise ordered from Spartan’s website; (3) a 20% discount applicable to online merchandise purchases; (4) exclusive discounts on select Spartan merchandise available to Spartan+ members³⁰; (5) free, downloadable, high-resolution photo downloads (without watermarks) after events; (6) access to other “members only” premium content on Spartan’s website; (7) express race day registration; (8) a Club Area for post-race recovery; (9) guaranteed start time choice for races; and (10) advanced race analysis to help participants with their fitness goals and to complete races.³¹

31. The retail cost of the Spartan+ Membership program to the public is \$7.99 per month.³² For the reasons stated below, in my opinion, \$7.99 per month is a reasonable market-based retail value for the Spartan+ Membership.³³ Since each Class Member is entitled to receive this benefit free of charge for four months, each Class Member will receive benefits with a monetary value of at least \$32 for this component of the proposed Settlement.

Value of the Spartan+ Program offered to Class Members

32. The benefits of the Spartan+ Membership compare favorably to other digital fitness memberships, such as Peloton and Apple+.

²⁸ <https://www.spartan.com/pages/spartan-plus-membership>

²⁹ We were advised that the Spartan Fit app previously launched by Spartan has been enhanced for inclusion in the Spartan+ Program.

³⁰ Currently there is a jacket available to Spartan + Program members for \$99, with a retail value of \$250.

³¹ Screenshots illustrating some of the benefits of the Spartan + Program are included at **Exhibit 2.**

³² <https://www.spartan.com/pages/spartan-plus-membership>

³³ See discussion at ¶¶ 32–39.

33. Peloton Interactive Inc. is a fitness company that sells equipment and access to virtual fitness classes such as biking, running, yoga, and strength training.³⁴ Peloton offers a Digital Membership (i.e., without requiring purchase of any equipment such as the Peloton Bike or Treadmill). This individual membership provides access to Peloton’s “entire library of classes” on “your phone, tablet and TV, and web browser.”³⁵ The cost for the Peloton Digital Membership is currently \$12.99 per month. Unlike the Spartan+ Program which includes discounted merchandise and free shipping, there are no additional benefits associated with the Peloton Digital Membership.

34. Peloton also provides an All-Access membership which costs subscribers \$39 per month and provides the full immersive experience on the Peloton Bike and Tread. The All-Access membership includes the Digital Membership but requires users to have access to a Peloton Bike or Tread, which equipment has a cost approximating \$1,900 or more³⁶.

35. Similarly, the Apple+ Fitness membership costs \$9.99 per month.³⁷ Apple Fitness+ is “a new fitness experience” that allows users to “choose from a catalog of workouts led by expert trainers”. If attached to the Apple Watch, “in-session metrics, like heart rate and calories burned, are synced to your iPhone, iPad, or Apple TV, so you don’t have to take your eyes away from your workout to see how you’re doing.”

36. To receive all of the benefits of the Apple+ Membership, consumers must also purchase an Apple Watch Series 3 or later at a cost of approximately \$199.³⁸ Similar to the Spartan+ Program, Apple+ offers a variety of fitness classes and workouts. However, unlike the

³⁴ <https://www.onepeloton.com/membership>

³⁵ <https://www.onepeloton.com/app>

³⁶ <https://www.onepeloton.com/bike>

³⁷ <https://www.apple.com/apple-fitness-plus/?cid=wwa-us-kwgo-fitness-slid->

³⁸ <https://www.apple.com/apple-watch-series-3/>. The Apple+ Fitness membership is free for three months if you purchase an Apple Watch series 3 or later.

Spartan+ Program which includes discounted merchandise and free shipping, there are no additional benefits associated with the Apple+ Membership.

37. The Spartan+ Program is thus less expensive and provides Class Members with more benefits than similar programs in the marketplace such as the Peloton Digital Membership and Apple+ Membership. Additionally, the Spartan+ Program does not require users (such as Class Members) to purchase equipment such as the Apple Watch or the Peloton Bike or Tread³⁹ in order to benefit from the Spartan+ Program.

	Spartan Free	Spartan Plus	Peloton Digital	Apple Fitness +
Cost per Month	\$ -	\$ 7.99	\$ 12.99	\$ 9.99
Cost per Year	\$ -	\$ 85.00	\$ 155.88	\$ 79.99
Personalized Race Results	✓	✓		
Free Event Photos	✓	✓		
Full Race Leaderboards	✓	✓		
Event + Ticket Hub	✓	✓		
Latest News + Event Updates	✓	✓		
Exclusive Content	✓	✓		
Training App (Note 1)		✓	✓	✓
Express Race Day Registration		✓		
Club Area Post-Race (Coming Soon)		✓		
Guaranteed Start Time Choice		✓		
20% Off Merch + Free Shipping & Returns		✓		
HD Watermark-Free Photo Downloads		✓		
Advanced Race Analysis (Coming Soon)		✓		
Curated playlists			✓	✓
Expert Trainers		✓	✓	
Classes with 10+ workout types			✓	✓
Connect and Compete with Community			✓	
Free 30 day Trial			✓	
Track your metrics (with apple watch)			✓	✓
Compete against others in workout				✓
Note 1) The Training App includes workouts with varying intensities and articles to improve strength, performance and nutrition.				

38. The Spartan+ Program was recently launched on March 17, 2021 and includes the features discussed above. It is my opinion that the value of the free Spartan+ Program afforded by

³⁹ As required for the Peloton All-Access Membership.

the proposed Settlement approximates its retail value of \$7.99 per month or \$32 for the four-month free membership period allowed under the Settlement Agreement.

39. I understand from updated information provided by Spartan’s counsel subsequent to entry of the Preliminary Approval Order that the Settlement Class encompasses approximately 800,000 members⁴⁰. I conclude, therefore, that the aggregate market-based retail value made available to Class Members for the Spartan+ Program component of the proposed Settlement totals \$25.6 million.

Value of the Electronic Voucher Option Available to Class Members

40. As an alternative to the four-month free subscription to the Spartan+ Program, every Class Member has the option to instead elect to receive, one \$5.00 electronic Voucher for each Spartan event for which they paid a “Racer Insurance” fee during the Class Period, up to a total of four (4) Electronic Vouchers (for a combined value of \$20.00).⁴¹ Each Electronic Voucher entitles the holder to a \$5.00 credit towards the purchase of any non-discounted merchandise from Spartan’s website.

41. There are currently 25 merchandise items available for \$5.00 or less in Spartan’s online merchandise store,⁴² including bracelets, magnets, keychains, hydration packets, Spartan magazine, and vinyl stickers. There are almost 100 merchandise items available for \$20.00 or less in the Spartan Shop including tee shirts, hoodies, jackets and towels. Spartan has advised that it has no intention of removing said items as a result of the Settlement.

⁴⁰ Counsel has stated that a Declaration of Deanna Sheridan is being filed concurrently citing the 800,000 members.

⁴¹ ECF No. 102-3 at ¶ III.B.

⁴² <https://www.spartan.com/pages/shop>

	Men	Women	Kids	All	Total	Items
\$0-\$5	0	0	9	19	28	bracelets, tags, keychains, magnets
\$5.01-\$10	6	4	4	7	21	tee shirts
\$10.01-\$15	7	1	2	2	12	tee shirts
\$15.01-\$20	9	10	4	16	39	jacket, hoodie, towels etc
Totals	22	15	19	44	100	

42. Settlement Class Members may “stack” up to four (4) Electronic Vouchers for a single purchase and may freely transfer their vouchers to friends and family members. Each Electronic Voucher will be valid for two (2) years from the date of issuance. Settlement Class Members may use the Electronic Vouchers to purchase merchandise (some of which is available without the need to pay additional funds) over a two-year period and can likewise stack or transfer the vouchers with a maximum value of \$20 for 4 Electronic Vouchers.


43. Therefore, in my opinion, the value of the Electronic Voucher afforded by the proposed Settlement approximates its retail value of \$5 per Electronic Voucher or \$20 for the 4 Electronic Vouchers allowed under the Settlement Agreement.

44. Since, according to Spartan, there were approximately two (2) million total registrations during the Class Period,⁴³ the aggregate value of the Electronic Voucher component of the proposed Settlement, standing alone, approximates \$10 million.

⁴³ ECF No. 102-3 at p 2.

FURTHER, DECLARANT SAYETH NOT.

Under penalties of perjury, I declare that I have read the foregoing Declaration and that the facts stated in it are true.



Soneet R. Kapita, CPA⁴⁴, CFF, CFE, CIRA

Dated March 24, 2021.

⁴⁴ Regulated in the State of Florida.

Exhibit 1

AARON FRUITSTONE, PLAINTIFF V. SPARTAN RACE, INC. , DEFENDANT
CASE NO.: 1:20-CV-20836-BLOOM/LOUIS
UNITED STATES COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Documents Utilized

No.	Document Description
1	Order Granting Motion for Preliminary Approval of Class Action Settlement, Conditionally Certifying a Class For Settlement Purposes, Directing The Issuance Of Class Notice, And Scheduling a Final Approval Hearing. [ECF No. 107]
2	Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement and Certification of the Settlement Class [ECF No. 102]
3	Defendant Spartan Race Inc's Response in Opposition to Plaintiff's Motion for Class Certification [ECF No. 63]
4	Defendant Spartan Race, Inc's Sur-Reply in Opposition to Plaintiff's Motion for Class Certification [ECF No. 95]
5	Settlement Agreement [ECF No. 102-3]
6	https://www.latimes.com/health/la-he-extreme-fitness-20190615-story.html?_amp=true
7	https://spartanrace.zendesk.com/hc/en-us/sections/200413936-About-Spartan
8	https://race.spartan.com/en/special-series-honor
9	https://race.spartan.com/en/race/find-race
10	https://www.spartan.com/blogs/unbreakable-race-stories/spartan-race-2021-schedule
11	https://race.spartan.com/en/teams
12	https://mountaintimes.info/by-the-numbers/
13	https://www.forbes.com/sites/darrenheitner/2013/09/03/spartan-race-growing-through-participation-surge-and-reebok-nbc-partnerships/?sh=691e93501b60
14	https://issuu.com/bobconner232/docs/the_spartan_race_and_the_three_four
15	https://deadline.com/2015/08/nbc-spartan-race-competition-series-american-ninja-warrior-producer-1201506930/
16	https://www.bizjournals.com/boston/news/2020/02/26/spartan-race-clears-hurdle-in-acquisition-of-rival.html
17	https://www.outsideonline.com/2413634/spartan-race-summer-2020-coronavirus
18	https://www.grandviewresearch.com/industry-analysis/fitness-app-market
19	https://www.freeletics.com/en/press/news/freeletics-surveys-americans-to-understand-what-is-in-store-for-the-fitness-industry-post-covid-19/
20	https://www.weforum.org/agenda/2020/09/fitness-apps-gym-health-downloads
21	https://www.statista.com/chart/22836/peloton-annual-sales/
22	https://www.spartan.com/pages/spartan-plus-membership
23	https://www.onepeloton.com/membership
24	https://www.onepeloton.com/app
25	https://www.onepeloton.com/bike
26	https://www.apple.com/apple-fitness-plus/?cid=wwa-us-kwgo-fitness-slid-
27	https://www.apple.com/apple-watch-series-3/
28	https://www.spartan.com/pages/shop
29	https://apps.apple.com/us/app/spartan-fit/id1504574501

See Accompanying Declaration Dated March 24, 2021

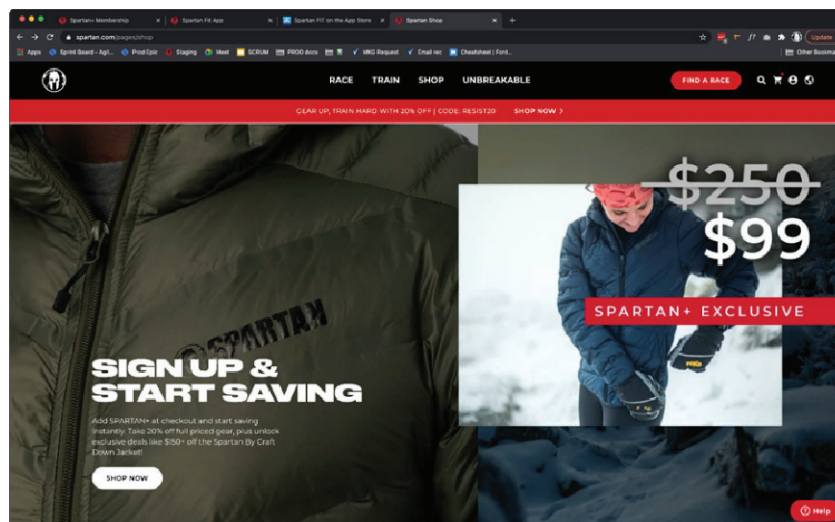
Exhibit 2

AARON FRUITSTONE, PLAINTIFF V. SPARTAN RACE, INC. , DEFENDANT
CASE NO.: 1:20-CV-20836-BLOOM/LOUIS
UNITED STATES COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

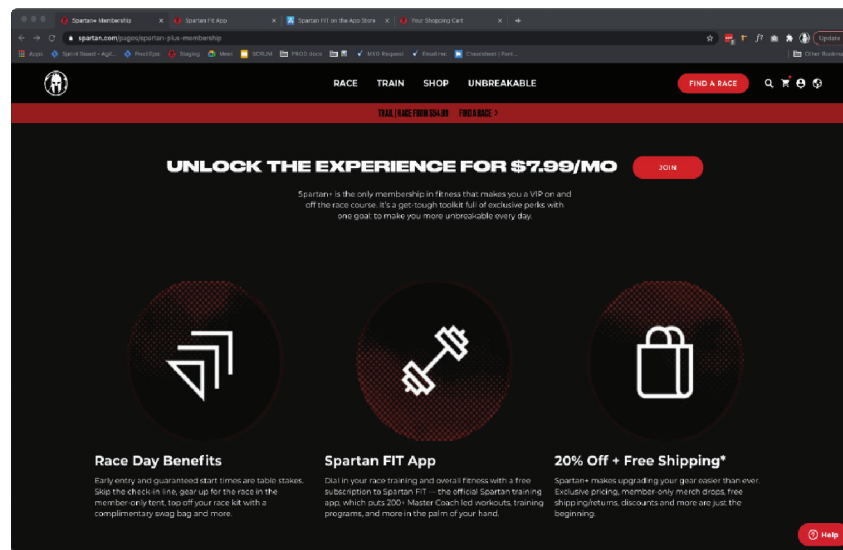
Spartan + Membership Screenshots

Source: <https://www.spartan.com/pages/shop>, <https://www.spartan.com/pages/spartan-plus-membership> and <https://apps.apple.com/us/app/spartan-fit/id1504574501>

Exclusive discount for Spartan+ members, \$150+ off the Spartan by Craft Down Jacket



Overview depiction of Spartan+ Program benefits



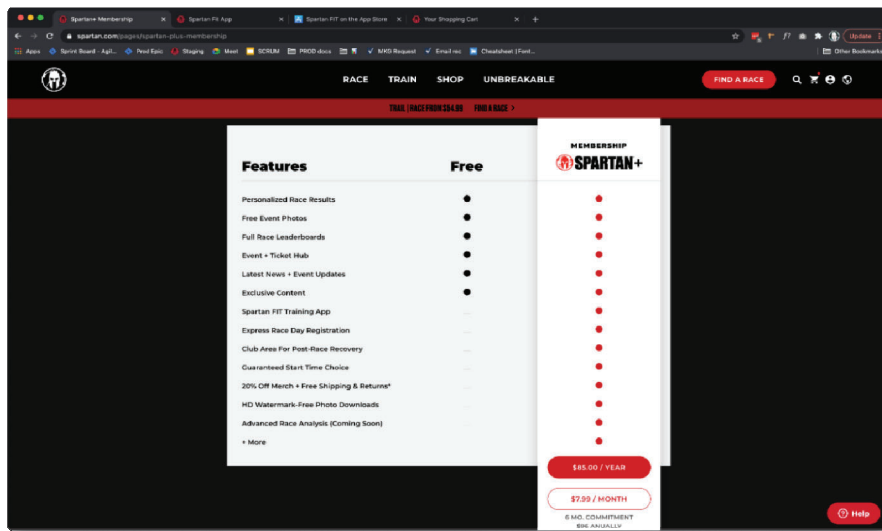
AARON FRUITSTONE, PLAINTIFF V. SPARTAN RACE, INC. , DEFENDANT
CASE NO.: 1:20-CV-20836-BLOOM/LOUIS
UNITED STATES COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Spartan + Membership Screenshots

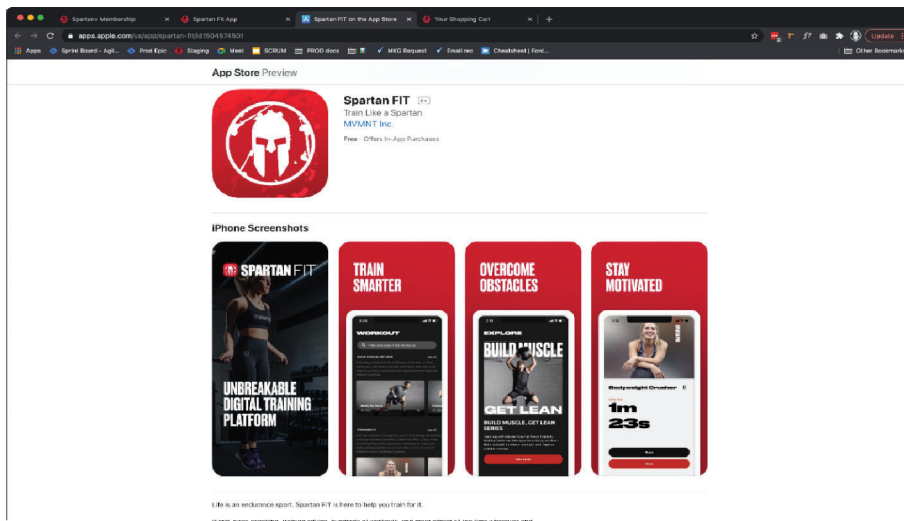
Source: <https://www.spartan.com/pages/shop>, <https://www.spartan.com/pages/spartan-plus-membership> and <https://apps.apple.com/us/app/spartan-fit/id1504574501>

Exclusive discount for Spartan+ members, \$150+ off the Spartan by Craft Down Jacket

Additional overview depiction of Spartan+ Program benefits



Screenshots of the Spartan Fit app (free membership with Spartan+ Program)



See Accompanying Declaration Dated March 24, 2021

Attachment A

Soneet R. Kapila, CPA, CIRA, CFE, CFF

kapila@kapilamukamal.com

Soneet R. Kapila, of East Indian origin, born in Kenya, Africa, is the founder of Soneet R. Kapila, P.A., d/b/a Kapila & Company and founding partner of *KapilaMukamal, LLP*. For over 25 years, he has concentrated his efforts in the areas of consulting in insolvency, fiduciary and creditors' right matters. Recognized for his acumen as a "business man", he has been appointed in Federal District Court, Bankruptcy Court and Florida State Court and served in the roles of Chief Restructuring Officer, S.E.C. Corporate Monitor, Examiner, Chapter 11 Trustee of Operating Businesses, Liquidating Trustee and Receiver.

**Professional Experience**

Mr. Kapila's practice is focused on restructuring, creditors' rights, bankruptcy, fiduciary matters and financial transactions litigation. He represents other bankruptcy trustees, debtors and both secured and unsecured creditors in and out of bankruptcy court. He also regularly advises clients about insolvency and implications involved in business transactions and the operation of distressed businesses. As a Trustee plaintiff, Mr. Kapila has managed complex litigation in significant cases.

As a fiduciary, he has advised and represented debtors and creditors' committees in formulating, analyzing and negotiating plans of reorganization. Recognized as an expert in fraudulent conveyance, Ponzi schemes and insolvency issues, Mr. Kapila has provided expert testimony and extensive litigation support services to law firms involving complex insolvency issues and commercial damages. He is a sitting trustee on the panel of U.S. Bankruptcy Trustees (Southern District of Florida) and has served in numerous matters in both the Southern and Middle Districts of Florida.

He has conducted numerous forensic and fraud investigations and has worked in conjunction with the Securities and Exchange Commission (SEC), Federal Bureau of Investigation (FBI) and the United States Attorney's Office.

EDUCATION / QUALIFICATIONS

Certified Public Accountant (CPA) - Florida
 Certified Insolvency and Restructuring Advisor (CIRA)
 Certified Fraud Examiner (CFE)
 Certified in Financial Forensics (CFF)
 Certified in Bankruptcy Mediation—Training
 —St. John's University (2014)
 MBA, Cranfield School of Management Studies, England
 Institute of Chartered Accountants in England and Wales

PROFESSIONAL AFFILIATIONS

American College of Bankruptcy
 American Institute of Certified Public Accountants
 Florida Institute of Certified Public Accountants
 Association of Insolvency & Restructuring Advisors
 Association of Certified Fraud Examiners
 American Bankruptcy Institute
 National Association of Bankruptcy Trustees
 National Association of Federal Equity Receivers

ROLES

Bankruptcy Trustee—Chapter 7, 11 & Subchapter V
 Liquidating Trustee / Plan Administrator
 Chief Restructuring Officer
 Corporate Monitor / Examiner
 Receiver / Assignee

ACCOMPLISHMENTS

- * Fellow, American College of Bankruptcy – 2013
- * Top CPAs and Litigation Support Professionals, South Florida Legal Guide—multiple years
- * Power Leaders in Law and Accounting – South Florida Business Journal – 2014, 2015
- * Best Trustee – Daily Business Review's Best of 2012
- * Key Partners Award Honoree – South Florida Business Journal – 2010
- * Bronze Medal Award – 3rd highest score, Examination of the Association of Insolvency and Restructuring Advisors – 1996

AREAS OF EXPERTISE

Bankruptcy and Insolvency
 Creditors Rights
 Restructuring
 Financial Transactions Litigation
 Complex Commercial Litigation

Kapila/Mukamal

CPAs, Forensic and Insolvency Advisors

Soneet R. Kapila, CPA, CIRA, CFE, CFF

kapila@kapilamukamal.com



SPEAKING ENGAGEMENTS

American Bankruptcy Institute
New York Law School
St. Thomas University Law School
National Conference of Bankruptcy Judges
National Association of Bankruptcy Trustees
Association of Insolvency & Restructuring Advisors
Bankruptcy Bar Association for the Southern District of Florida
Central Florida Bankruptcy law Association
Florida Bankruptcy Bar
Florida Institute of Certified Public Accountants
National Business Institute
Turnaround Management Association
University of Miami, School of Law
Florida International University, School of Law
Stetson College of Law, Insolvency Symposium – Germany
American Bar Association

CIVIC, VOLUNTEER AND PHILANTHROPIC

- Past and Present

The Kapila Family Foundation - Director

American Bankruptcy Institute -
Treasurer—2020

Member of the Executive Committee—2019—>

Member of Board of Directors - 2016—>

Southeast Regional Conference:

Chairperson of Advisory Board, 2016

Advisory Board, - 2012-2017 and Co-Chair 2015

Caribbean Insolvency Symposium -

Advisory Board—2010-2014 and Co-Chair 2015

Association of Insolvency and Restructuring Advisors -

Board of Directors

Past Chairman and Past President

The Florida Bar, Member, Grievances Committee

Hialeah-Miami Springs, NW Dade Chamber of Commerce -

Board of Directors (Past)

The American Group of CPA Firms - Chairman

– Litigation Support Services Committee of the

National Training and Experience Sharing Program

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REPRESENTATIVE CLIENTS

City of Detroit, Michigan *Financial Advisors to Fee Examiner*

SMF Energy Corporation *CRO, Liquidating Trustee*

Fontainebleau Las Vegas, LLC *Chapter 7 Trustee*

**Universal Health Care Group, LLC/
American Managed Care, Inc.** *Chapter 11 / Liquidating Trustee*

Simply Fashion Stores, LLC *Chief Restructuring Officer*

Spear & Jackson, Inc *Corporate Monitor – SEC Appointment*

Pan American Hospital *Examiner / Plan Administrator*

Louis J. Pearlman / TransContinental Airlines, et al –
Chapter 11 Trustee / Liquidating Trustee

Levitt & Sons *Chief Administrator*

Planet Hollywood International, Inc *Examiner*

Banco Latino International *Financial Consultants to
Official Committee of Unsecured Creditors*

Southeast Bank Corp *Financial Advisors to Chapter 7 Trustee*

Innovida Holdings, LLC /Claudio Osorio *Chapter 7 Trustee*

Prime Capital Corporation *Chapter 7 Trustee*

GunnAllen Financial, Inc. *Ch 11 Examiner/Liquidating Trustee*

SEC v. Christopher Freeman Brogdon *Corporate Monitor
- SEC Appointment*

PUBLICATIONS

**“New Receivership Act Streamlines Receiver’s Role for Lenders,
Other Stakeholders”** - Daily Business Review (Sept. 2020)

**“Eye of the Evaluator—The Role of Contingent Liabilities in an
Insolvency Analysis”** - American Bankruptcy Institute Journal—
(April, 2018)

**“Best Practices in the Treasury Functions of a Chapter 7 Trustee’s
Office”** – American Bankruptcy Trustee Journal (NABT) (Fall, 2015)

**“Fraud and Forensics: Piercing Through The Deception In A Com-
mercial Fraud Case”** – American Bankruptcy Institute – 2015

“Ponzi Schemes: Fiduciaries May Be The Saving Grace”, ABI Jour-
nal (2014)

“A Health Care Fraud and Bankruptcy Primer”, Southern District of
Florida Bankruptcy Bar Association Journal (2014)

“Hidden Resources in a Small Business”

Kapila/Mukamal

CPAs, Forensic and Insolvency Advisors

Soneet R. Kapila
Case Experience - 1985 to Present

Case Name	Approximate Date	Role/Testimony	Deposition / Trial / Other	Industry	Attorney / Contact Firm Name
19th Hole Discount Golf, Inc.	1997	Expert - Business valuation	T	Retail	Robert Furr, Esq. Furr and Cohen, P.A.
3MT Investments, LLC vs. Black Diamond Brokerage Services, LLC	2020	Forensic/Damages Expert	D	Contract Breach Litigation	Ed Whitson, Esq. Adams and Reese LLP
ABC Cellular Services, Inc.		Examiner	X	Wireless communication business	Phillip M. Hudson, III, Esq. Arnstein & Lehr, LLP
Abel & Seiden vs. Keitel vs. Nutter	1999	Expert - damages - lost profits	T	Fast food franchise	Jack Scarola, Esq. Searcy, Denney, Scarola, Barnhart & Shipley
Advanced Telecommunication Network, Inc. vs. Daniel W. Allen and David D. Allen	2004	Expert - solvency	D, T	Telecommunications	Phillip M. Hudson, III, Esq. Arnstein & Lehr, LLP
Alternative Services, Inc.	1994	Chapter 11 Trustee		Developmentally disabled group homes	Paul Battista, Esq. Genovese, Joblove & Battista
Amazing Flooring Sources, Inc.	2014	Expert Solvency; Equivalent Value	D	Flooring	James B. Miller, Esq.
Frank A. Amelung, Jr. & Eugenia Marie Amelung	1997	Accountants to the Trustee	D		Michael R. Bakst, Esq. Ruden, McClosky
Michael R. Bakst, Trustee vs. Robert J. Probst					
American Ammunition, F&F Equipment, Inc. & Industrial Plating Enterprises Co.	2009	Examiner	X	Small arms ammunition manufacturer	
American Fiber Optics	1995	Accountants for Trustee - insolvency, preference & fraudulent transfer analysis		Fiber optics	Robert Furr, Esq. Furr & Cohen, P.A.
American Pro International Corp. Arpi Group, Inc., Claudio Resnick and Omar Diaz Blasco v American DJ Supply, Inc.	2014	Expert - damages associated with trademark infringement	D	Trademark	David Friedland, Esq. Rich Vining, Esq.
American Way Services Corp.	1997	Expert - insolvency	T	Credit life insurance	Herbert Stettin, Esq./Herb Stettin, P.A. Paul Battista, Esq./Genovese, Joblove & Battista
Amoco Oil Company	1997	Expert - investigate conduct of corporate management & business, preferences & fraudulent transfers, profitability of business	D/T	Gas stations & franchise	Ron Peterson, Esq./Jenner & Block Craig Rasile, Esq./Holland & Knight
APL Corporation	1993	Expert - conduct of business. Accountant/Financial Advisor to Committee of Unsecured Creditors	T	Manufacturing	Steve Busey, Esq. Smith, Hulsey, Busey
A.R.E. & Overseas, Inc.	1993	Chapter 11 Trustee		Aviation services	David Levine, Esq. Levine, Kellogg, Lehman, Schneider & Grossman
Atlas Environmental, Inc.	1998	Chapter 11 Trustee		Waste management	Steven B. Soll, Esq. Otterbourg, Steindler, Houston & Rosen
ATM Financial Services, LLC	2008	Chapter 7 Trustee	D	Insolvency/PONZI scheme	Patrick Scott, Esq. Gray Robinson
Banco Latino International	1994	Accountant/Financial Advisor to Committee of Unsecured Creditors		Banking	John Genovese, Esq. Genovese, Joblove & Battista
Bankest Capital Corporation	2004	Chapter 7 Trustee	D/T	Factoring	Kenneth Robinson, Esq. Rice Pugatch Robinson & Schiller

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Soneet R. Kapila
Case Experience - 1985 to Present

Case Name	Approximate Date	Role/Testimony	Deposition / Trial / Other	Industry	Attorney / Contact Firm Name
Barfield vs. Burns	1997	Expert - contractual dispute/damages	D/T	Real estate	Jack Scarola, Esq. Searcy, Denney, Scarola, Barnhart & Shipley
Bay Club	2019	Receiver - Motion to Dismiss Involuntary Bankruptcy	T	Real Estate	Paul Battista, Esq. Genovese, Joblove & Battista PA Mark Hildreth, Esq. Shumaker LLP
Bayside Ventures I, LLC, et al. - Soneet Kapila as Plan Administrator vs. Bank One, N.A., Morgan Chase Bank, N.A. & Chase Home Finance, LLC	2008	Plan Administrator	D	Investment venture	Monique Hayes, Esq. Genovese Joblove & Battista
Beal Bank - Americare Retirement Facilities	1997	Financial analysis, plan feasibility, character of income (Judge James D. Gregg)	T	Health care/ALF	James Paul, Esq. Haley Sinagra Paul & Toland
Belvedere Construction Company	1992	Chapter 11 Trustee		Construction	David Profflet, Esq. Profflet & Associates
Bobby Allison, Inc. Bobby Allison Wireless Corp, Inc.	2003	Chapter 11/7 Trustee		Wireless retail stores	Arthur J. Spector, Esq. Berger Singerman
Bray & Gillespie Management, LLC, et al. - surcharge motion	2010	Creditor Agent	T	Hospitality	D. Christopher Carson, Esq. Denise Dell-Powell, Esq. Burr & Forman, LLP
Bray & Gillespie Management, LLC, et al. - motion to remove	2010	Creditor Agent	T	Hospitality	D. Christopher Carson, Esq. Denise Dell-Powell, Esq. Burr & Forman, LLP
Broward County Archeological Society	2004	Chapter 11/7 Trustee		Museum	Michael R. Bakst, Esq. Rudeln McClosky
CAC Aggregates vs. Comyns	2000	Expert - lost opportunity damages	D/T	Quarry	Jack Scarola, Esq. Searcy, Denney, Scarola, Barnhart & Shipley
Calumet/Bayshore Apartments	1995	State Court Receiver		Hospitality/Condominium hotel	Patrick Scott, Esq. Gray Robinson
Calvert Property/Key Largo Limited Partnership	1996	Expert - feasibility of Plan of Reorganization	D/T	Hospitality	Patricia Redmond, Esq. Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson
Calves vs. Lennar Homes, et al.	2001	Damages from accident/lost profits	D/T	Construction - ground work	Jack Scarola, Esq. Searcy, Denney, Scarola, Barnhart & Shipley
Caribbean Fuels America, Inc. Caribbean Line vs. Drew M. Dillworth Carpet - Tile Outlet	2015 1996	Expert - Insolvency State Court Receiver	T	Fuel Brokers Floor covering	James B. Miller, Esq. Patrick Scott, Esq. Gray Robinson
Cascade International, Inc., et al., Kenneth A. Welt, Trustee v. Gunster, Yoakley & Stewart Cash Today USA, Inc.	1995 2005	Expert - valuation of business and insolvency. Expert - Ponzi/advance pay fraud	D T	Retail Advance pay scheme	Dennis Waggoner, Esq. Hill, Ward & Henderson Jeffrey Kay, AUSA U.S. Attorney's Office

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Caulkins Indiantown Citrus Company	1999	Expert - damages - lost profits	D/T	Orange groves	Jack Scarola, Esq. Searcy, Denney, Scarola, Barnhart & Shipley
Central Cellular Services, Inc.	1997	Examiner - Investigate conduct of business and management	X	Wireless telecommunications	Jose Loredo, Esq. Carlton Fields
Certified, Inc. Kapila v. Thomas J. McNamara, Inc.	2012	Expert - Ponzi/Insolvency	D	Commodities	Carlos E. Sardi, Esq. Genovese, Joblove & Battista
Cheryl's Day Care Center, Inc.	1995	Chapter 11 Trustee		Day care	Paul Battista, Esq. Genovese, Joblove & Battista
Clybon Corporation	1993	State Court Receiver		Real estate	Patrick Scott, Esq. Gray Robinson
CLSF III IV, Inc. et. al	2013	Expert - Substantive Consolidation	T	Life Settlements	Leslie Gern Cloyd, Esq. Berger Singerman
Columbia Healthcare Partners, I-A, L.P. Valley View Nursing Home	1996	Expert - conduct of Debtor's management, financial analysis & insider transactions (Judge Paine, Middle District of Tennessee)	T	Health care/nursing home	Peyton Inge/Amresco Management, Inc. James Kelley, Esq./Neal & Harwell
Comcoa, Ltd.	1995	Accountants to the SEC Receiver Securities fraud/asset investigation		Wireless telecommunications	David Levine, Esq. Levine, Kellogg, Lehman, Schneider & Grossman
Community Environment, Inc.	1997	Examiner - Investigate conduct of business and management	X	Developmentally disabled group homes	Allison Maggiolo, Esq. Wyatt, Tarrant & Combs
Consolidated Yacht Corporation	2004	Evaluation of settlement		Yachts/boating	Jerry Markowitz, Esq. Markowitz, Davis, Trusty + Hartog, P.A.
Continuum Care Corporation	2005	Chapter 11 Trustee		Healthcare	Scott L. Baena, Esq. Bilzin Sumburg Baena Price & Axelrod
County Collection Services, Inc.	1996	State Court Receiver		Collection	Craig Eller, Esq. Gunster, Yoakley, Valdes-Fauli & Stewart
Soneet R. Kapila, as Trustee, Charles R. Covino and Dorothy J. Covino, Debtors	1995	Expert - proof of insolvency	T		Michael R. Bakst, Esq. Ruden, McClosky
Data Lease	1992	Chapter 7 Trustee	D	Holding company	David Profilet, Esq. Profilet & Associates
Marion Davidson vs. Ortho-McNeil Pharmaceutical, Inc.	2006	Expert - damages/valuation	D		Todd Falzone, Esq./Jack Scarola, Esq. Searcy, Denney, Scarola, Barnhart & Shipley
Dean Kretschmar, David Von Allmen, et al. vs. Bank of America, N.A., et al. Don Beverly, et al. vs. Bank of America, N.A., et al.	2015	Expert - Ponzi	D	Ponzi, Fraud	Gail McQuilkin, Esq. Kozyak, Tropin & Throckmorton William Scherer, Esq. Conrad & Scherer

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Dedicated Resources, Inc. Dedicated Trustees, Inc.	2002	Examiner	X	Viaticals	Chad Pugatch, Esq. Rice Pugatch Robinson & Schiller
Denison Marine, Inc.	1993	Examiner; testified regarding conduct of business	X	Marine/boat builder	Chad Pugatch, Esq. Rice Pugatch Robinson & Schiller
Design Guild, Inv. Vs. Ashoka Enterprises, et al.	1987	Expert - contractual dispute - damages	T	Design	
Dolphin Shoe	1995	Consulting to assist in formulating business plan		Soft goods	Rudolfo Pittaluga, Esq. Deloitte Financial Advisory Services, LLP
Domino Investments, Inc.	1985	Expert - preferences, fraudulent transfers; insolvency	D/T		Patrick Scott, Esq. Gray Robinson
Alberto Duque & Domino Investments, Inc.	1986	Special Accountants to the Bankruptcy Trustee Expert - insolvency	D/T		Patrick Scott, Esq. Gray Robinson
Eagle Building Technologies/ Fleming Manufacturing, Inc.	2005	Examiner	X	Heavy machinery for the manufacture of concrete masonry products	
Geoffrey W. Edelsten	2014	Chapter 7 Trustee - Rule 9019 Motion	D	Individual	Patricia Redmond, Esq. Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson
Empire Tile & Marble	2002	Chapter 11 Trustee		Floor covering	Jerry Markowitz, Esq. Markowitz, Davis, Trusty + Hartog, P.A.
Ulrich Engler - Robert E. Tardif, Trustee vs. Fidelity National Financial, Inc.	2009	Expert - Ponz/insolvency	D		Robert E. Tardif, Jr., Trustee Robert F. Elgidely, Esq. Genovese, Joblove & Battista
Ulrich Engler - Robert E. Tardif, Trustee vs. Friedrich Herring	2012	Expert - Ponz/insolvency	T		Robert E. Tardif, Jr., Trustee Robert F. Elgidely, Esq. Genovese, Joblove & Battista
Excalibur, Inc.	1994	Chapter 11 Trustee		Marine	David Levine, Esq. Levine, Kellogg, Lehman, Schneider & Grossman
Femri International	1995	Consulting to assist in formulating business plan		Catering equipment	Patricia Redmond, Esq. Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson
Fiddler's Creek, LLC	2010	Expert	T	Golf course/country club	Paul Battista, Esq. Genovese, Joblove & Battista
Financial Federated Title & Trust, Inc. a/k/a Asset Security Corp., a/k/a Viatical Asset Recovery Corp., a/k/a Quad B Ltd., a/k/a American Benefits Services, Inc. - Various adversaries	2001	Preferences, fraudulent transfers; insolvency	D/T	Viaticals/Ponzi	John W. Kozyak, Trustee Kozyak, Tropin & Throckmorton
First American Bank vs. Marvin and Marian Penalba	1994	Expert for bank - business valuation	T		Julianne R. Frank, Esq. Julianne R. Frank, P.A.
First American Railway, Morris Berger, Trustee Berger vs. Adorno Zeder	2001	Expert - business valuation	D	Tourism/railway	Kenneth Robinson, Esq. Rice Pugatch Robinson

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Fisherman's Pier, Inc.	2018	Chapter 11 Trustee - Plan Confirmation	T	Real Estate	Chad Pugatch, Esq. Rice Pugatch Robinson
Fontainebleau Las Vegas, LLC	2014	Chapter 7 Trustee - Rule 9019 Motion, D&O Settlement	D/T	Hospitality	Russ Blain, Esq. Paul Battista, Esq.
Franz Lesti and Petra Richter cs Wells Fargo Bank, N.A. f/k/a Wachovia Bank, N.A. - Engler Bankruptcy	2014	Expert - Ponzi / Damages	D	Ponzi	David Mandel, Esq. Robert Elgidelv, Esq.
Anne C. Friedman, Debtor	2001	Expert - damages - compute lost income of trust from erosion of corpus	T		Daniel Bakst, Esq. Adorno & Yoss
Fundamental Long Term Care, Inc.	2014	Expert - Successor business, fraud, corporate formalities	D/T	Healthcare	Steven Berman, Esq. Shumaker, Loop & Kendrick
Ivonne Aurea Garcia, Debtor	2013	Expert - Plan Confirmation / Feasibility	T	Individual	Richard R. Robles, Esq. Law Office of Richard R. Robles, PA
Gateway Investments Corporation	1992	Chapter 11 trustee	T	Real estate rental	John Genovese, Esq.
General Coffee Corporation a/k/a Chase & Sanborn Corporation	1985	Preferences, fraudulent transfers tax matters, insolvency	D/T	Coffee importer/distributor	Genovese, Joblove & Battista Scott Baena, Esq. Blizin Sumburg Baena Price & Axelrod
Mark J. Ginsburg	2010	Court's Expert - conduct of business	X		Chad Pugatch, Esq. Rice Pugatch Robinson & Schiller
Goodings Supermarkets, Inc.	2010	Expert - confirmation/feasibility of plan	D/T	Grocery store chain	Henry Wulf, Esq. Carlton Fields
Joan Grande/Hose McCann	2003	Business valuation	D/T	Divorce	Henry B. Handler, Esq. Weiss & Handler, P.A.
Graphic Dynamics, Inc.	1993	Accountants to the Bankruptcy Trustee		Printing	Kenneth Weit, Trustee
GunnAllen Financial, Inc.	2013	Liquidating Agent in a FINRA Arbitration			Robert V. Cornish, Jr. Dillworth Paxson LLP
Soneet R. Kapila, Trustee in Bankruptcy for Stephen B. Gray & Kathleen D. Gray vs. Stephen B. Gray, Kathleen D. Gray & Odis McKinney	1996	Chapter 7 Trustee - expert - insolvency analysis, valuation	T		Michael R. Bakst, Esq. Ruden, McClosky
Great American Farms & Interamerican Farms, LC vs. Proyecto 7 S.A., Milford International, Luis Ortega Flores and Jorge Ortega Flores	1999	Expert - lost profits damages	D/T	Farm	Andy Hellinger, Esq. Mishan, Sloto, Greenberg & Hellinger
Greenwich Insurance Services, Inc.	1990	State Court Receiver		Insurance agency	John Genovese, Esq. Genovese, Joblove & Battista
G-Site Associates	1996	Accountants/financial advisors to Committee of Unsecured Creditors. Expert - insolvency & funds tracing. Post-confirmation President to implement Plan.	D	Real estate construction	Alan Krinzman, Esq. Adorno & Yoss
Giuseppe America, Inc. v. Jan Bell Marketing	1999	Expert - lost profits damages	D/T	Jewelry manufacturing	Jeffrey D. Feldman, Esq. Feldman, Gale & Weber
Halpern et al. v. Retirement Builders	1985	Expert - contractual damages	D	Real estate	Manny Garcia, Esq. Abrams Anton

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Haulover Resort Marina	1995	Chapter 11 Trustee		Marina	David Levine, Esq. Levine, Kellogg, Lehman, Schneider & Grossman
BT/SAP Pool C Associates L.P. vs. High Point General Partnership et al.	1996	State Court Receiver		Health care/substance & alcohol abuse facility	Peter Levitt, Esq. Gunster, Yoakley, Valdes-Fauli & Stewart
Home & Housing of Dade, Inc.	1994	Chapter 11 Trustee	T	Low income housing	Paul Battista, Esq. Genovese, Joblove & Battista
Hushh, Inc.	1992	Expert - preference & fraudulent conveyance law suits	T		Martin Sander, Esq. Sandler & Sandler
International Air Leases, Inc.	1996	Exposure analysis, fraudulent transfers & preference recoveries; Expert - insolvency	D	Aviation	Scott Baena, Esq. Blitzin Sumberg Baena Price & Axelrod
International Capital Management	1998	Accountant to SEC Receiver; funds tracing/co-mingling	T	PONZI, securities fraud, foreign exchange currency	Craig Rasile, Esq. Holland & Knight
International Capital Management vs. Jose Santiago/MBA	1998	Expert Ponzi scheme and insolvency	D	PONZI, securities fraud, foreign exchange currency	Craig Rasile, Esq. Holland & Knight
International Management Associates	2001	Expert - insolvency	T		Paul Battista, Esq. Genovese, Joblove & Battista
Islil v. Gardens Anesthesiology, P.A., et al.	1993	Expert testimony - valuation	T	Health care	Jack Scarola, Esq. Searcy, Denney, Scarola, Barnhart & Shipley
C. Itoh v. Nordberg, Chase & Sanborn	1995	Fact witness	D	Coffee importer	Michael Pappone, Esq. Goodwin Procter
JerK Machine, Inc. vs. Ruden, McClosky, Smith, Schuster & Russell, P.A. and Robert C. Brighton, Jr., individually	2010	Expert - Business Damages	D	Restaurant	Joel L. Shulman, Esq. Greenspoon Marder, P.A.
Jonathan Perlman, Esq. as Receiver vs. American Express Centurion Bank	2020	Expert - Insolvency	D	Securities Fraud - Debt Consolidation	Gregory M. Garmo, Esq. Jonathan Pearlman, Esq. Genovese, Joblove & Battista
American Express Travel Related Services Co., Inc. American Express Bank, FSB, and American Express Company					
Joran Realty NY Corp.	2006	Chapter 11 Examiner	X		Brian Behar, Esq. Behar, Gutt & Glazer
Junction Financial Corporation/U.S. Ostrich Corporation	1994	Chapter 11 Trustee		Securities fraud	David Levine, Esq. Levine, Kellogg, Lehman, Schneider & Grossman
Kaplan International, Inc.	1995	State Court Receiver		Meat purveyor	Marte Singerman, Esq. Tabas, Singerman & Freedman
Keitel v. Wendy's International, Inc.	1997	Expert - damages	E/D	Fast food franchise	Jack Scarola, Esq. Searcy, Denney, Scarola, Barnhart & Shipley
King No. 16, et al.	1992	Examiner; testified regarding business conduct	X/T	Fast food franchise	Scott Baena, Esq. Blitzin Sumberg Baena Price & Axelrod

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Kleinman Trust v. Howard Rosenberg	2001	Expert - partnership allocations	D/T	Real estate	Kenneth R. Hartmann, Esq. Kozyak, Tropin & Throckmorton
Krypton Broadcasting Corporation	1993	Examiner, disbursing agent	X	Broadcast communications	Jerry Markowitz, Esq. Markowitz, Davis, Trusty + Hartog, P.A.
L Luria & Sons, Inc. vs. Citizens Watch of America, Inc.	1999	Expert - insolvency analysis		Jewelry/general merchandise	Michael D. Seese, Esq. Kluger, Peretz, Kaplan & Berlin, P.A.
L Luria & Son, Inc. vs. Iliia Lekach	1998	Expert - insolvency analysis - testified at deposition, insolvency expert, ordinary course analysis	E/D	Jewelry/general merchandise	David P. Lemoi, Esq. Genovese, Joblove & Battista
L. Luria & Son., Inc. vs. M. Fabrikant & Sons, Inc.	1999	Expert - insolvency analysis		Jewelry/general merchandise	Michael D. Seese, Esq. Kluger, Peretz, Kaplan & Berlin, P.A.
L Luria & Son, Inc. vs. Tepito Electronics, Inc.	1998	Expert - ordinary course, new value defense analysis		Electronics	David P. Lemoi, Esq. Genovese, Joblove & Battista
Lancer Offshore, Inc./The Omnifund, Ltd.	2008	Expert - class action certification	D/T	Hedge funds	David Millian, Esq. Kozyak, Tropin & Throckmorton
Lancer Partners, LP/Lancer Offshore, Inc.	2008	Expert - asset tracing	T	Hedge funds	Securities & Exchange Commission
Lancer Partners, LP vs. Grayhawk Capital Advisors, LLC	2008	Expert - insolvency/valuation	D	Hedge funds	Craig V. Rasile, Esq. Hunton & Williams
LaSalle Bank National Association v. Martin Epstein	2001	Expert - damages	D	Lending	William Zeena, Jr., Esq. Wilson, Elser, Moskowitz, Edelman & Dicker LLP
Neil & Gail Levin/Harry & Marian Epstein vs. Commissioner of Internal Revenue		Expert	T		
Liberty Property Limited Partnership vs. The Panda Project, Delta Capital Services, Jewlett-Packard Company, Ikon Office Solutions & Helix (PEI, Inc.)	1999	Expert witness - solvency analysis	D	Commercial property	Jeff R. Mazor J.R. Mazor & Associates
LP Watch Group, Inc. et al. Watchco Liquidating, Inc. f/k/a LP Watch Group, Inc.; CWLG, LLC, f/k/a Charles Winston Luxury Group, LLC; and A.G. INC., vs. Arnstein & Lehr, LLP	2016	Expert - Damages	D	Jewelry/ Watch	Lou Mirachek, Esq. Alan Rose, Esq.
The Loxscreen Company, Inc. vs. Designed Windows, Inc.	1996	Expert testimony - lost profits damages	T	Manufacturers	Michael R. Bakst, Esq. Ruden, McClosky
Dipnarine Maharaj, M.D. v. Tenet Healthcare	2004	Expert - damages breach of contract	D, T	Health care	Lash & Goldberg
Robert C. Malt & Co.	1996	Examiner - construction bankruptcy matters	X	Construction	Robert Furr, Esq. Furr and Cohen, P.A.
Marledge Group, Inc.	1996	Examiner - conduct of business	X	Marble/construction	Paul J. Battista, Esq. Genovese, Joblove & Battista

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Peter Johnson and Nicolas Johnson vs. Mastec, Inc., Jose Mas, Bob Apple, and Pablo Alvarez	2012	Expert - damages	D	Utility/powerlines	Gail McQuilkin, Esq. Kozyak, Tropin & Throckmorton
Mec/Waste, Inc.	2002	Receiver		Medical waste management	Arthur Rice, Esq. Rice Pugatch Robinson & Schiller
Metropolitan Life Insurance Company		Expert - tracing of funds & lender liability		Insurance Company	John Hart, Esq./Carlton Fields Max Kunin, Esq./Metropolitan Life Insurance Company Robert Golstein, Esq./Metropolitan Life Insurance Company
MHP Group One, L.C.	2003	Chapter 11 Trustee		Mobile home park	Alan J. Periman, Esq. Adorno & Yoss
Miami Neurological Institute	2019	Chapter 7 Trustee as Plaintiff - Reasonably equivalent value in fraudulent transfer	T	Health care	Patrick Scott, Esq. Gray Robinson
Michigan National Bank	1997	Debt discharge reporting by financial entity	T	Tax	Patrick Barry, Esq. Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson
Midtown Campus Properties, LLC	2020	Fact Witness - DIP Loan for Commercial Costs Budget	T	Multi-use development college housing project	Paul Battisa, Esq. Genovese, Joblove, Battista
Ron Morris	1996	Chapter 11 Trustee	T		Robert Furr, Esq. Furr and Cohen, P.A.
National Fisheries	2002	Assignee - assignment for benefit of creditors		Seafood processing/distributor	Jerry Markowitz, Esq. Markowitz, Davis, Trusty + Hartog, P.A.
National Store Fixture & Display Co. vs. J.R. Wire & Metal Specialty, Ltd.	2001	Expert - new value/ordinary course	D		Chad P. Pugatch, Esq. Rice, Pugatch, Robinson & Schiller
Naturally Beautiful Nails, Inc. vs. Wal-Mart Stores, Inc., d/b/a Sam's Club	2001	Expert - damages - lost profits/valuation	D/T	Retail	Roberta A. Colton, Esq. Trenam Kemker
Noble Trust Company Liquidation State of New Hampshire	2012	Expert - Ponzi/Fraud	D	Ponzi	Abbe Shaine, Esq. Bill Gannon, Esq. William S. Gannon, PLLC
Noble Trust Company Liquidation State of New Hampshire	2014	Expert - Ponzi/Fraud	T	Ponzi	Abbe Shaine, Esq. Bill Gannon, Esq. William S. Gannon, PLLC
Nuevo Mundo Holding - Aldo Fernando Kahan Novoa & Gustavo Kahan Novoa vs. Safra National Bank of New York	2003	Expert - solvency/insolvency analysis	D		Stuart S. Mermelstein, Esq. Herman & Mermelstein
North American Clearing Inc. vs. Richard Goble	2011	Expert	D	Broker/Dealer	Christopher M. Sacco, Esq. Carlton Fields

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North American Clearing Inc. vs. Richard Goble	2013	Fact Witness	T	Broker/Dealer	Robert Gilbert, Esq. Christopher M. Sacco, Esq. Carlton Fields
Ocean Bank vs. Tuscany Villages Associates	2009	Expert - forensic accountant		Real estate	Daniel J. Simon, Esq. White & Case
Old Corkscrew Plantation I, II, IV, V, VI	2012	CRO - Liquidation Analysis and Plan Confirmation	D	Orange groves	Debi Evans Galler, Esq. Paul Singerman, Esq.
Orvis vs. Caulkins	2001	Expert - wrongful termination of employment - lost compensatory damages	D/T	N/A	Jack Scarola, Esq. Searcy, Denney, Scarola, Barnhart & Shipley
Jonathan Perlman, Esq as receiver of VGC Corporation of America, All Dream Vacations Corporation, and All Dreams Tours, LLC v American Express Centurion Bank Corp., et. al	2014	Expert- Fraud, insolvency	D	Fraud	Carlos Sardi, Esq. Genovese, Joblove & Battista
Pacific Airline Support Corporation	1996	Examiner - conduct of business	X	Aviation	Chad P. Pugatch, Esq. Rice, Pugatch, Robinson & Schiller
PADC Marketing, LLC. Joel L. Tabas vs. Daniel Grimm	2014	Expert - Insolvency	D	Marketing - Real Estate	Adrian C. Delancy, Esq. Markowitz, Ringel, Trusty & Hartog
PADC Marketing, LLC. Joel L. Tabas vs. R. Donahue Peebles	2016 2017	Expert - Insolvency	D/T	Marketing - Real Estate	Adrian C. Delancy, Esq. Markowitz, Ringel, Trusty & Hartog
Pan American Hospital Corporation	2005	Chapter 11 Examiner	X	Hospital/health care	Drew Dillworth, Esq. Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson, P.A.
Peckar & Abramson	2015	Expert - Rebuttal Financial Ability	D		Mary E. Borja, Esq. Wiley Rein LLP
Lakeland Animal Nutrition	2015	Reasonably Equivalent Value and Business Sale Transactions	D	Animal Feed	Edward J. Peterson, Esq. Stichter Riedel Blain & Prosser PA
Louis J. Pearlman	2007	Chapter 11 Trustee		PONZI	Denise Dell-Powell, Esq. Burr and Forman
Louis J. Pearlman	2013	Testimony - Investor Profiteer Case	T	PONZI	Samuel A. Miller, Esq. Akerman Senterfitt
Louis J. Pearlman, Trans Continental Television Productions, Inc. vs. MTV Networks	2011	Rule 30(B)(6) Representative	D	PONZI	James Sammartano, Esq. Kasowitz, Benson, Torres & Friedman Gregory M. Garno, Esq. Genovese, Joblove & Battista
Louis J. Pearlman, Soneet R. Kapila, Trustee vs. Carolina First Bank d/b/a Mercantile Bank	2009	Chapter 11 Trustee	D	PONZI	Gregory M. Garno, Esq. Genovese, Joblove & Battista
Louis J. Pearlman, Trans Continental Television Productions, Inc. vs. MTV Networks	2010	Records Custodian	D	PONZI	James Sammartano, Esq. Kasowitz, Benson, Torres & Friedman Gregory M. Garno, Esq. Genovese, Joblove & Battista

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Louis J. Pearlman, Trans Continental Airlines and Louis J. Pearlman Enterprises, Inc. vs. De Beaubien, Knight, Simmons, Mantzaris & Neal, LLP	2013	Chapter 11 Trustee	D	PONZI	Esther A. McKean, Esq. Akerman Senterfitt
Piccadilly Cafeterias, Inc. n/k/a Capital City Cornichon Corp.	2004	Chapter 11 Plan Administrator		Restaurant	Leslie Gern Cloyd, Esq. Berger Singerman
Planet Hollywood International, Inc.	2002	Examiner - investigate tort liability & insider transactions	X	Celebrity theme restaurants	Denise Dell-Powell, Esq. Burr and Forman
Prime Capital Corporation	1996	Chapter 7 Trustee - Expert - insolvency and Ponzi	D	Accounts receivable/factoring business/Ponzi	Scott Baena, Esq./Bilzin Sumberg Baena Price & Axelrod Patricia Redmond, Esq./Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson
Princeton Dental Management & Subsidiaries	2001	Chapter 11 Trustee		Dental practices	Roberta A. Colton, Esq. Trenam Kemker
PSN USA, Inc.	2007	Examiner	X		
Purity, Inc. of Florida		Examiner	X	Processor & distributor of condiments	
Raben-Pastal v. Peat, Marwick, Mitchell & Co.	1986	Special master report		Accounting	
Razorback Funding, LLC. et al vs. Scott W. Rothstein, et al.	2012	Expert - PONZI/ Damages	D	PONZI	Gail McQuilkin, Esq. Kozvak, Troplin & Throckmorton
Ready State Bank	1995	Expert - defense of alleged fraudulent transfers/new value analysis		Automotive	Arthur Rice, Esq./Rice Pugatch Robinson & Schiller David Levine, Esq./Levine, Kellogg, Lehman, Schneider & Grossman
Regions Bank vs. First West Cutler Gardens, LLC	2012	Financial Expert	D	Real Estate/ Title Company	Jeffrey C. Schneider, Esq. Amanda Quirke, Esq.
Roof Services, Inc. and Saige, LLC., Assignment for the Benefit of Creditors	2011	Expert - Valuation/Fiduciary for Wells Fargo Bank	T	Roofing	Adam Rabinowitz, Esq./ Broad & Cassel
Rudges v. Rudges	1988	Expert witness - corporate valuation	D		
S & K Air Power, Inc.	1994	Examiner - conduct of business	X	Commercial equipment	Robert Fracasso, Esq. Shutts & Bowen
Securities & Exchange Commission vs. A.B. Financing & Investment, Inc.	2003	Expert - PONZI			Robert K. Levenson, Esq. Securities & Exchange Commission
Securities & Exchange Commission v. Aubrey Lee Price, et al.	2015	Fact Witness - restitution- investor losses	T	Fraud	Sanjay Karnik, Esq. Charles Mulaney, Esq. US Attorneys

Legend: D = Deposition, E = Expert Report, T = Trial, P = Pending, X = Examiner

Soneet R. Kapila
Case Experience - 1985 to Present

Case Name	Approximate Date	Role/Testimony	Deposition / Trial / Other	Industry	Attorney / Contact Firm Name
Securities and Exchange Commission v. Edward S. Digges, Jr., Nexstar Communications, LLC, TMT Equipment Company, LLC, TMT Management Group, LLC, Posa, LLC, Posa TMT, LLC; Televest Communications, LLC, Televest Group, LLC and Spin Drift, LLC	2006	Expert/Forensic Accountant - asset tracing - contempt hearing	D/T		James D. Silver, Receiver Carlton Fields, P.A.
Securities & Exchange Commission vs. Carol C. Martino and CMA Noel, Ltd., et al.	2003	Receiver			John Nowak, Esq. Securities & Exchange Commission
Securities & Exchange Commission vs. Medco, Inc. & Mark R. Blacher, Defendants & The Hi Lily Company & National Health Services Inc., Relief Defendants	1997	Expert witness & accountants to the SEC Receiver - securities fraud, tracing of funds & assets.		Securities fraud/Ponzi	David Levine, Esq. Levine, Kellogg, Lehman, Schneider & Grossman
Securities & Exchange Commission vs. Mark David Shiner, Leon Swichkow, Timothy Wetherald, and Telecom Advisory Services, Inc. and Louis Stinson, Jr., P.A., Equity Service Administration, Inc., Marketing Media, Inc., and USA Media Group Inc.	2006	Forensic analysis	T		Roger Steffin, Esq. Securities & Exchange Commission
Securities & Exchange Commission vs Woodbridge Group of Companies, LLC. et al.	2018	Expert - Ponzi - Plan Confirmation	T	Ponzi	Christine Nestor, Esq. Securities & Exchange Commission Russell Koonin, Esq. Securities & Exchange Commission
Securities & Exchange Commission vs. Tel-One, Inc., et al.	2002	Claims Administrator			Securities & Exchange Commission
Securities & Exchange Commission vs. Transamerica Wireless Systems, Inc., Intercontinental Telecommunications Corporation and Danny Sterk	1994	Expert witness & accountant to the SEC receiver - securities fraud, tracing of funds & assets.	T	Wireless communications	David Levine, Esq. Levine, Kellogg, Lehman, Schneider & Grossman
Irvine J. Sherman Revocable Trust vs. Prime Hospitality Corp.		Expert witness - percentage rent on lease	T	Hospitality	Cynthia Carson Jackson, Esq. Smith, Hulsey & Busey
Shubitz & Rosenbloom, P.A.	1999	Examiner - investigate conduct of specific transactions - report	X	Certified public accountants	Jeff Kucera, Esq. Kirkpatrick & Lockhart, LLP
Sigma-Tech Sales, Inc.	2017	Expert Witness - Insolvency	T	Consumer electronics	John E. Page, Esq. Shraiberg, Ferrara, Landau, Page PA
Simply Fashion Stores, LTD.	2015	Chief Restructuring Officer - twice	T	Retail	Paul Singerman, Esq. Christopher A. Jarvinen, Esq.
Smith International Enterprises, Inc.	2002	Examiner - investigate conduct of the acquiring corporation	X	Printing	Berger-Singerman Peter N. Hill, Esq. Wolff, Hill, McFarlin & Herron
SMF Energy Liquidating Trust vs Grant Thornton, LLP.	2016	Liquidating Trustee - Accounting Liability 30(b)(6) Witness	D	Mobile Fueling	Paul Battista, Esq. Greg Garno, Esq. Theresa Van Vliet, Esq. Genovese, Joblove & Battista PA

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Soneet R. Kapila
Case Experience - 1985 to Present

Case Name	Approximate Date	Role/Testimony	Deposition / Trial / Other	Industry	Attorney / Contact Firm Name
Softouch	1995	Disbursing Agent/Special Accountant to the Debtor		Apparel	Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson
South Andrews Realty Association, Inc.	1991	Examiner	X	Real estate	David Profilet, Esq. Profilet & Associates
South Stevedoring, Inc.	2004	Chapter 11/7 Trustee		Stevedoring/freight	James H. Fierberg, Esq. Berger Singerman
Southeast Banking Corporation	1998	Accountants & financial consultants to Chapter 7 Trustee		Banking	Jeffrey Beck Chapter 7 Trustee
Southern Gun & Tackle, Inc.	1990	Expert - business conduct & corporate transactions.	D	Sporting goods distributor	Scott Baena, Esq.
SouthTrust Bank - A-1 Specialty Gasolines, Inc.	2000	Accountant/financial advisor to Committee of Unsecured Creditors Expert witness - erosion of cash collateral	T	Gas station	Bilzin Sumberg Baena Price & Axelrod Scott Baena, Esq.
Spear & Jackson, Inc.	2004	Corporate Monitor - appointed by Federal District Court and Securities and Exchange Commission		Hand, garden, agricultural, horticultural & engineering tools for professional & handyman use	Bilzin Sumberg Baena Price & Axelrod Robert Levenson, Esq. Securities & Exchange Commission
State Farm Mutual Automobile Insurance Company, et al. vs. John Romano, D. C. et al	2013	Expert	T	Insurance Fraud	David Spector, Esq. Akerman Senterfitt
State of Texas vs. Edward S. Digges, Jr.	2009	Expert - PONZI	T		Robert K. Gordon, Esq. U.S. Securities & Exchange Commission
Stock Electronics v. Viatch Industries, LLC	2002	Expert - business valuation - fraudulent transfer under State Statute	D	Computers	Edward J. Jennings, Esq. Jennings, Valancy & Edwards
Suncruz Casinos, LLC, JAB America, Inc.	2002	Expert - computation of distributable earnings under Joint Venture Agreement	D	Cruise casino	Patrick Scott, Esq. Gray Robinson
Supra Telecommunications & Information Systems, Inc. v. BellSouth Telecommunications - bankruptcy	2004	Expert - conduct of business and management	D	Telecommunications	Paul S. Singerman, Esq. Berger & Singerman
Supra Telecommunications & Information Systems, Inc. v. BellSouth Telecommunications - Mara	2003	Expert - financial reporting	D	Telecommunications	Paul S. Singerman, Esq. Berger & Singerman
Systems of Excellence	1997	Chapter 7 Trustee		Video teleconference/ securities fraud	Rudolfo Pittaluga, Esq. Deloitte Financial Advisory Services, LLP
T/F Systems, Inc. vs. Southeast Capital Financing, Inc., Fu Sheng Industrial Co., Ltd., Purifiner Distribution Corporation	1994	Expert on lost profits, damages from patent & license rights infringement.	T		Jack Scarola, Esq. Searcy, Denney, Scarola, Barnhart & Shipley
Ticofrut, S.A. vs. E.I. Du Pont de Nemours & Company, Inc.	2003	Damages expert regarding lost profits	D, T	Citrus	Janet Humphreys, Esq. Kozyak, Tropin & Throckmorton, P. A.
Topp, Inc. v. Uniden American Corporation	2006	Damages expert - lost profits	D, T	Communications equipment	Stanley H. Wakshlag, Esq. Kenneth Nachwalter, P.A.
Tradecom, Inc.	1991	Examiner - business conduct.	X	Commodities broker	Scott Baena, Esq.
Trafford Distributing Center, Inc., Soneet R. Kapila as Trustee vs. Barbara Wortley	2008	Expert - insolvency	T		Bilzin Sumberg Baena Price & Axelrod Michael R. Bakst, Esq. Ruden McClosky

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Soneet R. Kapila
Case Experience - 1985 to Present

Case Name	Approximate Date	Role/Testimony	Deposition / Trial / Other	Industry	Attorney / Contact Firm Name
Transamerica Wireless Systems, Inc. Intercontinental Telecommunications Co.	1994	Accountants to the SEC Receiver - securities fraud		Securities fraud	David Levine, Esq. Levine, Kellogg, Lehman, Schneider & Grossman
Triad v. Southwest Direct	2001	Expert - ordinary course and new value analysis			Jack Shawdee
Tsunami of Palm Beach, LLC	2005	Expert - business trend	D	Restaurant	Steel, Hector & Davis Thomas Messana, Esq. Ruden McClosky Smith, Schuster & Russell, P.A.
Raymond A. Tubbs vs. RC Highlands Holdings of Florida, Inc., et al. Michael L. Tubbs vs. RC Highlands Holdings of Florida, Inc., et al.	2010	Receiver	T	Peat farm mining operation	Rhett Traband, Esq./Broad & Cassel Michelle Visideo-Hidalgo, Esq./Broad & Cassel
Gloria Singer a/k/a Gary Singer v. Unibit Development Co., Williamsburg Developers Ltd. Partnership, Williamsburg-Biltmore, Inc., and Williamsburg-Zlotoff, Inc.	2012	Expert - shareholder dispute - damages	D	Real Estate	Samuel A. Miller, Esq. Akerman Senterfitt
Gloria Singer a/k/a Gary Singer v. Unibit Development Co., Williamsburg Developers Ltd. Partnership, Williamsburg-Biltmore, Inc., and Williamsburg-Zlotoff, Inc.	2012	Expert - shareholder dispute - damages	T	Real Estate	Samuel A. Miller, Esq. Akerman Senterfitt
USA Airmobile, Inc., & Michael Kurtig v. Haverfield Corp. & Scott Yenzler	1995	Expert - patent infringement damages			Patrick Barry, Esq. Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson, P.A.
W.B. Care Center, LLC d/b/a/ West Broward Care Center	2009	Examiner	X	Nursing home	
Wachovia Bank of Florida Continuum Care Corporation	2004	Expert - conduct of business		Bank fraud	Stephen C. Coates, Esq. Wachovia Bank
Wachovia Bank of Florida Lover's Key Development	1994	Expert for secured lender - consultants on feasibility and workouts	E	Hospitality	Irene Marshall Wachovia Bank
Wachovia Bank of Florida National Recovery Institute Group	1997	Expert - conduct of business & Management, ability to restructure; management compensation	T	abuse recovery/health care	Hal Moorefield, Esq. Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson
John Wagstaff-Callahan vs. Northern Trust Investment, Inc., et al. Thomas Aloysius Warmus	2002 1995	Expert - damages, wrongful dismissal, lost earnings Accountants & financial advisors to Committee of Unsecured Creditors	D T		Jack Scarola, Esq. Searcy, Denney, Scarola, Barnhart & Shipley David Profflet, Esq. Profflet & Associates
Thomas Aloysius Warmus Richard Langhorne, Liquidating Trustee	1997	Expert witness in adversarial proceedings - insolvency (Judge Francis G. Conrad)	T		James Leshaw, Esq. Greenberg, Traurig
Wayne Blackwell & Co., Inc.	1996	Expert - viability of business and ability to rehabilitate	T	Environment - asbestos abatement	Wayne Blackwell Wayne Blackwell & Co., Inc.
Weinberg Tubbs & Company, CPAs	1993	Examiner	X	Accounting firm	Jack Weins, Esq. Abrams, Anton, Robbins, Resnick, Schneider & Mager
John F. Weir vs. The Club at St. Lucie West, Ltd., The Club at St. Lucie West, Inc., Creative Homes, Inc., Naimisha Construction, Inc. and Dilip Barot	2010	Expert - damages, breach of contract	D	Damages relating to a partnership agreement in a construction development	Jack Scarola, Esq. Searcy, Denney, Scarola, Barnhart & Shipley, P.A.

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Soneet R. Kapila
Case Experience - 1985 to Present

Case Name	Approximate Date	Role/Testimony	Deposition / Trial / Other	Industry	Attorney / Contact Firm Name
Ronald Ziegler, D.O., P.A. and Javery & Strum, D.O., P.A. v. Humana	1994	Expert - damages, breach of contract	D	Health care	David Sales, Esq. Searcy, Denney, Scarola, Barnhart & Shipley, P.A.
Zingg Homes, L.C.	2002	Examiner	X	Residential home developer	
Over 10,000 matters	Various	Chapter 11 and Chapter 7 Trustee		Various	Steven R. Turner Office of the U.S. Trustee

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Exhibit D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No.: 1:20-CV-20836-BLOOM/Louis

AARON FRUITSTONE, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

CLASS ACTION

SPARTAN RACE, INC.,
a Delaware Corporation,

Defendant.

DECLARATION OF DEANNA SHERIDAN REGARDING CLASS NOTICE

I, Deanna Sheridan, declare as follows:

1. I am the General Counsel and a Vice President of Spartan Race, Inc., located in Boston, Massachusetts. I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. Pursuant to the Court's February 2, 2021 Order Granting Motion for Preliminary Approval of Class Action Settlement, Conditionally Certifying a Class for Settlement Purposes, Directing the Issuance of Class Notice, and Scheduling a Final Approval Hearing [ECF No. 107] ("Preliminary Approval Order"), Spartan was required to disseminate Class Notice in connection with the Proposed Settlement of the above-captioned Action.¹ This declaration describes what Spartan did in response to the Preliminary Approval Order, a process that I supervised.

3. On February 25, 2021, Spartan compiled a list of 809,116 unique email addresses identified as potentially belonging to individuals on the Class List. The Class List included the names and email addresses of Settlement Class Members. To compile the list, Spartan searched its database for registrations that meet the class definition, namely "All individuals in the United States who during the Class Period [February 26, 2016 to December 31, 2020], based on Spartan's

¹ All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement, [ECF No. 102-3], and in the Preliminary Approval Order.

records, paid a \$14 ‘Racer Insurance Fee’ or ‘Insurance Fee’ in connection with any race organized and sponsored by Spartan,” subject to the exclusions from the Settlement Class. After gathering the initial list of registrants who met these criteria, I oversaw a process to send the Class Notice via email to the Class List. The Class List included all unique email addresses of Settlement Class Members regardless of their current subscription status in receiving Spartan marketing emails. Any email addresses in the Spartan customer database that had previously “hard bounced” and were labeled “dead”, however, were removed, resulting in a total of 789,239 unique email addresses in the final Class List.

4. Using the resulting list of Settlement Class Members, Spartan sent the Class Notice to these 789,239 email addresses of Settlement Class Members via email on March 2, 2021. A true and correct copy of the Class Notice (without name or email address information inserted) is attached as **Exhibit A**.

5. Since sending the Class Notice to Settlement Class Members, Spartan has received 9,648 Class Notice emails returned as undeliverable, including: a) 193 emails marked as “dead”, b) 8,615 emails which “hard bounced” and c) 840 emails which “soft bounced”. To date, Spartan has not yet taken any measures to a) determine which, if any, of those 9,648 email addresses belong to Settlement Class Members who received the Class Notice via a separate email address in the Class List or b) reach the Settlement Class Members through alternate means.

6. The Class Notice informs Settlement Class Members that requests for exclusion from the Class must be received no later than April 7, 2021. As of the date of this declaration, Spartan (including its counsel of record in this case) has received five requests for exclusion. A list of the Class Members requesting to be excluded is attached as **Exhibit B**.

7. The receipt deadline for Class Members to object to the settlement is April 7, 2021. As of the date of this declaration, Spartan (including its counsel of record in this case) has received one objection to the Settlement.

8. In accordance with the Preliminary Approval Order, Spartan will file an updated declaration with final figures for requests for exclusion and objections by April 27, 2021.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. This declaration was executed in Framingham, Massachusetts on March 24, 2021.

By: _____


Deanna Sheridan

EXHIBIT A

Subject: FW: PREVIEW: Fruitstone v. Spartan Race, Inc. – Notice of Class Action Settlement

From: Spartan <Spartan@t.spartan.com>

Date: March 2, 2021 at 11:40:23 AM EST

To:

Subject: PREVIEW: Fruitstone v. Spartan Race, Inc. – Notice of Class Action Settlement

Reply-To: Spartan <us@spartan.com>



NOTICE OF CLASS ACTION SETTLEMENT

Fruitstone v. Spartan Race, Inc.,

**Case No. 1:20-cv-20836-BB. United States District Court for the Southern
District of Florida**

You are receiving this Notice because you were identified in Spartan Race, Inc.'s ("Spartan") records as an individual who participated in a race organized and sponsored by Spartan and who paid a \$14 "Racer Insurance Fee" or "Insurance Fee." This Notice explains a proposed settlement in a class action under which Spartan has agreed to provide certain benefits to customers who paid such a fee. Spartan denies liability for the claims alleged in the class action but has agreed to the proposed settlement to avoid the distraction of continued litigation and to further its stated mission to promote an active lifestyle that will result in longer, healthier and happier lives for its customers through races and related programs, including the free four-month membership in the new Spartan+ program that is one of the benefits available under the proposed settlement

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

- If you are an individual in the United States who during the Class Period, based on Spartan's records, paid a \$14 "Racer Insurance Fee" or "Insurance Fee" in connection with any race organized and sponsored by Spartan, you are entitled to the benefits of this settlement.
- This notice explains what the class action lawsuit is about, what the Settlement will be if it is approved by the Court, and what to do if you want to: (i) participate in the settlement; or (ii) object to the Settlement; or (iii) not participate in the Settlement and instead "opt out" of the class action. This notice also tells you how to get more information if you want it.
- You have a choice of benefits.
 - You may select a FREE four month membership in the Spartan+ Membership Program. See Section 7 below for an explanation of the Program; OR
 - You may select a \$5 Voucher to be used for any non-sale Spartan Merchandise on www.spartan.com for each time you paid a Racer Insurance Fee. See Section 7 below for an explanation of the Vouchers.

****Use password parthenon to access benefit selection.****

CLICK HERE TO SELECT YOUR BENEFITS

YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DON'T ACT. PLEASE READ THIS NOTICE CAREFULLY, AND GET MORE INFORMATION IF YOU NEED IT. THE NOTICE WILL TELL YOU HOW TO GET THAT INFORMATION.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

1. Why Was This Notice Sent To Me?
 2. What Is This Notice?
 3. What Is This Lawsuit About?
 4. Why Is There A Settlement?
- SETTLEMENT CLASS MEMBERSHIP**
5. Who Is a Settlement Class Member?
 6. What If I Am Not Sure Whether I Am Included In The Settlement Class?

THE SETTLEMENT TERMS AND BENEFITS

7. What Are The Terms Of The Settlement?
8. How Do I Receive Benefits?
9. When Would I Receive My Benefits?
10. What Am I Giving Up To Be Part Of The Settlement Class?
11. What Happens If I Do Nothing?

EXCLUDING YOURSELF FROM THE SETTLEMENT

12. How Do I Get Out Of The Settlement?
13. What If I Do Not Opt Out Of The Settlement?
14. If I Exclude Myself, Can I Receive Benefits From This Settlement?

OBJECTING TO THE SETTLEMENT

15. How Can I Object To The Settlement?

THE LAWYERS REPRESENTING YOU

- 16. Do I Have A Lawyer In This Case?
- 17. How Will The Class Counsel Lawyers Be Paid?

THE COURT'S FAIRNESS HEARING

- 18. When And Where Will The Court Decide Whether To Approve The Settlement?
- 19. As A Settlement Class Member, May I Speak At The Hearing?

GETTING MORE INFORMATION

- 20. Where Can I Get More Details About The Settlement?

BASIC INFORMATION

1. WHY WAS THIS NOTICE SENT TO ME?

This Notice was sent to you because you are an individual in the United States who during the Class Period, based on Spartan's records, paid a \$14 "Racer Insurance Fee" or "Insurance Fee" in connection with an event organized and sponsored by Spartan.

Excluded from the Class are (a) Defendant's board members and executive level officers; (b) the District and Magistrate judges assigned to this Action, along with persons within the third degree of relationship to them; and (c) individuals who submit a valid, timely exclusion/opt-out request. The Class Period means the time period from February 26, 2016 to December 31, 2020 (inclusive of both dates).

The Court ordered this Notice to be sent to you because you have a right to know about the proposed Settlement of this class action lawsuit, which concerns an alleged failure to disclose how Spartan uses funds from the Racer Insurance Fee, and about your options, before the Court decides whether to

approve the Settlement.

If the Court approves the Settlement, you will receive the benefits of the settlement outlined in Section 7. However, the benefits will not be issued until any objections or appeals are resolved.

2. WHAT IS THIS NOTICE?

This Notice is sent to potential settlement Class Members like you to explain the terms of the settlement and your options. The Notice also explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Southern District of Florida, and the case is called Aaron Fruitstone v. Spartan Race Inc., Case No. 1:20-cv-20836-BB.

Plaintiff Aaron Fruitstone sued on behalf of you and all Class Members and is called the “Plaintiff.” The company he sued, Spartan Race, Inc., is called the “Defendant.”

3. WHAT IS THIS LAWSUIT ABOUT?

In this lawsuit, Plaintiff alleges that Spartan made profits by charging and retaining most of the monies collected from the \$14 “Racer Insurance Fee.” Plaintiff alleges that Spartan’s conduct violated Florida’s Deceptive and Unfair Trade Practices Act and the Massachusetts Consumer Protection Law, and provided a basis for a cause of action for unjust enrichment.

Spartan expressly denies Plaintiff’s allegations and asserts that it has complied and does comply with the law. It also expressly denies that it did anything wrong. There has been no court decision on the merits of this case and no finding that Spartan committed any wrong doing.

4. WHY IS THERE A SETTLEMENT?

Both sides have agreed to a Settlement to avoid the cost and risk of a trial and so that Class Members can receive benefits in exchange for releasing Defendant from liability. Although it admits no wrongdoing, Spartan prefers to direct its resources to giving value to consumers over squandering them on litigation.

SETTLEMENT CLASS MEMBERSHIP

5. WHO IS A SETTLEMENT CLASS MEMBER?

To see if you will be affected by this class action, you first have to determine if you are a member of the Settlement Class. The "Settlement Class" includes:

All individuals in the United States who during the Class Period, based on Spartan's records, paid a \$14 "Racer Insurance Fee" or "Insurance Fee" in connection with any race organized and sponsored by Spartan. Excluded from the Class are (a) Defendant's board members and executive level officers; (b) the District and Magistrate judges assigned to this Action, along with their court staff; and (c) individuals who submit a valid, timely exclusion/opt-out request.

6. WHAT IF I AM NOT SURE WHETHER I AM INCLUDED IN THE SETTLEMENT CLASS?

If you are receiving this Notice, Spartan's records show that you are in the Settlement Class and entitled to benefits. To review the settlement documents filed in this case, you can visit the Settlement Website at <https://moskowitz-law.com/results/spartan-race>.

THE SETTLEMENT TERMS AND BENEFITS

7. WHAT ARE THE TERMS OF THE SETTLEMENT?

As described more fully below, each Class Member will be entitled to elect to receive either (a) one four-month free membership to the "Spartan+ Membership Program," or (b) one Voucher per each paid registration during the Class Period, up to a maximum of four (4) total Vouchers per Class Member.

A. The Spartan+ Membership Program

Through this Stipulation of Settlement, each Class member who elects to receive the Spartan+ Membership Program (the "Program") will be provided with a free four-month subscription to the Program. This Program subscription will include: (1) the "highest" level of access to all available video, audio, and other digital content; (2) a 20% discount and free shipping and handling for any

merchandise purchased by the Class Member from Spartan's website; and (3) free event photo downloads and access to other "members only" premium content on Spartan's website.

The normal cost of the Program is \$85.00 per year.

You will not be required to provide a credit card to initiate the Program subscription. Subscriptions will automatically terminate at the end of four months, unless the you choose affirmatively to extend your subscription beyond the complimentary four-month period.

B. Voucher for Spartan Merchandise

As an alternative to the four-month free subscription to the Program, each Class Member may elect to receive a \$5.00 Voucher for each event for which you paid a "Racer Insurance Fee" or "Insurance Fee" during the Class Period, up to a total of four (4) Vouchers maximum (for a combined value of \$20.00).

Voucher Terms:

1. No Class Member or other person may receive or redeem more than four (4) Vouchers.
2. Each Voucher shall entitle the owner to a \$5.00 credit towards the purchase of any non-discounted merchandise on Spartan's website.
3. Vouchers cannot be combined with any promotion, discount, or coupon.
4. Up to four (4) Vouchers may be "stacked" (i.e., combined for use in a single transaction) towards the purchase of any non-discounted merchandise on Spartan's website. Vouchers are transferable.
5. You may transfer the Voucher to family or friends. However, the non-discounted merchandise and four-Voucher stacking limitations also apply to recipients of transferred Vouchers.
6. Each Voucher will be valid for two (2) years from the date of issuance, at which time the Voucher will expire.

C. Spartan has also agreed to change its business practices by adding the following language to current and future marketing and sales materials, FAQs, relevant website screens in the registration process, and screen indicators or selectors that describe or are adjacent to the at-issue fee: "The Administrative, Insurance, and Management Fee covers a number of different costs involved in Spartan events, including administrative and management costs, insurance costs and expenses for related risk management and safety measures. This fee is not a direct pass-through of third-party costs to the racer and may include revenues to Spartan." The full changes to the business practices can be viewed on the

Settlement Agreement .

8. HOW DO I RECEIVE THE BENEFITS?

CLICK HERE TO SELECT YOUR BENEFITS .

NOTE that if you do not select your benefit within 60 days of receiving this Notice, you will be deemed to have selected the Spartan+ Program for four months and will receive information to enroll after the Effective Date of the Settlement (See Section 9). The Effective Date is the date the settlement is approved and all appeals have been exhausted.

9. WHEN WOULD I RECEIVE MY BENEFITS?

The Court will hold a hearing on May 7, 2021, to determine whether to approve the Settlement. If the Court approves the Settlement, there may be appeals after that. It is always uncertain when any appeals, if filed, will be resolved. Benefits will be activated after the Settlement becomes final and effective, which means after all appeals have been resolved. Please be patient.

Please check the Settlement Website, <https://moskowitz-law.com/results/spartan-race> for updates on this matter and the Effective Date.

10. WHAT AM I GIVING UP TO BE PART OF THE SETTLEMENT CLASS?

Unless you exclude yourself from the Settlement Class, you will remain in the Settlement Class. That means you cannot sue, continue to sue, or be part of any other lawsuit against Defendant about the issues that were or could have been raised in this case. It also means that all of the Court's orders concerning the Settlement Class will apply to you and legally bind you, including the Releases described in detail in Section 15 of the Settlement Agreement. The Releases describe the legal claims that you give up if this Settlement is approved and you do not exclude yourself. Please carefully read the Releases in the Settlement Agreement.

11. WHAT HAPPENS IF I DO NOTHING?

If you do nothing as a Settlement Class Member, you will be deemed to have selected the Spartan+ Program for free for four months as your benefit. But, unless you exclude yourself from the Settlement, you will not be able to start a lawsuit or continue with a lawsuit against Defendant about the legal

issues that were or could have been raised in this case, ever again. EXCLUDING YOURSELF FROM THE SETTLEMENT

12. HOW DO I GET OUT OF THE SETTLEMENT?

If you are within the definition of the Settlement Class (see Answer #5), you are automatically a member of the Settlement Class. However, you can exclude yourself, or “opt-out” of the Settlement Class, if you do not wish to participate. This means you will receive no benefits as part of this Settlement. You cannot ask to be excluded over the phone or on the internet. To exclude yourself, you must mail a written request for exclusion to Spartan and that Request for Exclusion must clearly indicate the name, address, email address, and telephone number of the Person seeking exclusion, the name and case number of the Action, a statement that the Person wishes to be excluded from the Class, and the date and signature of such Person or, in the case of a Person in the Settlement Class who is deceased or incapacitated, the signature of the legally authorized representative of such Person. You cannot “opt out” of the Settlement on behalf of other members of the Settlement Class.

13. WHAT IF I DO NOT OPT OUT OF THE SETTLEMENT?

Any member of the Settlement Class who does not opt out of the Settlement in the manner and by the deadline described above will be part of the Settlement Class, will be bound by all Orders and proceedings in this action, and will give up the right to sue any of the Defendant for the claims that this Settlement resolves. If you want to opt out, you must take timely affirmative written action even if you have filed a separate action against the Defendant or are a putative class member in any other class action filed against the Defendant. If you have a pending lawsuit, please contact your lawyer in that lawsuit immediately. Remember, the exclusion deadline is April 7, 2021.

14. IF I EXCLUDE MYSELF, CAN I RECEIVE BENEFITS FROM THIS SETTLEMENT?

No. If you exclude yourself from the Settlement Class, you will not be entitled to any benefits. But, you may sue or continue to sue Defendant individually, or you may be part of a different lawsuit against Defendant.

OBJECTING TO THE SETTLEMENT

15. HOW CAN I OBJECT TO THE SETTLEMENT?

You may object to or comment on all or part of the proposed Settlement if you are a Settlement Class Member and do not opt out of the Settlement. To do so, you (or your attorney at your expense) must submit a valid objection. To be valid, your objection must be in writing, personally signed by you, and must include the information and documents required by the **Preliminary Approval Order**. Failure to provide ALL required information may be grounds to have your objection stricken.

Your objection must be filed with the Clerk of Court, with copies mailed to counsel for all of the parties identified below, postmarked no later than **April 7, 2021**:

CLERK OF THE COURT	CLASS COUNSEL
Clerk of the United States District Court for the Southern District of Florida 400 North Miami Avenue 8th Floor Miami, FL 33128	Adam M. Moskowitz The Moskowitz Law Firm, PLLC 2 Alhambra Plaza Suite 601 Coral Gables, FL 33134
COUNSEL FOR DEFENDANT	
Evan S. Nadel Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. 44 Montgomery Street, 36th Floor San Francisco, CA 94104	

THE LAWYERS REPRESENTING YOU

16. DO I HAVE A LAWYER IN THIS CASE?

The Court appointed the following lawyers to represent you and all other Settlement Class Members. Together, these lawyers are called Class Counsel. You will not be charged any money to pay for these lawyers.

Adam M. Moskowitz Andrew S. Friedman Howard M. Bushman Francis Balint Joseph M. Kaye
 Bonnett, Fairbourn, Friedman & The Moskowitz Law Firm Balint, P.C. 2 Alhambra Plaza #601 2325
 E. Camelback Road, Suite 300 Miami, FL 33134 Phoenix, AZ 85016

17. HOW WILL THE CLASS COUNSEL LAWYERS BE PAID?

Class Counsel will ask the Court for attorneys' fees and expenses for all counsel up to \$2,290,000, and a case contribution award of \$10,000.00 paid to Plaintiff Aaron Fruitstone for his time and effort in the matter. The Court may award less than these amounts.

Defendant has agreed not to oppose the applications by Class Counsel for attorneys' fees and expenses or the case contribution award to Plaintiff that do not exceed those amounts.

A panel of the United States Court of Appeals for the Eleventh Circuit issued an opinion holding that case contribution awards for class representatives were impermissible. *Johnson v. NPAS Solutions, LLC*, 2020 WL 5553312 (11th Cir. 2020). In light of this opinion, the Parties have agreed that the Court may approve all of the terms of the settlement, while also denying the request for a case contribution award, but Class Counsel can request the Court reserve jurisdiction to reconsider the issue of a case contribution award if NPAS is reversed, vacated, or overruled. Class Counsel will file with the Court their request for attorneys' fees and expenses and any request for service awards on or before March 24, 2021, which will then be posted on <https://moskowitz-law.com/results/spartan-race>.

THE COURT'S FINAL APPROVAL HEARING

18. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Court will hold a hearing about the Settlement at 10:00 a.m. on May 7, 2021, before Judge Beth Bloom via Zoom video conference. The link to join the Zoom video conference is: <https://www.zoomgov.com/j/160960411?pwd=NE1FSVVRUZLZWhhNG5UUEk5OWJpQT09>. Alternatively, the Meeting ID is: 160 960 4111, and the Passcode is: 692150. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and Class Counsel's applications for attorneys' fees and expenses and case contribution award to the Plaintiff. If there are valid and timely objections, the Court will consider them.

The Court may listen to people who have properly asked in writing beforehand to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. It is unknown how long this decision will take.

19. AS A SETTLEMENT CLASS MEMBER, MAY I SPEAK AT THE HEARING?

You cannot speak at the hearing if you have excluded yourself from the Settlement Class. However, if you are a member of the Settlement Class, you may ask the Court for permission for you or your attorney to speak at the hearing. To do so, you must file with the Clerk of the Court and serve on all counsel for the parties (at the addresses identified above in Answer #16) a notice of intention to appear at the hearing. The notice of intention to appear must include the case name and number; your name, address, telephone number, and signature, and, if represented by counsel, their contact information; and copies of any papers, exhibits, or other evidence that you intend to present to the Court in connection with the hearing. The notice of intention to appear must be filed with the Clerk of Court and served on all counsel no later than **April 7, 2021**.

If you do not file a notice of intention to appear by this deadline and/or follow the requirements in the Settlement Agreement and this Notice, you will not be entitled to appear at the hearing to raise any objections.

GETTING MORE INFORMATION

20. WHERE CAN I GET MORE DETAILS ABOUT THE SETTLEMENT?

This notice summarizes the lawsuit and Settlement. More details are in the Settlement Agreement, which is available on the Settlement Website at <https://moskowitz-law.com/results/spartan-race>. You may also contact Class Counsel, identified in Answer 17 above.

Date: March 2, 2021

PLEASE DO NOT CALL OR WRITE THE COURT, THE JUDGE OR HER STAFF, FOR INFORMATION OR ADVICE ABOUT THE SETTLEMENT

TRAIN EAT APP TEAMS



Please add spartan@e.spartan.com to your address book.

For more information about Spartan privacy practices, see our online [privacy statement](#).

[View Online](#) | [Update your email preferences](#) | [Unsubscribe](#)

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234 Congress St., Boston, MA 02110

EXHIBIT B

List of Class Settlement Exclusion Requests Received as of March 23, 2021:

<u>Name</u>	<u>Email</u>	<u>Date Sent</u>	<u>Method Sent</u>
Ronald Roy	██████████@gmail.com	3/4/2021	Mail
Alexander Greimann	██████████@gmail.com	3/2/2021	Mail
Danielle Schaap	██████████@gmail.com	3/4/2021	Mail
Hildee Weiss	██████████@gmail.com	3/3/2021	Mail
Sarah Flores	██████████@gmail.com	3/4/2021	Mail

Exhibit E

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

Case No.: 1:20-CV-20836-BLOOM/Louis

AARON FRUITSTONE, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

CLASS ACTION

SPARTAN RACE, INC.,
a Delaware Corporation,

Defendant.

**DECLARATION OF ADAM MOSKOWITZ AND ANDREW FRIEDMAN IN SUPPORT
OF PLAINTIFF’S MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT, CLASS COUNSEL’S APPLICATION FOR ATTORNEYS’
FEES AND EXPENSES, NOTICE REGARDING SERVICE AWARDS AND
INCORPORATED MEMORANDUM OF LAW**

We, ADAM MOSKOWITZ and ANDREW FRIEDMAN declare as follows:

1. We are Co-Lead Settlement Class Counsel, and counsel of record for Plaintiff and the proposed Settlement Class in this action (“Class Counsel”), and we respectfully submit this Declaration in support of Plaintiff’s Motion for Final Approval of Settlement, Class Counsel’s Application for Attorneys’ Fees, Notice Regarding Service Awards, and incorporated Memorandum of Law. Except as otherwise noted, we have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. In January 2021, after months of hard-fought, arm’s-length negotiations, Plaintiff and Defendant executed the Settlement Agreement and Release (“Agreement”) under which Defendant has agreed to make available and automatically provide more than \$25.6 million in economic benefits to Class Members without the need to submit a claim form (unless Class

Members wish to opt for alternative economic benefits), as well as significant injunctive relief.¹ We are proud to seek final approval and the reaction from the Class to date has been outstanding.

3. Plaintiff maintains that the claims asserted in this matter are meritorious, Defendant's attempt to transfer or dismiss this action was unsuccessful, a motion for class certification would be successful (and would be upheld on appeal), Defendant's attempt to win summary judgement would be unsuccessful, and Plaintiff would prevail if this matter proceeded to trial. This case involved sharply opposed positions on several fundamental and dispositive legal and factual issues. The ultimate success of the litigation required Plaintiff to prevail, in whole or in part, on *all* of these issues. Conversely, Defendant's success on any one of these issues could have spelled defeat for Plaintiff and the Settlement Class. Therefore, continued litigation would have presented significant risks to attaining a successful judgment, as well as the time and expense associated with proceeding to trial, the time and expense associated with appellate review, and the countless uncertainties of litigation, particularly in the context of a large and complex litigation.

4. In light of the risks presented by continued litigation, and taking into account the substantial benefits extended to Settlement Class Members under the terms of the Settlement Agreement, the Settlement not only provides fair and adequate compensation to Settlement Class Members, it also represents a significant achievement benefitting the Settlement Class.

I. Background of the Litigation and Mediation

5. Plaintiff initiated this action against Spartan on February 26, 2020. On April 13, 2020, Plaintiff filed the operative Amended Complaint [ECF No. 15] alleging that Spartan's representations regarding the "Racer Insurance Fee," objectively construed, would lead a reasonable consumer to believe that this mandatory, non-refundable \$14 charge is used solely to purchase insurance on behalf of the Spartan event registrant.

6. The Amended Complaint alleges that, in reality, and unknown to consumers, Spartan uses the Racer Insurance Fees to defray administrative expenses and as a hidden profit center for Spartan. *Id.*, ¶¶ 20–21.

¹ All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement, [ECF No. 102-3], and in the February 2, 2021 Order Granting Motion for Preliminary Approval of Class Action Settlement, Conditionally Certifying a Class for Settlement Purposes, Directing the Issuance of Class Notice, and Scheduling a Final Approval Hearing, [ECF No. 107] ("Preliminary Approval Order").

7. Plaintiff alleges that Spartan's representations regarding the Racer Insurance Fee were deceptive and the class members suffered damage. The Amended Complaint asserts claims for violations of the Massachusetts Consumer Protection Law, Massachusetts General Laws, Chapter 93A, et seq., and the Florida Deceptive and Unfair Trade Practices Act, §§ 501.201, et seq., Florida Statutes.

8. Spartan filed a Motion to Transfer this case to Massachusetts and an alternative Motion to Dismiss. [ECF No. 24]. After extensive briefing and oral argument, the Court denied Spartan's transfer motion, as well as Spartan's Motion to Dismiss. [ECF Nos. 32, 34, 36]. The parties thereafter engaged in extensive discovery, exchanging hundreds of thousands of pages of documents and data, conducting several depositions and participating in multiple hearings on discovery disputes before Magistrate Judge Lauren Louis.

9. Plaintiff filed his Motion for Class Certification on September 3, 2020, [ECF No. 58], which was fully briefed as of December 23, 2020. [ECF Nos. 63–65, 72–73, 95].

10. In November 2020, the parties moved to stay these proceedings in deference to a private mediation before Michael D. Young, an experienced and highly regarded mediator with the New York office of JAMS. [ECF Nos. 79, 81]. Declaration of Michael D. Young dated January 27, 2021 [ECF Nos. 102-2, 103] ("Young Decl.").

11. In addition to counsel for the parties, outside coverage counsel for Travelers and Chubb, the two insurance carriers providing potential coverage to Spartan for the claims asserted in the action, participated actively throughout the mediation. Young Decl., ¶ 8. The mediation was hard-fought and protracted, extending over a two-month period during which the parties participated in a full-day mediation session and multiple Zoom and telephonic follow on mediation sessions. *See, e.g.*, Young Decl. Over the course of the mediation, the parties held numerous telephone and Zoom calls with Mr. Young and, as the negotiations progressed, the parties sought and obtained several extensions of the stay allowing them to continue their negotiations. *See id.*; *see also* [ECF Nos. 83–85, 87–88].

12. At several points during the mediation, the parties reached a near impasse as counsel for Plaintiff pressed for enhanced settlement benefits to maximize the recovery for the putative class members. Spartan, for its part, emphasized that its insurers were asserting coverage defenses and that Spartan currently lacks the financial resources necessary to satisfy the claims asserted should Plaintiff fully prevail at trial. Young Decl., ¶ 9. Spartan therefore consistently

maintained throughout the mediation process that its precarious financial condition precluded it from making any meaningful monetary contribution to any class settlement. *Id.*

13. Despite their best efforts, the parties informed the Court on December 22, 2020 that they had been unable to reach a mutually satisfactory settlement and the Court lifted the stay and reset the class certification hearing. [ECF Nos. 89–90]. On December 29, 2020, the Court heard oral argument on Plaintiff’s Motion for Class Certification, [ECF No. 97], at which the Court inquired about the status of the settlement negotiations. Counsel informed the Court that although their prior efforts had not achieved a settlement agreement, the parties had left open the door for further negotiations. After the class certification hearing, the parties continued settlement negotiations in the ongoing mediation with Mr. Young. After many weekend and late-night calls and Zoom conferences, Mr. Young made a mediator’s proposal, based upon all of the relevant circumstances, which the parties accepted. Young Decl., ¶ 11.

14. Commenting on the mediation process, mediator Young attests that “[t]he proposed Settlement is the product of hard-fought arm’s length negotiations ... conducted by extremely knowledgeable counsel having extensive experience in complex class actions, who were highly knowledgeable concerning the claims and defenses asserted in the Action. The caliber of the representation of both sides was, in my experience, exemplary.” *Id.* ¶ 5.

15. On January 28, 2021, Plaintiff filed an Unopposed Motion for Preliminary Approval of Class Action Settlement, [ECF No. 102]. The Court then preliminarily approved the Settlement on February 2, 2021. [ECF No. 107]. Thereafter, on February 5, 2021, in compliance with the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, Spartan caused fifty-three (53) CAFA Notice Packets to be mailed via Certified U.S. Mail to the U.S. Attorney General, the Attorneys General of every state, the District of Columbia, Puerto Rico, and the Virgin Islands. (Tucci Decl., attached to the Motion for Preliminary Approval as **Exhibit B**, at ¶¶ 2–3. To date, the parties have not received *a single inquiry* regarding the Settlement from the CAFA Notice. (*Id.* at ¶ 4.)

II. The Settlement Terms and Agreement

A. The Proposed Settlement Class

16. All individuals in the United States who during the Class Period, based on Spartan’s records, paid a \$14 “Racer Insurance Fee” or “Insurance Fee” in connection with an event organized and sponsored by Spartan. Excluded from the Class are (a) Defendant’s board members

and executive level officers; (b) the federal district and magistrate judges assigned to this Action and their staff, and (c) individuals who submit a valid, timely exclusion/opt-out request. [ECF No. 102-3], ¶ II.A.3.

B. Settlement Relief

17. This proposed Settlement substantially fulfills the main objectives of this action and affords beneficial relief to the Settlement Class Members that certainly falls “within the range of potential recovery” through successful litigation of the claims asserted in this action. Although Spartan does not admit any fault or liability in the Settlement, Spartan has agreed to provide substantial relief to be distributed according to the Settlement Agreement. As described more fully below, each Class Member will be entitled to elect to receive either: (a) one four-month free membership to the “Spartan+ Membership Program,” or (b) one \$5 electronic Voucher per each paid registration during the Class Period, up to a maximum of four (4) total electronic Vouchers per Class Member.

18. Plaintiff and his counsel estimate that the value of the Settlement relief made available to Settlement Class Members, exclusive of the valuable injunctive relief, is similar (if not more) to relief that Class Members might receive, if they were able to certify this case nationwide over Spartan’s objections and obtain a favorable jury verdict.² Moreover, attached to the Motion for Final Approval as **Exhibit C** is the Expert Declaration of forensic accountant Soneet Kapila (“Kapila Decl.”), which analyzes the specific value of the Settlement benefits. In addition, the Settlement Class Members stand to benefit from the important injunctive relief described below. The Court should find such relief to be fair, adequate, and reasonable, especially given the risks of success on the merits of Plaintiff’s claims.

1. The Spartan+ Membership Program (the “Program”)

19. Each Class member will be provided with a free four-month subscription to the Spartan+ Program, unless they select the alternative relief. [ECF No. 102-3], ¶ III.A. While the pandemic adversely impacted the operating revenues for Spartan and other companies operating mass participation events for which social distancing was not feasible, online or remote fitness

² This estimate is based on the retail value of the free four-month membership in the Spartan + Membership Program, which is available at the election of the Settlement Class Members and as the default benefit if a Settlement Class Member does not affirmatively elect the Electronic Voucher(s).

memberships available through computer or personal device applications or websites have flourished and remain a growing industry. (Kapila Decl. ¶ 25). According to an industry analysis published in January 2021, the global fitness app market size was valued at “\$4.4 billion in 2020 and is expected to expand at a compound annual growth rate (CAGR) of 21.6% from 2021 to 2028.” *Id.* Further, the protracted spread of the COVID-19 pandemic resulting in nationwide lockdowns and social distancing norms has precipitated a transition to virtual fitness from traditional studios and gyms. *Id.* The growing awareness regarding health and wellness is also driving the market. *Id.* This, in turn, has vastly increased the downloads and usage of fitness apps. *Id.*

20. According to a poll conducted in mid-2020, 74% of Americans used at least one fitness app or site during quarantine (41% for the first time), and “64% of Americans are now more interested in at-home fitness options,” and over half of those now plan on canceling their gym memberships for good. *Id.*, ¶ 26. The average American used two fitness apps and took four online fitness classes during the lockdown. *Id.* Further, the global downloads of fitness and health apps since 2020 increased by 46%. *Id.*, ¶ 27. This increased usage rate of fitness apps due to a growing trend of online fitness training is driving the market globally. Therefore, memberships in a virtual fitness program have enjoyed a boost and provide a real and tangible benefit to the Class. *Id.*, ¶ 28.

21. This new Spartan+ Program subscription, recently launched in March 2021, provides significant value to each Settlement Class Member in that it includes: (1) subscription to an enhanced Spartan Fit App (formerly \$14.99/month),³ including online workouts, training programs, activity tracking and more from world class coaches; (2) free shipping and handling for merchandise ordered from Spartan’s website; (3) a 20% discount applicable to online merchandise purchases; (4) exclusive discounts on select Spartan merchandise available to Spartan+ members⁴; (5) free, downloadable, high-resolution photo downloads (without watermarks) after events; (6) access to other “members only” premium content on Spartan’s website; (7) express race day registration; (8) a Club Area for post-race recovery; (9) guaranteed start time choice for races; and (10) advanced race analysis to help participants with their fitness goals and to complete races.

³ The Spartan Fit app previously launched by Spartan has been enhanced for inclusion in the Spartan+ Program.

⁴ Currently there is a jacket available to Spartan + Program members for \$99, with a retail value of \$250.

(Kapila Decl. ¶ 30). *The retail cost of this membership program to the public is \$7.99 per month, so the four-month free membership has a value to each Settlement Class Member of \$32.* *Id.*, ¶ 29. Settlement Class Members are not required to provide any credit card to initiate the Program subscription and subscriptions will automatically terminate at the end of four months unless the Class Member affirmatively chooses to extend it. [ECF No. 102-3], ¶ III.A.

22. Plaintiff's expert, Mr. Kapila, opines that this pricing is a "reasonable market-based retail value for the Spartan+ Membership," which includes benefits that "compare favorably to other digital fitness memberships, such as Peloton and Apple+," and therefore "the value of the free Spartan+ Program afforded by the proposed Settlement approximates its retail value of \$7.99 per month or \$32 for the four-month free membership period allowed under the Settlement Agreement." (Kapila Decl. ¶¶ 32–39). Thus, "the aggregate market-based retail value made available to Class Members for the Spartan+ Program component of the proposed Settlement totals \$25.6 million." *Id.*, ¶ 39.

2. Electronic Vouchers for Free Purchase of Spartan Merchandise

23. As an alternative to the four-month free subscription to the Program, each Class Member may elect to receive one \$5.00 electronic Voucher per each event for which they paid a full registration fee during the Class Period, up to a total of four (4) electronic Vouchers (for a combined value of \$20.00). [ECF No. 102-3], ¶ III.B. Each electronic Voucher shall entitle the class member to a \$5.00 credit towards the purchase of any non-discounted merchandise on Spartan's website. *Id.* There are currently many non-discounted merchandise items available for sale on the Spartan website for \$5.00 or less, and Spartan has no intention of removing said items as a result of this Settlement. *Id.*; *see also* Kapila Decl. ¶¶ 41–44. Electronic Vouchers are fully transferable to friends and family and each Voucher will be valid for *two (2) years* from the date of issuance. [ECF No. 102-3], ¶ III.B. Spartan currently sells Spartan Gift Cards in various dollar amounts that are utilized in a similar manner as the electronic Vouchers. Thus, "the value of the Electronic Voucher afforded by the proposed Settlement approximates its retail value of \$5 per Electronic Voucher or \$20 for the 4 Electronic Vouchers allowed under the Settlement Agreement," for an estimated aggregate value of \$10 million. Kapila Decl. ¶¶ 43–44.

3. Election of Benefits

24. The Class Notice further informed each Class Member that they had sixty (60) days from the date the Class Notice email is sent to make their selection, otherwise the default relief

will be the free four-month subscription to the Program. [ECF No. 102-3], ¶ III.B. Due to the fact that Spartan's records contain all information sufficient to identify and directly contact the members of the Settlement Class and that *there is no Claim Form or Claims Process*, to save the substantial costs of administration by a third party, Spartan will primarily administer the Settlement in good faith and will absorb that cost and with the participation and oversight of Class Counsel. If Spartan's records conflict with information submitted by a claimant, counsel for both Parties shall in good faith attempt to resolve the conflict as they have done throughout the pendency of this matter.

4. Injunctive Relief to the Settlement Class

25. Plaintiff's main reason for bringing this litigation was so Spartan provides full and adequate disclosures regarding the \$14 "Racer Insurance Fee." In addition to providing all Class Members with the relief described above, Spartan also agrees to the following injunctive relief, starting on the Effective Date, that will directly benefit all current and future Spartan consumers:

- Spartan will not describe in writing or abbreviate the at-issue fee as a "Racer Insurance Fee," "Racer Insur. Fee," "Insurance Fee," "Insur. Fee," or similar nomenclature. Spartan specifically retains the right to describe the at-issue fee as "Administrative, Insurance, and Management Fee," "AIM Fee," or "Admin Fee" during the online event registration process or elsewhere.
- Spartan will add the following language to current and future marketing and sales materials, FAQs, relevant website screens in the registration process, and screen indicators or selectors that describe or are adjacent to the at-issue fee: "The Administrative, Insurance, and Management Fee covers a number of different costs involved in Spartan events, including administrative and management costs, insurance costs and expenses for related risk management and safety measures. This fee is not a direct pass-through of third-party costs to the racer and may include revenues to Spartan."
- Spartan agrees that it will not represent, directly or indirectly, that 100% (or all) of the "Administrative, Insurance, and Management Fee" is paid to an insurance provider or other third-party.

[ECF No. 102-3], ¶ III.C

C. Class Counsel's Fees and Expenses and Named Plaintiff's Case Contribution Award

26. The Court has already designated the law firms of The Moskowitz Law Firm, PLLC and Bonnett, Fairbourn, Friedman & Balint, P.C. to serve as Class Counsel for the Settlement Class. [ECF No. 107]. Collectively, Class Counsel's application for attorneys' fees and expenses for all of the law firms involved, including Brown, Readdick, Bumgartner, Carter, Strickland & Watkins, LLP, as well as a service award for the named Plaintiff of up to \$10,000.00 (subject to Court approval), shall not exceed \$2,300,000.⁵ [ECF No. 102-3 at section VIII]. The Court may consider whether to approve these awards separate and apart from its analysis of the fairness, reasonableness, and adequacy of the Settlement.

III. Preliminary Approval and Settlement Administration

27. After the Court preliminarily approved the Settlement and certified the proposed Settlement Class, it ordered the parties to implement the Notice plan. [ECF No. 107 at 16–18]. On March 2, 2021, Spartan disseminated the notice via direct email to the Settlement Class Members as required by the Preliminary Approval Order and in substantially the form of the notice attached as Exhibit A to the Settlement Agreement. (Sheridan Decl., attached to the Motion for Final Approval as **Exhibit D**, at ¶¶ 2–4). In all, Spartan sent 789,239 emails to Settlement Class Members.

28. On March 3, 2021, Class Counsel established an internet website, <https://moskowitz-law.com/results/spartan-race>, to inform Settlement Class Members of the terms of the Agreement, their rights, dates and deadlines, and related information, as required by the Preliminary Approval Order.

29. Since notice was disseminated and the settlement website established, Class Counsel has fielded calls and inquiries from dozens of Class Members who voiced their support for the Settlement and Class Counsel answered any questions regarding the Settlement administration process.

IV. Considerations Supporting Settlement

A. There Was No Fraud or Collusion.

30. Class Counsel negotiated the Settlement vigorously and at arm's-length. Plaintiff was represented by experienced counsel at these arm's-length negotiations. Settlement

⁵ Any award of attorneys' fees and costs will be paid by Spartan's insurance carriers as part of the Settlement.

negotiations were informed by the experience of counsel for both sides in the litigation, certification, trial, and settlement of nationwide class action cases.

31. Specifically, Class Counsel investigated their claims and allegations through extensive discovery, including the review of thousands of pages of documents and the depositions of key Spartan personnel.

32. Class Counsel's investigation and review of the information provided by Defendant enabled Class Counsel to gain an understanding of the evidence related to central questions in the case and prepared them for well-informed settlement negotiations.

33. Thus, Class Counsel were well-positioned to evaluate the strengths and weaknesses of Plaintiff's claims, as well as the appropriate basis upon which to settle them.

34. Moreover, the mediation was overseen by Michael Young of JAMS, a highly experienced and prominent mediator. Mr. Young has significant experience mediating complex commercial suits to resolution and was involved in every step of the process. The settlement negotiations and mediation sessions were, at all times, adversarial, and conducted at arm's length. The mediation process and subsequent negotiations spanned many weeks.

B. *The Settlement Will Avert Years of Highly Complex and Expensive Litigation.*

35. This case involves approximately 800,000 Settlement Class Members who paid a \$14 Racer Insurance Fee to Spartan. The claims and potential defenses are complex; litigating them to resolution would have been difficult and time consuming. Although Plaintiff's claims have been pending for over a year, recovery by any means other than settlement would require additional years of litigation in this Court and appellate courts. By contrast, the Settlement provides immediate and substantial benefits to the Settlement Class.

C. *The Factual Record Is Sufficiently Developed to Enable Plaintiff and Class Counsel to Make a Reasoned Judgment Concerning the Settlement.*

36. As discussed above, Class Counsel were well-versed in Defendant's operations through considerable discovery in this action prior to Settlement. This afforded Class Counsel important insight into the strengths and weaknesses of their claims against Defendants. Before settling, Class Counsel had already developed ample information and performed extensive analyses from which to assess the probability of success on the merits, the possible range of recovery, and the likely expense and duration of the litigation.

D. Plaintiff Would Have Faced Significant Obstacles to Obtaining Relief.

37. Plaintiff and Class Counsel are confident in the strengths of their case, but are also pragmatic in their awareness of the various defenses available to Defendant and the risks inherent to litigation. Indeed, at the time of settlement Plaintiff's Motion for Class Certification was pending.

38. While Plaintiff and Class Counsel believe they have a compelling case against Defendants, Class Counsel is mindful of the fact that Defendant would have advanced significant defenses that they would be required to overcome at class certification, summary judgment, trial, and eventually on appeal on any merits and class certification. *See, e.g.*, ECF Nos. 44, 63, 95. Class Counsel and Plaintiff thus appreciate that, absent a settlement, it would have taken years of additional litigation – and overcoming vigorous legal and factual defenses – to bring the action to finality. Even then, the outcome would be uncertain. Given the myriad risks attending these claims, the Settlement cannot be seen as anything other than a fair compromise.

39. Protracted litigation carries inherent risks and inevitable delay.

40. Plaintiff and Class Counsel determined that the benefits of the Settlement reached with Defendant clearly outweigh the risks of continued litigation.

41. The Settlement provides substantial value to the Settlement Class. Such value is well within the range of reasonableness.

42. According to Defendant's records and Plaintiff's calculations, the total value of the monetary benefits provided by the Settlement is more than \$25.6 million.

43. Here, the Settlement Agreement provides that each Class member who elects to receive the Program (or simply does not indicate any selection after receiving the email notice) will be provided with a free four-month subscription to the Spartan+ Program. [ECF No. 102-3], ¶ III.A.

44. Alternatively, each Class Member may elect to receive one \$5.00 electronic Voucher per each event for which they paid a full registration fee during the Class Period, up to a total of four (4) electronic Vouchers (for a combined value of \$20.00). [ECF No. 102-3], ¶ III.B.

45. The potential Class recovery of approximately \$25.6 million represents a significant portion of the Class Members' anticipated total recovery, making available approximately 100% of claimants' actual potential damages (not factoring in potential multiple

damages), depending on the final damages calculations had the claims proceeded to trial. The return here is eminently fair.

46. Finally, Defendants are mandated to provide meaningful disclaimers on their products and other injunctive changes which will provide real value to the Class and the consuming public.

E. *The Settlement Amount Is Reasonable Given the Range of Possible Recovery.*

47. The Settlement provides substantial value to the Settlement Class. Such value is well within the range of reasonableness. Under the Settlement, Plaintiff and the Settlement Class have recovered economic benefits valued at over \$25.6 million, which represents approximately 100% of claimants' actual potential damages (not factoring in potential multiple damages), depending on the final damages calculations had the claims proceeded to trial.

48. While it is certainly possible that the maximum recoverable damages at trial for all claims could exceed the amount of the Settlement, this assumes complete acceptance of Plaintiff's liability and damage evidence on a class-wide basis. Given the obstacles and uncertainties of continued litigation, Class Counsel believe the proposed settlement represents an outstanding recovery for the Class who otherwise may have not recovered anything.

49. The Settlement also helps Class Members by providing for significant and real injunctive relief.

F. *The Opinions of Class Counsel, Class Representatives, and Absent Class Members Strongly Favor Approval of the Settlement.*

50. Class Counsel believe that this Settlement is extraordinary and clearly deserving of final approval. Moreover, opposition to the Settlement has been *de minimis*. As of March 23, 2021, the parties received 1 objection and 5 exclusion requests. (Sheridan Decl. ¶¶ 6–7).

IV. Service Awards

51. Defendant also agreed to not oppose an application for a case contribution award not to exceed \$10,000 to Class Representative Aaron Fruitstone for taking on the risks of litigation, and for Settlement of his individual claims as a Settlement Class Member in this Action. If the Court approves the award, it will be paid over and above the settlement amounts available for Class Members, and in addition to the relief the Class Representative will be entitled to under the terms of the Settlement.

52. Service awards compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation. Courts have consistently found service awards to be an efficient and productive way to encourage members of a class to become class representatives.

53. The factors for determining a service award include: (1) the actions the class representatives took to protect the interests of the class; (2) the degree to which the class benefited from those actions; and (3) the amount of time and effort the class representatives expended in pursuing the litigation.

54. The above factors, as applied to the Action, demonstrate the reasonableness of a service award to the Class Representative. Among other things, the Class Representative took numerous actions and provided substantial assistance to Class Counsel by locating and forwarding documents and information, sitting for deposition, and engaging in conferences with Class Counsel.

55. The Class Representative not only devoted time and effort to this litigation, but the end result of his efforts (and those of counsel) was a substantial benefit to the Class. The Class Representative should be compensated for their service.

56. Class Counsel hereby acknowledge that last year a panel of the United States Court of Appeals for the Eleventh Circuit issued a ruling in *Johnson v. NPAS Solutions, LLC*, No. 18-12344, 2020 WL 5553312 (11th Cir. Sept. 17, 2020). In *NPAS*, the Eleventh Circuit held that service awards for class action representatives are impermissible.

57. Although the Settlement Agreement makes clear that the settlement is in no way conditioned upon the granting of any service awards [ECF No. 102-3 at ¶ VIII.], Class Counsel does not intend to seek a service award for Plaintiff unless the ruling in *NPAS* prohibiting service awards is reversed, vacated, or overruled on or before the final approval hearing. Class Counsel will advise this Court of the status of *NPAS* prior to the Final Fairness Hearing. To the extent *NPAS* is still binding on this Court at the time of final approval, Class Counsel respectfully requests that this Court could still approve the settlement and all of its terms, but also deny approval of specifically a service award and retain “jurisdiction for the limited purpose of revisiting the denial of service awards if the Eleventh Circuit holds a rehearing en banc in *Johnson v. NPAS Sols., LLC* and reverses its decision,” or another Eleventh Circuit decision overrules *NPAS*. See *Metzler, et al. v. Medical Management International, Inc., et al.*, Case No 19-02289-VMC-CPT, 2020 WL

5994537 (M.D. Fla. October 9, 2020) (reserving jurisdiction to award service awards if NPAS is reversed). Class Counsel could then “move for reconsideration upon such a reversal.” *Id.* However, should *NPAS* be reversed, vacated, or overruled, the Court should approve the service award for Plaintiff. The detailed notice advised Class Members that Plaintiff would apply for a service award not to exceed \$10,000 for taking on the risks of litigation, and for Settlement of his individual claims as a Settlement Class Member in this Action. To date, no class member has filed an objection to this reasonable request.

V. Class Counsel’s Attorneys’ Fees

58. Pursuant to the Settlement, Class Counsel are entitled to request that the Court award attorneys’ fees up \$2,290,000.00 which is roughly 8.9% of the monetary value of the Settlement’s benefits. If the value of the injunctive relief is included, the percentage is even lower.⁶ Defendant has agreed not to oppose Class Counsel’s request for attorneys’ fees and expenses. *Id.* The Parties negotiated and reached this agreement regarding attorneys’ fees and expenses only after reaching agreement on all other material terms of this Settlement.

59. As indicated in the Court-approved Notice disseminated to the Settlement Class, and consistent with standard class action practice and procedure, Class Counsel request a fee amounting to \$2,290,000.00, inclusive of all litigation costs and expenses.

A. *The Claims against Defendants Required Substantial Time and Labor.*

60. Investigating, prosecuting, and settling the claims here demanded considerable time and labor. The complexity of this case required organization by Class Counsel, including assignment of work and regular meetings and conference calls to ensure coordinated, productive work efforts to maximize efficiency and minimize duplication of effort. Class Counsel spent over

⁶ See *Poertner v. Gillette Co.*, 618 Fed. App’x 624 (11th Cir. 2015) (class counsel fees properly awarded based on percentage of total “settlement pie,” including injunctive relief and *cy pres* award); *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003) (“[C]ourts should consider the value of the injunctive relief obtained as a relevant circumstance in determining what percentage of the common fund class counsel should receive as attorneys’ fees.”) (internal quotation and citation omitted); *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360 (S.D. Fla. 2007); *Sheppard v. Consol. Edison Co. of N.Y., Inc.*, 2002 WL 2003206, at *7 (E.D.N.Y. Aug. 1, 2002) (in valuing total settlement for percentage-based attorneys’ fee award, court included \$6.745 million in monetary relief and “an estimated \$5 million in non-monetary, injunctive relief”); *Steiner v. Williams*, 2001 WL 604035, at *4 (S.D.N.Y. May 31, 2001) (“Although the settlement in this action did not involve the payment of money by the defendants, counsel may nonetheless recover a fee if the settlement conferred a substantial non-monetary benefit.”).

1,200 hours investigating the claims of many potential plaintiffs and in litigating Plaintiff's and the Class's claims against Defendant in this action.

61. Class Counsel litigated this action tenaciously, including defeating Spartan's motion to transfer this action to Massachusetts, or alternatively to dismiss this action with prejudice. [ECF Nos. 24, 32, 34, 36].

62. Class Counsel expended significant resources researching and developing the legal claims at issue.

63. Class Counsel prepared for and participated in many meetings and conference calls in an attempt to settle the action. After the Parties executed a term sheet, Class Counsel engaged in protracted discussions and drafting over the terms of the Settlement Agreement, Notice, and claim forms. In addition, Class Counsel had continued communications with Defendants, pending final approval of the Settlement.

64. Further, the Settlement requires a continuing role for Class Counsel after final approval, in reviewing the payments made to Class Members, as well as any denied claims and reasons for denial. Class Counsel have negotiated a procedure to resolve any disagreements with Defendants regarding denied claims and will not involve the Court unless those procedures fail to result in a mutually agreeable solution. Class Counsel have responded to many Class Member calls and written inquiries concerning the Settlement and will continue to do so. Finally, Class Counsel will be responsible for responding to any appeals that may be filed and for handling all other post-approval proceedings. These substantial efforts justify awarding Class Counsel the requested fee.

65. All told, Class Counsel's steadfast and coordinated work paid great dividends for the Settlement Class. Each of the above-described efforts was essential to achieving the Settlement currently before the Court. Taken together, the time and resources Class Counsel devoted to prosecuting and settling this action of nationwide importance justify the fee we are now seeking.

B. *The Issues Involved Were Novel and Difficult and Required the Exceptional Skill of a Highly Talented Group of Attorneys.*

66. The Court has witnessed the high quality of Class Counsel's legal work, which has conferred a significant benefit on the Settlement Class in the face of daunting litigation obstacles. As the Court is aware, it is extremely challenging to establish liability based upon the facts at issue in this litigation. This complex action requires the acquisition and analysis of specific science and economic data – and the efforts of highly skilled lawyers.

67. Indeed, litigation of a case like this requires counsel highly trained in class action law and procedure as well as the specialized issues these cases present. All of the lawyers representing Plaintiff possess these attributes, and their participation as Class Counsel added significant value to the representation of this Settlement Class consisting of millions of individuals. The record before the Court establishes that the Action involved a wide array of complex challenges, which Class Counsel met at every juncture based on their extensive experience in complex litigation and class action litigation.

68. In assessing the quality of representation by Class Counsel, the Court also should consider the quality of their opposing counsel. Throughout this litigation, Defendant has been represented by extremely able and diligent attorneys. These were worthy, highly competent adversaries.

C. *The Claims against Defendants Entailed Considerable Risk.*

69. There have been vigorous defenses to similar claims in other actions denying any and all liability and similar defenses have been raised in this Action. The time and expense demands required to prepare to work on this for Class Counsel were daunting, to say the least, and obviated their ability to work on numerous other matters. Class Counsel's success under these circumstances thus represents a genuine milestone.

70. Prosecuting the Action was risky from the outset. While several risks existed, Class Counsel limit the discussion to the most serious risks.

71. First, the possibility that this Court would dismiss this action in its entirety based upon arguments that would be raised by Defendants in their motions to dismiss.

72. Second, the Court could have denied class certification on a variety of issues raised by Defendant and by the Court at the hearing on Plaintiff's Motion for Class Certification.

73. Each of these risks, standing alone, could have impeded Plaintiff's successful prosecution of these claims at trial (and in any appeal).

74. Together, they overwhelmingly demonstrate that Plaintiff's claims against Defendant were far from a "slam dunk" and that, in light of all the circumstances, the Settlement achieves an excellent class-wide result.

D. *Class Counsel Assumed Substantial Risk to Pursue the Action on a Pure Contingency Basis, and Were Precluded From Other Employment as a Result.*

75. Class Counsel prosecuted the Action entirely on a contingent fee basis. In undertaking to prosecute this complex action on that basis, Class Counsel assumed a significant risk of nonpayment or underpayment. That risk warrants the requested fee.

76. Public policy concerns – especially ensuring the continued availability of experienced and capable counsel to represent classes of injured plaintiffs whose individual claims would defy vindication – further justify the requested fee award.

77. Because of the nature of a contingent practice where cases are predominantly “big cases” lasting for years, not only do contingent firms have to pay regular overhead, but they also have to advance the substantial expenses of litigation of this kind. The financial burden on counsel bringing contingent fee cases is far greater than on a firm that is paid on an ongoing basis.

78. The above does not take into consideration the possibility of no recovery. It is not unusual to spend tens of thousands of hours on losing efforts. Prosecutions without recovery are exceedingly expensive. While the Court must focus on the reasonableness of the fees to be paid in this case, the fees and expenses that go unpaid when the cases are dismissed should not be ignored.

79. The progress of the Action to date readily demonstrates the inherent risk that Class Counsel faced in taking these cases on a contingency fee basis. Despite Class Counsel’s ongoing effort in litigating before this Court, Class Counsel remain completely uncompensated for the time and expenses they have invested. Uncompensated expenditures of this magnitude can severely damage or even destroy law firms. There can be no reasonable dispute that the Action entailed substantial risk of nonpayment and resulting financial harm for our practices.

80. Furthermore, the time Class Counsel spent on the Action was time that they could not spend on other matters. This factor thus strongly militates in favor of Class Counsel’s requested fee.

E. *Class Counsel Have Achieved an Excellent Result.*

81. The result Class Counsel achieved is outstanding. Instead of facing additional years of costly and uncertain litigation, Settlement Class Members will receive an immediate and automatic benefit from the potential economic settlement benefits of over \$25.6 million, which represents approximately 100% of claimants’ actual potential damages (not factoring in potential multiple damages), depending on the final damages calculations had the claims proceeded to trial.

The number is much higher when one considers the injunctive relief obtained. The Settlement represents an exceptional achievement by any measure.

F. *The Requested Fee Comports with Customary Fees Awarded in Similar Cases.*

82. The fee requested here matches the fee typically awarded in similar cases. As legions of decisions have recognized, a fee award of 30% or more of a common benefit is well within the range of a customary fee. The fee requested is only just under 8.9% (without any consideration of the injunctive relief). Moreover, the requested fee falls squarely below the range of awards made in numerous cases brought in this Circuit and District.

G. *Other Factors Also Favor Approving Class Counsel's Fee Request.*

83. Other factors likewise support granting Class Counsel's fee request. As noted, the burdens of this litigation have precluded Class Counsel's pursuit of other cases. The relatively small size of the firms representing Plaintiff, and the major commitment involved in accepting this representation, precluded Class Counsel's firms from working on other matters and accepting other representations. In addition, Class Counsel's fee request is firmly rooted in the economics of prosecuting a class action. *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 775 (11th Cir. 1991). Without adequate compensation and financial reward, cases such as this simply could not be pursued.

VI. Conclusion

84. Class Counsel are well aware of the strengths and weaknesses of their case, the principles of law applicable to the disputed issues, and the relative risks of continuing to prosecute the litigation and believe the Settlement obtained is an excellent result. For the reasons set forth above and in the accompanying memoranda, Class Counsel respectfully submit that the Settlement is fair, reasonable, and adequate and should be approved. In addition, the amount of attorney's fees expenses and service award agreed upon by the Parties is fair and reasonable and should be approved by the Court.

I declare under penalty of perjury of the laws of Florida and the United States that the foregoing is true and correct, and that this declaration was executed in Miami-Dade County, Florida on March 24, 2021.

By: /s/ Adam M. Moskowitz
Adam M. Moskowitz

I declare under penalty of perjury of the laws of Arizona and the United States that the foregoing is true and correct, and that this declaration was executed in Maricopa County, Arizona on March 24, 2021.

By: /s/ Andrew Friedman
Andrew Friedman